

File identification

Resolution of sanctioning procedure no. PS 46/2022, referring to the General Directorate of LGBTI+ Public Policies of the Department of Equality and Feminism

Background

1. On 04/30/2021, the Catalan Data Protection Authority received a letter from the company (...) in which it filed a complaint against the General Directorate of Equality of the Department of Labor, Social Affairs and Families – currently, General Directorate of LGBTI+ Public Policies of the Department of Equality and Feminism – (hereinafter, the Department), due to an alleged breach of the regulations on personal data protection .

Specifically, the letter of complaint made it clear that the Department had published on its website the Equality Plan of the complaining company, in which, according to the statement, "private and sensitive *data of the company and workers are released that cannot be published*" and called for the immediate withdrawal of the publication of the reference document.

2. The Authority opened a preliminary information phase (no. IP 184/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 24/01/2022 the reported entity was required to report on which personal data was contained in the Equality Plan of the reporting company that had been published on the Department's website, on period of time in which the Plan remained published and on the legal basis that would have legitimized the publication of the said document without anonymizing the personal data of the workers.

4. On 02/03/2022, the Department responded to the above-mentioned request in a letter in which it stated the following:

- That " *The personal data contained in the Company's Equality Plan (...) are as follows: name and surname and some handwritten rubric*".
- That , " *It was published on the website of the Department of Labor, Social Affairs and Families on 05/29/2020 and was depublished on 05/03/2021. The publication of data was not subject to any of the legal bases provided for in article 6 of the General Data Protection Regulation.*"
- That " *On April 30, 2021, the company (...) and, on the other hand, the company's Data Protection Officer, contacted the Data Protection Officer of the TASF, through email, in order to communicate the improper publication of the corresponding Equality Plan and request its deletion. (...) On May 3, 2021, the DPD of the TASF informed the company (...) and its DPD that the General Directorate of Equality, currently attached to the Department of Equality and Feminism, had already proceeded to the de-publication of the information, as well as to the de-indexing of it in Google search engines*".

5 . On 12/07/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Department of Equality and Feminism for the alleged

violation provided for in article 83.5.a) in relation to the Article 5.a); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 07/14/2022.

In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

The deadline has been exceeded and no objections have been submitted.

proven facts

Publication of the company's Equality Plan (...) in the "Equality Plans" section of the website of the Department of Work, Social Affairs and Families - currently the Department of Equality and Feminism -, which contained the identification data of people working in the company, as well as handwritten signatures of some people. This Plan remained published during the period between 05/29/2020 and 05/03/2021.

Fundamentals of law

1. The provisions of the LPAC , and article 15 of Decree 278/1993, 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 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.
3. In relation to the facts described in the proven facts section, relating to the publication of the Equality Plan of the reporting company on the website of the accused Department, it is necessary to refer to article 5.1 a) of the RGPD , which provides that personal data "a) *treated in a lawful, fair and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)*".

For its part, article 6.1 of the RGPD provides for the following:

- " 1. *Treatment will only be permitted if at least one of the following conditions is met:*
- a) *The interested party gives his consent for the treatment of his personal data for one or several specific purposes.*
 - b) *The treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;*
 - c) *The treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
 - d) *The treatment is necessary to protect the vital interests of the interested party or another natural person;*

- e) *The treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
- f) *The treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the a child is interested.*

The provisions in letter f) of the first paragraph will not apply to the treatment carried out by public authorities in the exercise of their functions”.

In relation to the content of Equality Plans, this is regulated in article 8 of Royal Decree 901/2020, of October 13, which regulates equality plans and their registration, and modifies the Royal Decree 713/2010, of 28 May, on registration and deposit of collective labor agreements and agreements, issued in furtherance of Organic Law 3/2007, of 22 March, for the effective equality of women and men, and of article 17.5 of the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October.

Well, article 8.2 of Royal Decree 901/2020 provides the minimum content that equality plans must have, which is what is transcribed below:

- "a) The determination of the parties that arrange them.*
- b) The personal, territorial and temporal sphere.*
- c) The report of the diagnosis of the company's situation or, in the case referred to in article 2.6, a diagnosis report of each of the companies in the group.*
- d) The results of the remuneration audit, as well as its validity and periodicity in the terms established by Royal Decree 902/2020, of 13 October, on equal remuneration between women and men.*
- e) The definition of qualitative and quantitative objectives of the equality plan.*
- f) The description of specific measures, the deadline for execution and prioritization of these measures, as well as the design of indicators to determine the evolution of each measure.*
- g) The identification of the means and resources, both material and human, necessary for the implementation, monitoring and evaluation of each of the measures and objectives.*
- h) The calendar of actions for the implementation, monitoring and evaluation of the measures of the equality plan.*
- i) The monitoring, evaluation and periodic review system.*
- j) The composition and functioning of the commission or joint body in charge of monitoring, evaluating and periodically reviewing equality plans.*
- k) The modification procedure, including the procedure to resolve possible discrepancies that may arise in the application, monitoring, evaluation or review, as long as the legal or conventional regulations do not require it to be adapted."*

In turn, article 17.5 of the revised text of the Workers' Statute Law makes a reference to Organic Law 3/2007, when it provides that the establishment of equality plans in companies " must *"adjust to the provisions of this law and Organic Law 3/2007, of March 22, for the effective equality of women and men"*.

In this regard, neither Royal Decree 901/2020, nor the Workers' Statute, nor Organic Law 3/2007, contain any provision that could prevent the publication of companies' equality plans, including the personal data of their workers and workers Dissemination that, on the other

hand, the Department recognizes as having carried out, without the protection of any of the legal bases provided for by article 6 of the RGPD.

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of " *the principles basics of the treatment, including the conditions for consent to the tenor of articles 5, 6, 7 and 9* ", among which there is the principle of legality.

The conduct addressed here has been included as a very serious infraction in article 72.1.b) of the LOPDGDD, in the following form:

"b) The processing of personal data without any of the conditions of legality of the processing established by article 6 of Regulation (EU) 2016/769 being met"

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected. The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

And section 3 of art. 77 LOPDGDD, establishes that:

"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable. Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010 , determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In the present case, it is unnecessary to require the Department of Equality and Feminisms to adopt corrective measures in order to correct the effects of the infringement given that the controversial document is no longer published on the Department's website.

For all this, I resolve:

1. Admonish the Department of Equality and Feminism as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1 a), both of the RGPD.

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 4th legal basis.

2. Notify this resolution to the Department of Equality and Feminism.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.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 the provisions of 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,