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File identification

Resolution of sanctioning procedure no. PS 35/2018, referring to Nexea Gestión Documental, SASME.

Background

1. On 05/29/2018, Girona City Council notified the Catalan Data Protection Authority of a security breach (NVS 1/2018). Specifically, Girona City Council stated that Nexea Gestión Documental, SASME (hereinafter, Nexea) manipulated, without being authorized, the files that Girona City Council had sent to it for automatic printing and filing, referring to various notifications of a tax nature (tax assessments and seizure proceedings). According to the City Council, in a document sent to Nexea, this company added a blank page, which meant that the notifications did not correspond to the recipient. This security incident affected between 500 and 1,000 notifications, as estimated by Girona City Council.

2. On 06/14/2018, Girona City Council supplemented the initial notification of the aforementioned security breach. In this complementary notification, among others, the City Council indicated that "Given the previously accumulated delay in the provision of the contracted service, the NEXEA staff responsible for the process decided, without informing or consulting the City Council beforehand, to remove the automatic controls on the stuffing to speed up the shipment. These controls are carried out on envelope codes or, if there are none, on distribution barcodes (SICER). This caused the scrolling of a page and caused some notifications not to correspond with the people concerned. When the error was detected, the process was stopped and the notifications not yet delivered were withdrawn."

The City Council added that this incident had affected 1,106 notifications, which in turn had meant that 346 people had had their personal data revealed.

3. As part of the processing of the security breach, on 06/26/2018 the Girona City Council requested information on the communication of the security breach to the affected persons.

4. On 03/07/2018, Girona City Council responded to the aforementioned request by means of a letter of the same date. In that letter, among others, it was reported that the correct number of people affected by the security incident was 347.

5. The Authority opened a preliminary information phase (no. IP 178/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of 1 October, on the common administrative procedure of the administrations

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public authorities (henceforth, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

6. In this information phase, on 11/07/2018 the Girona City Council was required to provide a copy of the contractual documentation formalized with the company Nexea regarding the service in which the incident occurred, which included the clauses relating to the processing of personal data by the external company.

7. On 23/07/2018, the Girona City Council responded to the aforementioned request in writing in which it set out the following:

- That by agreement of the Local Government Board dated 24/11/2017, the contract for the postal services of the Girona City Council was awarded to the Sociedad Estatal de Correos y Telegrafos, SASME (hereafter, Correus).
- That the file contains a responsible statement presented by Correus on 08/30/2017, which indicates that the comprehensive management of computerized notifications (computers, printing, filing, custody of images and consumables) would be subcontracted to Nexea

The City Council provided the required contractual documentation.

8. On 19/11/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Nexea for an alleged serious infringement provided for in article 44.3.d) in relation to article 10 LOPD. Likewise, he appointed a person instructing the file (...), an official of the Catalan Data Protection Authority.

9. This initiation agreement was notified to the imputed entity on 04/12/2018. In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

10. On 12/18/2018, Nexea made objections to the initiation agreement. The accused entity provided various documentation with its letter.

11. Given that in its allegations, Nexea expressly denied having manipulated the original file sent to it by Girona City Council for the printing and filing of tax notifications in relation to which the subject incident occurred of the present sanctioning procedure, on 04/01/2019 the instructing person agreed to open a trial period for a period of 10 days, in order to carry out the trial consisting of requiring the Girona City Council in order to provide all the information and/or documentation you have about the controversial security incident.

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12. This trial agreement was notified to Girona City Council and Nexea, in both cases, on 01/14/2019.

13. On 01/28/2019, Girona City Council provided the required documentation during the test phase.

14. On 03/14/2019, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority impose on Nexea, the sanction consisting of a fine of 15,000.- euros (fifteen thousand euros), as responsible for a serious infringement foreseen in article 44.3.d) in relation to article 10, both of the LOPD.

This resolution proposal was notified on 03/21/2019 and granted a period of 10 days to formulate allegations.

15. On 29/03/2019 and 01/04/2019, the accused entity presented the same letter in which it stated that it had made the voluntary advance payment of the pecuniary penalty that the investigating person proposed for resolution (15,000 euros), once applied the reduction of 20% provided for in article 85 of the LPAC (12,000 euros).

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

On 24/11/2017, Girona City Council awarded the contract for postal services to Correus. As part of this contract, Correus provided the City Council with a responsible declaration dated 30/08/2017, in which it declared that the comprehensive management of computerized notifications (computers, printing, filing, custody of images and consumables) they would be subcontracted to Nexea.

In the set of technical prescriptions that governed the aforementioned contract, with regard to the comprehensive management of computerized notifications, the City Council expressly indicated that the awarding entity "will not carry out any manipulation on the original file in terms of changing content, nor to the classification of records, which must be printed in the same order as established in the work protocols, as it appears in the file provided by the City Council" (clause III, section 5).

Nexea, as a sub-processor, modified the files provided by the Girona City Council, referring to various tax notifications (tax settlements and seizure procedures), which had to be printed and enclosed.

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This circumstance led to Nexea printing and enclosing several tax notifications that incorporated data from third parties unrelated to the recipient, which was recorded on 05/23/2018.

Although the undelivered notifications affected by this incident were withdrawn, 1,106 notifications were made, which involved the disclosure of the data of 438 people unrelated to the recipient, according to Nexea estimates.

Fundamentals of law

1. The provisions of the LPAC and article 15 of Decree 278/1993 apply to this procedure, according to the provisions of DT 2a of Law 32/2010, of October 1, of Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. In accordance with article 85.3 of the LPAC, the voluntary advance payment of the proposed monetary penalty entails the application of a 20% reduction in the amount of the fine. The effectiveness of this reduction is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

Although Nexea had presented allegations in the agreement to initiate the procedure, the imputed entity has not formulated allegations in the resolution proposal due to the fact that it had the option indicated to reduce the amount of the penalty. Despite this, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations made before the initiation agreement.

2.1. About the causes of the incident.

After specifying the date on which Nexea became aware of the controversial security incident (23/05/2018) and the measures taken that same day, Nexea addressed in its statement of objections to the agreement initiation, the causes of said incident. Nexea denied that it had manipulated the original file sent to it by Girona City Council for the printing and filing of tax notifications in relation to which the incident that is the subject of the present sanctioning procedure occurred. Specifically, Nexea asserted that the incident occurred as a result of a computer error in the program it uses for imposition (the assignment of fronts and backs to each sheet that must be printed), an error that entailed that certain sheets were crossed, so that the back of the left page was associated with the front of the right page and vice versa, which caused the front of "recipient A" to be printed on the same sheet with the reverse side of "recipient B".

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Regarding this, on the one hand it is certified that by means of a letter dated 04/06/2018, Nexea informed Girona City Council, in response to a letter dated 30/05/2018 from that local corporation, that the incident responded to an exceptional computer or technical error in the terms just described.

For its part, Girona City Council, when it initially notified this Authority of the security breach on 05/29/2018 (to which it was assigned NVS no. 1/2018), reported that Nexea had improperly manipulated the files received from the City Council for printing and automatic filing, adding a blank page, which led to the incorrect printing of notifications and the possible transmission of information that did not correspond to the recipient. Subsequently, on 06/14/2018, the Girona City Council supplemented the initial notification of said security breach, reaffirming that Nexea had improperly manipulated the files received from the City Council, an action which it attributed to the fact that given the " previously accumulated delay in the provision of the contracted service, the NEXEA staff responsible for the process decided, without informing or consulting the City Council beforehand, to remove the automatic controls on the encumbering in order to speed up the delivery. These controls are carried out on envelope codes or, if there are none, on distribution barcodes (SICER). This caused the scrolling of a page and caused some notifications not to correspond with the people concerned. When the error was detected, the process was stopped and the notifications not yet delivered were withdrawn."

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As things stand, there was a contradiction between the versions of Nexea and the Girona City Council in relation to the causes that would have originated the controversial incident that involved the disclosure of data to unauthorized third parties. Faced with this circumstance, the instructing person agreed to arrange for the opening of a trial period in order for the Girona City Council to provide all the information and/or documentation that was in its possession and that had been drawn up as a result of these facts, as much as I could have elaborated
the City Council, such as the one that Nexea had sent to him, a requirement that the City Council complied with, with the contribution of all the requested documentation.

Among the documentation provided by the City Council, apart from Nexea's letter of 06/04/2018 mentioned at the beginning of this section, there were also the minutes of the meetings held on 05/23/2018 and 06/04/2018 between representatives of the City Council (responsible for the treatment), Nexea (sub-responsible for the treatment) and Correus (responsible for the treatment), in relation to the security incident addressed here.

Firstly, in the minutes of the meeting held on 05/23/2018 (prior to Nexea's letter of 06/04/2018), which is signed by (...) of Nexea, it is recorded that although the initial purpose of that meeting was to address the "launching of the new printing service by Nexea, the delays in printing and the various incidents that have arisen", it ended up dealing with the security incident that was the subject of this sanctioning procedure. In this regard, it is stated in the minutes that the representatives of Correus and Nexea asked their respective companies for telephone explanations in that event. After obtaining

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these explanations, the representatives of Correus and Nexea made statements that were recorded in the minutes in the following terms: "there have been personnel changes and the launch of a new quality control program, called CARMEN, which seems to be that this remittance 5011 has not passed. That this remittance did not pass the control of the new program, because there had already been a significant delay in the delivery of the notifications and they wanted to be delivered as soon as possible. From the conversation they have on site with the (...) of Nexea ((...)) it is verified that the order of the file for remittance 5011 arrived in error and that, from Nexea, it was decided to fix manually, producing the situation described, because the data of different taxpayers were crossed, without anyone being aware of the error. However, from Nexea, with the intention of expediting and not paralyzing the remittances to be notified, it is acting incorrectly, because by not following the quality control protocols they have established, unfortunately the error occurs detected and described."

And according to the indicated minutes, the representative of Nexea in that meeting added about this incident that, "as a result of the delay that had occurred, its staff, unilaterally and without prior consultation, decided to manipulate the document, which is not allowed and the company is fully aware of the seriousness of this action."

It is also stated in the minutes of that meeting, that one of the representatives of the Girona City Council warned that these events could violate the regulations on data protection.

Secondly, in the minutes of the meeting of 06/04/2018 (signed by two representatives of Nexea and two representatives of Correus) it is recorded that one of the representatives of Nexea reiterates that "at the time of the incident, different circumstances: commissioning of the notification printing service by Nexea, start of operation of the GTT system at the City Council, new staff and commissioning of new software at Nexea (CARMEN Program)... All this goes cause Nexea to be delayed in the processing of shipments, and if an error was detected in one of them at the time of layout, instead of returning the shipment to the City Council for replacement or correction, an attempt was made to fix it quickly and without consulting the City Council, which has caused what happened."

So things are, from the minutes provided by the Girona City Council during the trial phase, as explained by the instructing person, it is considered accredited that, upon detecting an error in the order of the files of the remittances sent by the City Council, Nexea staff attempted to manually correct their order, instead of returning it to the City Council for correction. This meant that the printed notifications contained data corresponding to a person other than the recipient and, therefore, that the recipient of the notification accessed a third party's personal data. All this, with the addition that the control protocols that would have allowed this incident to be detected were not followed.

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As indicated in the imputed facts section, in the set of technical prescriptions that governed the aforementioned contract, the City Council gave the instruction consisting in prohibiting any type of manipulation on the original files sent by it, noting which had to be printed "in the same order as established in the work protocols, as it appears in the file provided by the City Council". From this instruction Nexea
he was aware of it before the facts alleged here occurred, as his representative admitted in the meeting held on 05/23/2018 with other representatives of the Post Office and the Girona City Council, a statement that it is included in the minutes that were drawn up and that were signed by all those present.

In relation to the defects or deficiencies that Nexea attributes to the City Council, regarding the lack of introduction of the envelope marks in all shipments, which in Nexea's opinion would allow the crossing of data, it should be taken into account that d in accordance with article 12.2 of the LOPD, it is up to the data controller to detail in the binding contract the security measures to be implemented by the data controller and, where appropriate, by the subcontractor or subcontractor.

For its part, the RGPD determines that in the contract or legal act that regulates access to data by the person in charge of the treatment, it must be stipulated that the person in charge of the treatment will adopt all the measures of necessary security in accordance with article 32 RGPD (article 28.3.c); as well as helping the person in charge to guarantee compliance with the obligations established in articles 32 to 36 (article 28.3.f), including data security (article 32). In order to maintain data security, Recital 83 RGPD determines that the person in charge or the person in charge must assess the risks inherent in the treatment and apply measures to mitigate them and to guarantee an adequate level of security. From all of the above, it is inferred that the person in charge of the treatment or sub-in charge must also take into account the risks that may arise from the provision of their services.

In turn, article 28.4 RGPD provides that the same data protection obligations stipulated in the contract (or other legal act) between the person in charge and the person in charge of the treatment, and in particular, the provision of sufficient guarantees of the application of appropriate technical and organizational measures. And article 28.3.a) RGPD establishes that in the aforementioned contract (or legal act) it must be stipulated that the person in charge of the treatment will treat the personal data only following the documented instructions of the person in charge.

As has been explained, in the set of technical prescriptions that govern the contract, Girona City Council prohibits manipulating the files it sends for printing and enclosing, which prevents Nexea from introducing the ensobrat marks unilaterally, although this considers that it would become a measure that would reduce the risk of data crossing.

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Well, for the eventual assumption that the lack of implementation of the envelope marks in all shipments, compromises the security of the data in the future, this eventual breach in the security of the treatment motivated by this lack, would be imputable solely to Girona City Council, in the understanding that it is proven that Nexea has warned it about it.

On the other hand, in its statement of objections to the initiation agreement, Nexea indicated the possible impact caused by the incident in relation to the data exposed, the level of exposure and the number of people affected . In this last sense, Nexea increased up to 438 people who would have been affected by the controversial security incident, which has already been collected in the proven facts section.

2.2. On the measures taken prior to the incident.

Subsequently, the accused entity indicated in its allegations in the initiation agreement, that it is certified in ISO 27001:2014 and 9001:2015. He added that a large part of the remittances from the Girona City Council do not have the packaging marks that allow their effective control, which was brought to the attention of the local body. He also explained that random samples are taken to check if there is any error, although he acknowledges that, in the controversial case, the sample was made on communications not affected by the incident.

On this invocation by Nexea to the quality certifications it has, it is necessary to move forward since they do not allow the imputed facts or their legal qualification to be distorted, without prejudice to the fact that they may be taken into account in the grading of the penalty, as will be explained further come in.

With regard to the allegation regarding the alleged lack of packing marks in the remittances sent by the City Council, it must be made clear that this lack was not what originated the security incident that gave rise to the present procedure In fact, Nexea admitted in its statement of objections to the initiation agreement that not all the remittances affected by the incident lacked these marks.

And as for the random extractions that he claimed to have carried out, it is sufficient to note that if they had been carried out, they were insufficient or ineffective to detect the security incident and avoid the violation of the duty of secrecy that is imputed here.

2.3.- On the measures to avoid the recurrence of the incident.

Also in the statement of objections to the initiation agreement, Nexea detailed the measures implemented following the security incident (in particular, the incorporation of a new quality control in the notifications that do not have marks of ensobrato at source, to detect that there are no odd pages in the notifications that must be printed double-sided, which would be an indication of error since they must be even), placing special emphasis on the

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the fact that there were files sent by Girona City Council that did not include the ensobrat marks, which could lead to a risk of data crossing, at Nexea's discretion.

In this respect, it is necessary to point out that the measures implemented by Nexea after the security incident that is the subject of this sanctioning procedure, cannot distort the facts imputed here nor their legal qualification. However, it is true that the adoption of security measures can be taken into account in the graduation of the sanction, as has been said regarding the quality certifications.

2.4.- About Nexea's responsibility

In the last point of its statement of objections to the initiation agreement, Nexea qualified the security incident as an unintended one-time error.

This issue relating to the possible concurrence of an unintentional error in the commission of the imputed facts, as explained by the investigating person in the resolution proposal, must be brought back to the principle of culpability. On this, this Authority has recalled in several resolutions (for all, the resolution of sanctioning procedure no. PS 52/2012 – available on the website apdcat.gencat.cat, section resolutions-) the jurisprudential doctrine on the principle of culpability, both of the Supreme Court and of the Constitutional Court. According to this doctrine, the sanctioning power of the Administration, as a manifestation of the "ius puniendi" of the State, is governed by the principles of criminal law, and one of its principles is that of guilt, incompatible with a regime of objective responsibility without fault.

In this sense, the Supreme Court in several rulings, all of 16 and 22/04/1991, considers that from this element of culpability it follows that the action or omission classified as an administratively punishable offense must be in all case imputable to its author due to grief or imprudence, negligence or inexcusable ignorance. Also the National Court, in the Judgment of 06/29/2001, precisely in the matter of personal data protection, has declared that to appreciate this element of guilt: "simple negligence or breach of duties that the Law

requires the persons responsible for files or data processing to exercise extreme diligence...".

The SAN of 08/10/2003 is also of interest, which explains the following:

> "Therefore, contrary to what is ordered in art. 11.1 of Law 15/1999, of December 13 on Protection of Personal Data, the appellant entity communicated personal data to a third party without the consent of the affected person, without meeting the causes established in section 2 of that article for that consent is not required, and without his conduct being covered by art. 12 of the same Law.

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> For what affects culpability, it must be said that generally this type of behavior does not have a malicious component, and most of them occur without malice or intentionality. It is enough to simply neglect or fail to comply with the duties that the Law imposes on the persons responsible for files or data processing to exercise extreme diligence to avoid, as in the case at hand, a processing of personal data without the consent of the person concerned , which denotes an obvious lack of compliance with those duties that clearly violate the principles and guarantees established in Organic Law 15/1999, of December 13, on the Protection of Personal Data, specifically that of the consent of the affected person."

Likewise, the judgment of the Supreme Court of 25/01/2006, also issued in the area of data protection, is based on the required diligence and establishes that intentionality is not a necessary requirement for a conduct to be considered guilty .

Regarding the degree of diligence required, the SAN of 14/12/2006 declared: "the Supreme Court considers that imprudence exists whenever a legal duty of care is neglected, that is, when the offending subject does not behave with diligence required And the degree of diligence required must be determined in each case in attention to the concurrent circumstances, such as the special value of the protected legal property, the professionalism required of the infringer, etc."

In short, it is necessary that in the conduct that is imputed there must be an element of culpability, but in order for culpability to exist it is not necessary that the facts have occurred with intent or intent, but it is sufficient that negligence has intervened or lack of diligence. And the latter is what happened in the present case, as explained by the instructing person in the resolution proposal.

Indeed, it should be borne in mind that the printing and filing of documents is a regular activity in the services provided by Nexea, for which reason, it deals with a very high volume of personal data. To this it must be added that the Girona City Council had established a contractual prohibition not to manipulate the files of the consignments, in the sense of proceeding to their printing in the same order as they appeared in the file provided by the City Council, order that Nexea breached. In addition, it is also considered proven that the quality control that Nexea had implemented (CARMEN program) was not applied to the disputed remittances.

All these circumstances lead us to consider that, if Nexea had acted with the required diligence, the access to personal data by unauthorized third parties, which is the subject of imputation here, would not have occurred.

In this way, the criteria expressed in the judgments of the National Court of 03/17/2004 and 03/02/2005 and in the archive resolution are not considered applicable to the present case

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dictated by the director of the Spanish Data Protection Agency (hereinafter, AEPD) in file E/01768/2018, which includes the jurisprudential criteria expressed in these two judgments. Leaving aside the fact that said judgments analyzed whether the appellant entities had violated the principle of data quality in its purpose aspect (art. 4.2 LOPD) as resolved by the AEPD, there the National Court concluded that it was not can

to impute to those entities the violation of the principle of finality to consider that the facts derived from a simple error, so it considers that the resolution issued by the AEPD does not keep the necessary proportion with the facts that were imputed.

In the present case, however, we are not dealing with a simple mistake, but with conduct in which the accused entity did not act with the diligence that was required of it, as explained by the investigating person.

Having established the above, it is not superfluous to remember that the Catalan Data Protection Authority and the AEPD are related based on the principle of collaboration, without any kind of hierarchy or dependency between them, so that the decisions or AEPD reports do not bind this Authority, without prejudice to existing instruments for the purpose of coordinating criteria.

3. In relation to the facts described in the proven facts section, relating to the duty of secrecy, it is necessary to refer to article 10 of the LOPD, which provided for the following:

> "The person in charge of the file and those who intervene in any phase of the processing of personal data are obliged to professional secrecy with regard to the data and the duty to save them, obligations that remain even after the end of their relations with the owner of the file or, where appropriate, with its manager."

In accordance with what has been presented, as indicated by the instructing person, the fact described in the section on proven facts, is considered to constitute the serious infringement provided for in article 44.3.d) of the LOPD, which typified as such:

> "d) The violation of the duty to keep secret about the processing of personal data referred to in article 10 of this Law."

On the other hand, article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time the events occurred, except that the subsequent modification of these provisions favor the alleged infringer. That is why, in this act, the eventual application to the present case of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons regarding the processing of personal data and the free movement thereof (RGPD). And as a result of this analysis, it is concluded that the eventual application of this rule would not alter the legal classification that is made here, and in particular would not favor the presumed person responsible for the infringement.

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4. Article 45.2 of the former LOPD provided that serious infractions are sanctioned with a fine of 40,001 to 300,000 euros.

However, paragraph 6 in article 45 of the LOPD provided for the possibility of issuing a warning, instead of imposing a fine. The aforementioned precept determined the following:

> "Exceptionally, the sanctioning body, with the prior hearing of the interested parties and given the nature of the facts and the significant concurrence of the criteria established in the previous section, may not agree to the opening of the sanctioning procedure and, instead, warn the responsible subject in order to, within the period determined by the sanctioning body, accredit the adoption of the corrective measures that are relevant in each case, provided that the following conditions are met:
> a) That the facts constitute a minor or serious infringement in accordance with the provisions of this Law.
> b) That the offender has not been previously sanctioned or warned.
> If the warning is not heeded within the period that the sanctioning body has determined, the opening of the corresponding sanctioning procedure is appropriate for this non-compliance".

It is worth saying that the legislator of the LOPD had not provided for the direct application of the figure of the warning contemplated in the precept transcribed when the requirements of the regulated type that are included in letters a) ib) are met. What this precept did was to enable an alternative of an exceptional nature, which will only be possible if the aforementioned assessed requirements are met, and whenever the sanctioning body considers it appropriate "given the nature of the facts and the significant concurrence of the criteria established by "previous section", that is to say, section 5 of article 45 LOPD.

In the present case, without the need to address whether the presuppositions established in clauses a) and b) of article 45.6 LOPD are met, as indicated by the instructing person in the resolution proposal, it is considered that the nature of the facts imputed and the lack of significant concurrence of the criteria established in article 45.5 LOPD, prevent the warning from being applied here.

On the other hand, section 5 of the same precept determined the following:

> "5. The sanctioning body must establish the amount of the sanction and apply the scale relative to the class of infractions that immediately precedes in severity the one in which the one considered in the case in question is integrated, in the following cases :
>
> a) When a qualified reduction of the defendant's culpability or the illegality of the act is seen as a result of the significant concurrence of several of the criteria stated in section 4 of this article.

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b) When the offending entity has regularized the irregular situation diligently.

c) When it can be seen that the conduct of the affected party may have led them to commit the offence.

d) When the offender has spontaneously recognized his guilt.

e) When a process of merger by absorption has taken place and the infringement is prior to this process, so that it is not imputable to the absorbing entity."

Therefore, this precept, in accordance with article 29.4 of Law 40/2015, of October 1, on the legal regime of the public sector (LRJSP), provided for the possibility of applying the scale of sanctions provided for by to infractions of a lower degree than the one charged; that is to say, it allows a light penalty to be imposed for the commission of a serious offence.

On the basis of the previous point, as indicated by the instructing person, it is considered that in this case several of the criteria provided for in article 45.4 of the LOPD for a qualified reduction of the culpability of the accused entity were met (art. 45.5.a LOPD). Specifically, the one-off nature of the offense (art. 45.4.a) and the non-record of benefits as a result of the commission of the offense (art. 45.4.e).

For all this, it is pertinent to appreciate a qualified reduction of culpability, which constitutes one of the presuppositions for estimating the application of article 45.5 of the LOPD.

Once the option provided for in article 45.5 LOPD has been applied, it is necessary to determine the amount of the penalty to be proposed, within the limits provided for minor penalties (from 900 to 40,000 euros).

With regard to the graduation of the sanctions established by article 45.4 of the LOPD, in accordance with the principle of proportionality enshrined in article 29 of the LRJSP, as proposed by the instructing person, the consistent sanction should be imposed in a fine of 15,000 euros (fifteen thousand euros), as a result of the weighting between the aggravating and mitigating criteria.

As mitigating criteria, the concurrence of the following causes is observed: the lack of evidence of recidivism in the commission of infractions of the same nature (art. 45.4.g); and the concurrence of three circumstances that are considered relevant to mitigate the degree of illegality and culpability in the actions of the specific infringing entity (art. 45.4.j): 1) immediate suspension of the sending of notifications a once you became aware of the data crossing; 2) the measures adopted - new controls - to prevent the facts alleged here from being reproduced again; and 3) have certifications in relation to information security and quality management.

On the contrary, as aggravating criteria, the following elements must be taken into account: the volume of illicit treatments carried out - they affected 438 people - (art. 45.4.b); the obvious link between the offender's activity and the processing of character data

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staff (art. 45.4.c); and the business figure of the imputed entity - according to the transparency portal of the Ministry of Finance, in the latest annual accounts published on said portal corresponding to the year 2017, Nexea's business figure was be of
13,168,929.00 euros - (art. 45.4.d).

On the other hand, in accordance with article 85.3 of the LPAC as set out in the initiation agreement and in the resolution proposal, if before the resolution of the sanctioning procedure the accused entity made the payment voluntary pecuniary penalty, a 20% reduction should be applied on the amount of the proposed penalty (therefore, the penalty would be 12,000).

The effectiveness of the aforementioned reduction is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of Law 39/2015, in fine).

Well, as indicated in the antecedents, by means of a letter of 29/03/2019, the accused entity informed that it had paid 12,000 euros (twelve thousand euros) in advance, corresponding to the amount of the penalty resulting once the cumulative reduction of 20% has been applied. This payment was received by the Authority on 04/01/2019.

5. Given the findings of the violations provided for in article 44 of the LOPD for privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Authority Catalana de Protecció de Dades, authorizes the Director of the Authority so that the resolution declaring the infringement establishes the appropriate measures so that its effects cease or are corrected. This, in addition to imposing the corresponding sanctions. In the present case, as stated by the instructing person in the resolution proposal, it is not considered necessary to require any corrective measures from Nexea, on the understanding that the infringing conduct was a one-off fact already accomplished.

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resolution

For all this, I resolve:

1. Impose on Nexea Gestión Documental, SASME the sanction consisting of a fine of 15,000.- euros (fifteen thousand euros), as responsible for a serious infringement provided for in article 44.3.d) in relation to article 10 , both from the LOPD. Once the reduction is applied
provided for in article 85 of the LPAC, the resulting amount is 12,000 euros (twelve thousand euros), an amount already paid by Nexea.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 5th legal basis.

2. Notify Nexea of this resolution.

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08008 Barcelona

3. Order that this resolution be published on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide
article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,

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