

□ File No.: PS/00478/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with  
based on the following

### BACKGROUND

FIRST: Dated 09/08/2020 A.A.A. (hereinafter referred to as the complaining party)

files a claim with the Spanish Agency for Data Protection (AEPD)

against EDITORIAL RIBADEO, S.L., with NIF B01864982 (hereinafter, the part  
claimed or the Publisher).

He bases his claim, on the one hand, on the fact that \*\*\*URL.1 publishes “conversations that I  
I sent by email (which I have no problem making public)

attributing them to a third person.” On the other hand, the claimant states that the

website of the person claimed, despite including a data collection form

personal, does not provide the information required by the data protection regulations of  
personal character.

Provide with your claim a screenshot of a page of the social network

Facebook that reproduces a comment subscribed by a person, identified by the

name and two surnames, and a photograph of your profile. Immediately below is

a written text and a photograph of a person.

SECOND: The AEPD accesses the website on 10/02/2020

<https://edribadeo.com/contacto> and get screenshots of the contact forms

collection of data published in it:

1. The first form is preceded by this legend: “Your opinion is important to us.

us. Knowing the opinion of our clients is very important for us,

We extend the invitation to fill out our form to request information about

the products we offer. As soon as possible, one of our representatives will honor the request."

Immediately below there are spaces intended to collect the name, address electronics and opinion. Next, the "Send" button appears and below this caption: "This site is protected by reCAPTCHA and the Privacy Policy applies and the Google Terms of Service."

2.The following form is preceded by the following text: "TODAY SUPER DEALS OF OUR BOOKS. FAIL NOW! +\*\*\*PHONE.1 \*\*\*EMAIL.1 Create bill. By creating an account, you may receive newsletters or promotions."

Then there are spaces for filling in the name, surname, email e-mail and telephone "(optional)". He then says, "Already have an account?"

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/16

Log in. This site is protected by reCAPTCHA and the Privacy Policy applies.

privacy and the Google Terms of Service."

3.The third form is preceded by the indication "Checkpoint/We are the voice of the new writers. Then the anagram of the claimed person and a form of orders. There are spaces in it for data collection: Under the rubric "Customer information", the data of the email address and telephone (optional). Bass the heading "Main Address", the name, surname, postal address, postal code and city.

Neither in the aforementioned forms nor in any other section of the website does the Claimed party, owner of the page, informs of its privacy policy. yes there is one

reference to the privacy policy related to “reCAPTCHA” in the terms

that have been reproduced in points 1 and 2 above.

THIRD: In accordance with the provisions of article 65 of Organic Law 3/2018, of

December 5, data protection and guarantee of digital rights

(LOPDGDD), in order to assess the admissibility of this claim, a transfer of

she to the claimed party so that within a month he could provide an explanation

on the facts denounced and detail the measures adopted to avoid that in the

Similar situations will continue to occur in the future.

The transfer to the claimed Publisher was made electronically, in the manner provided

by Law 39/2015, of October 1, on the Common Administrative Procedure of the

Public Administrations (LPACAP), the date of availability being the

10/13/2020 and its automatic rejection on 10/24/2020. This is stated in the certificate

issued by the Electronic Notification and Electronic Address Support Service

Skill of the FNMT (hereinafter, FNMT) in the file.

The notification was reiterated by post and was returned to this AEPD on

10/29/2020 due to incorrect address, end that accredits the Certification of

impossibility of delivery issued by the State Post and Telegraph Society, S.A.E.,

(hereinafter, Correos) in the file.

FOURTH: On 12/16/2020 the Director of the AEPD issues a resolution admitting the procedure

the claim.

FIFTH: On 07/30/2021 the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the party claimed, in accordance with

provided in articles 63 and 64 of the LPACAP, for the alleged violation of article

13 of the RGPD, typified in article 83.5.b) of the RGPD.

SIXTH: The agreement to start the procedure was notified to the respondent

electronically, making available in the electronic headquarters of this Agency the

08/02/2021. On 08/13/2021 the rejection occurred in accordance with the provisions of article 43.2 of the LPACAP, with the effects provided for in article 41.5 LPACAP, "taking for carried out the process and followed the procedure.

There are no allegations of the respondent party to the agreement to open the file sanctioning

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/16

SEVENTH: Test phase.

On 10/05/2021, the instructor of the procedure agrees to open a

test phase and the practice of the following evidentiary proceedings:

1. Consider the following documents reproduced for evidence purposes: The claim filed by the claimant and its attached documentation; documents generated and obtained by the Subdirectorate of Inspection on the occasion of the request of information addressed to the respondent, prior to admission for processing of the claim, and the documents generated by notifying the claimed party of the settlement agreement. opening of the sanctioning procedure.

2. The claimed party is required so that, within ten business days computed

Upon receipt of this letter, send the information and documentation to the AEPD which is detailed:

1. That you inform from what date you use the data collection forms personal data that are published on its website.

2. That it inform if the entity directs any writing, by way of acknowledgment of receipt or welcome, to the people from whom you collect personal data on the occasion of

Fill in the "Create account" form. If your answer is yes, you must

Provide a copy of the document that the entity sends to the interested parties.

3. That you provide a copy of the written model that you use when you provide information to the people who have completed the "request for information on their products" that appears on its website.

The document informing the defendant of the opening of the evidence phase and the practice of the tests that are requested is notified electronically on 10/05/2021 and is rejected on 10/16/2021 in the form and with the effects of articles 43.2 and 41.5 of the LPACAP respectively, as evidenced by the certificate of the FNMT that works in the proceedings.

The notification of the letter is reiterated by postal mail that is delivered on 10/25/2021, as stated in the "Proof of Delivery Document" issued by Mail that works in the file.

No response is received from the party complained against to the tests carried out.

EIGHTH: By diligence signed by the instructor on 10/27/2021 they join the administrative file the following documents from the Subdirectorato

General Promotion and Authorizations of this body:

1. The email that the Subdirectorato General for Promotion and Authorizations addresses on 10/25/2021 to the secretary of the Subdirectorato General for Data Inspection in which it indicates that, following instructions, it forwards the email received in the account of the DPD of this Agency. The documents that were received in the DPD account of the AEPD were:

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

(i) An email sent on 10/25/2021 by B.B.B. from the address

\*\*\*EMAIL.2 to the DPD of the Agency with the "Subject" "Editorial Ribadeo, SLD (responses notification)". The text of the email reads like this:

"A few hours ago I received the following document that I attach about some complaint from Editorial Ribadeo SLD. I inform you that Editorial Ribadeo is in disintegration process and that for 6 months has been without operations, for therefore we do not treat data of authors, the authors who made contracts with our publisher were informed of the withdrawal of the books, and the consequences, in addition to the protection of your data, which consists.

Editorial Ribadeo SLD does not currently benefit from any published book, for this you can check directly with the Caixa Bank bank branch.

Sorry for any inconvenience this may cause, I don't know who to contact and I am currently out of the country. But I would like to clarify any doubt that exist, if you could help in case this is not the department to which I must direct myself."

"Sincerely Administrative of Editorial Ribadeo SLD B01864982".

(The underlining is from the AEPD)

(ii) Photographs showing the letter that the AEPD sent to the respondent notifying you of the opening of the trial phase and the request for information and documentation, as well as the envelope used for mailing.

2. The email that the Subdirector General for Promotion and Authorizations of the AEPD sent the respondent on the same date, 10/25/2021, informing him that "This email address is not an official record for submission of writings addressed to the Spanish Data Protection Agency. If you want to present any documentation, you must do so through the General Registry of the

Agency."

NINTH: Motion for a resolution.

The proposal was signed by the instructor of the file on 03/23/2022

proposing:

<<That, by the Director of the Spanish Agency for Data Protection, a

warning, regulated in article 58.2.b) of the RGPD, to EDITORIAL RIBADEO

S.L., with NIF B01864982, for an infringement of article 13 of the RGPD typified in the

article 83.5.b) of the same legal text.

That, by the Director of the Spanish Data Protection Agency, in accordance with

article 58.2.d) RGPD, is ordered in the sanctioning resolution that could be issued

that, within the term specified in the resolution, adopt the necessary measures to

that the treatment operations comply with the provisions of the RGPD, in

individual to comply with the information obligation imposed by articles 12 and 13

of the RGPD.>>

Included in the proposed resolution, as an annex, is a list of the

documents involved in the procedure.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/16

TENTH: The proposal was notified to the respondent party electronically,

in accordance with the provisions of the LPACAP, making itself available at the headquarters

electronically on 03/23/2022 and being rejected on 04/03/2022.

There are no allegations of the respondent party to the proposed resolution.

The notification of the proposal was reiterated through postal mail, which resulted

delivered on 04/13/2022, according to the documentation in the file.

Of the actions carried out in this procedure and the documentation

that works in the file, the following have been accredited:

#### PROVEN FACTS

1º): There are various captures in the file, obtained by the AEPD on 10/02/2020

screenshots from the web page for which the claimant is responsible,

\*\*\*URL.1, confirming that collection forms were included on that date

of personal data. The forms that are displayed in the images obtained from

the website are:

1. Form preceded by the legend "Your opinion is important to us.

Knowing the opinion of our clients is very important for us, we extend

the invitation to fill out our form to request information about the products

what we offer. As soon as possible, one of our representatives will answer the

request."

2. Form preceded by the text "TODAY SUPER OFFERS ON OUR BOOKS.

FAIL NOW! +\*\*\*PHONE.1 \*\*\*EMAIL.1 Create account. When creating a

account, you can receive newsletters or promotions."

3. Form preceded by the indication "Checkpoint/We are the voice of the new

writers" that includes the anagram of the person claimed and an order form.

2º): The screenshots obtained from the web page of the claimed party prove that

through the forms described in the preceding proven fact, information was collected

the following data:

1. In the form destined to "request information about the products that

we offer", the name and the electronic address.

2. In the form used to "create an account" the name, surname, email and,

only optional, the phone.



3. In the order form, the postal address, zip code, city, name,

last name, email address and, only optional, telephone.

3º): The documentation related to the website \*\*\*URL.1 that is in the file

evidence that in none of the three forms or in any other section of that

website there was a clause that facilitated the information that was mandatory

must be offered to the interested parties from whom personal data is collected,

in accordance with article 13 of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/16

4th): The opening agreement was notified to the respondent by electronic means and the

notification was rejected after ten days, in accordance with article 43.2,

second paragraph, of the LPACAP, with the effects provided for in article 41.5 of the

same law. The respondent did not make any objections to the agreement to open the

process.

5º): The opening document of the evidence phase and the evidence proceedings that are

requested the claimed party were notified electronically and by mail that it was

received by the claimed party on 10/25/2021. The defendant did not respond to the tests

requested. He just sent an email from the address \*\*\*EMAIL.2 and

this text:

“A few hours ago I received the following document that I attach about a complaint

of the Editorial Ribadeo SLD. I inform you that Editorial Ribadeo is in the process of

disintegration and that for 6 months has been without operations, therefore, we do not try

author data, the authors who made contracts with our publisher were

informed of the withdrawal of the books, and the consequences, in addition to the protection of your data, which consists.

Editorial Ribadeo SLD does not currently benefit from any published book, to

This can be checked directly with the Caixa Bank bank branch. Excuse me the inconvenience it may cause is that I don't know who to contact and I am currently out of the country. But I would like to clarify any doubt that existed, if you could help in case this is not the department to which I should go.

Sincerely Administrative of Editorial Ribadeo SLD B01864982”

6º) On 09/22/2021 the Mercantile Registry published the following information regarding the claimed:

- Company registration date, 09/18/2020
- Start date of social operations, 08/21/2020
- Name of the sole Administrator, B.B.B.
- Registered office, \*\*\*ADDRESS.1
- Company object, as main activity publishing books. Also the edition of newspapers and magazines and others "not included in the previous articles"
- Subscribed and paid up share capital, 3,000 euros.

7º) We have no evidence that the claimed company is extinguished or is in the process of dissolution. As of 03/22/2022 the last registration that appears practiced in the Mercantile Registry is dated 09/18/2020 and deals with the constitution of the company, the declaration of its sole proprietorship and the Appointment as Sole Administrator of B.B.B.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/16

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Article 63.2 of the LOPDGDD determines that "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Article 5 of the RGPD deals with the principles that should govern the treatment of

personal data and has:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and transparency>>;

(...)

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it (<<proactive responsibility>>)"

One of the manifestations of the principle of transparency described in section a)

of article 5.1. of the RGPD is the right that the RGPD grants to interested parties, and the

correlative obligation imposed on the person responsible for the treatment, to receive the

information referred to in articles 13 and 14 in the terms detailed

Article 12 of that legal text.

Articles 13 and 14 of the RGPD contemplate, respectively, two hypotheses: that the data have been collected directly from the interested party, as is expected to happen

in the forms that the claimed party has published on its website, or that the

Data is not obtained from the interested party.

Article 13 of the RGPD establishes:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of the transfers indicated in the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.” (emphasis ours)

Recitals 39 and 60 of the Regulation help to specify the scope of the

right of information that is granted to the interested parties. Recital 39 says:

“All processing of personal data must be lawful and fair. For natural persons

it must be absolutely clear that they are being collected, used, consulted or

otherwise treating personal data that concerns them, as well as the extent to which

that said data is or will be processed. The principle of transparency requires that all

information and communication regarding the processing of said data is easily

accessible and easy to understand, and that simple and clear language is used. Saying

principle refers in particular to the information of the interested parties on the identity

of the person in charge of the treatment and the purposes of the same and to the information added to

ensure fair and transparent treatment with respect to natural persons

affected and their right to obtain confirmation and communication of the data

personal data that concern them that are subject to treatment. natural persons

must be aware of the risks, standards, safeguards and rights

regarding the processing of personal data as well as the way to assert their

rights in relation to treatment. In particular, the specific purposes of the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

processing of personal data must be explicit and legitimate, and must be determined at the time of collection. [...]” (emphasis ours)

Recital 60 of the RGPD adds that “The principles of fair treatment and transparent demand that the interested party be informed of the existence of the processing and its purposes. The data controller must provide the data subject with as much additional information as necessary to guarantee fair treatment and transparent, taking into account the specific circumstances and context in which personal data is processed. The interested party must also be informed of the existence of profiling and the consequences of such profiling.

If personal data is obtained from data subjects, they must also be informed whether they are obliged to provide them and the consequences if they do not. they made.” (emphasis ours)

The violation of article 13 of the RGPD is typified in article 83.5.b) of the RGPD, provision that provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) (...)
- b) the rights of the interested parties pursuant to articles 12 to 22;”

The LOPDGDD, for prescription purposes, qualifies the violation of article 13 of the RGPD as a very serious infringement (article 72.1.h) for which it sets a term of three-year prescription.

The agreement to open this sanctioning procedure attributed to the Editorial, responsible for the website <https://edribadeo.com/contacto>, an infringement of the article 13 of the RGD, since the forms included on its page do not offer the information you are required to provide to people from whom you collect personal data by completing the aforementioned forms.

The obligation to inform imposed by the RGD covers all the extremes that details its article 13 and the data controller must provide it to the interested party in the very moment of data collection, that is, when the third party fill in any of the forms.

The documentation in the file proves that from the website <https://edribadeo.com/contacto>, of which the claimed party is the owner, three forms are accessed of data collection: It is accredited that through the form that has been described in section 1 of the second Antecedent -which indicates that by means of it one can request information about the products that the complainant offers and know the opinion of those who access the page - the name, the electronic address and the opinion of the interested party. That through the form described in section 2 of the Second antecedent -in which it is indicated that its purpose is that the owner of the C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

10/16

data create an account that will allow you to receive newsletters and promotions- collects the name, surname, email and, only optional, the telephone. and what to through the form described in section 3 of the second Antecedent -which says that



the information contained in it allows you to order products from the claimed party.

collects the email address, the telephone number, only optional, the name, surname, postal address, postal code and city.

In turn, it has also been proven in the file that the website of the

Editorial does not inform about "its" privacy policy, nor does it provide the information that specifies article 13 of the RGPD. The only reference to "a" privacy policy

that we can find on the website of the claimed party is related to

"reCAPTCHA" because under two of the three forms the following legend appears:

"This site is protected by reCAPTCHA and the Privacy Policy and Terms of Use apply.

Google Terms of Service."

Google reCAPTCHA is a system designed to differentiate between humans and computers that is used so that bots cannot fill out application forms

maliciously on behalf of a human being and that the privacy policy of

Google, which is alluded to on the website of the defendant, obviously deals with exclusively, on the processing of data carried out by Google to activate that system.

We are, therefore, before a data treatment -the one that Google carries out to

provide the person in charge of the web page with its service of the recaptcha system- and before a

responsible for that treatment -Google- other than the claimed party against whom

this sanctioning file is directed. The data processing that Google carries out

carried out by reason of the recaptcha service has nothing to do with the breach by the

Publisher of the obligation to inform imposed by article 13 of the RGPD.

The Publisher has made no objections to the opening agreement. Neither has

responded to the requested evidence nor has it made any arguments regarding the proposal for

resolution. At this point it should be noted that, in accordance with the provisions of the

article 14.2.a) of the LPACAP, the claimed party is a subject obliged to relate

with the Administration by electronic means. Article 43 of the LPACAP, "Practice of notifications through electronic means", it has in its section 2, subparagraph second, that "When the notification by electronic means is of a mandatory [...] shall be deemed rejected when ten calendar days have elapsed from the time the notification is made available without accessing its content." (The underlining is ours)

For its part, article 41 of the LPACAP, "General conditions for the practice of notifications", it provides in section 5 that "When the interested party or his/her representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure."

As stated in the Factual Background of this resolution, the agreement of The beginning of the procedure was notified to the Editorial by electronic means and the notification was rejected in accordance with article 43.2, second paragraph, of the LPACAP with the effects provided for in article 41.5 of the LPACAP:

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

11/16

The letter in which the defendant was informed of the opening of the evidence phase and various tests were requested, it was also notified by electronic means and was also rejected in accordance with the provisions of article 43.2 of the LPACAP and the effects provided for in article 41.5 of Law 39/2015. notification of that writing was reiterated exceptionally through postal mail that was received by the party claimed on 10/25/2022. However, the Publisher did not respond to the tests

requested and limited himself to writing a letter to this Agency -to the electronic address of the DPD of the AEPD- in which he made various considerations unrelated to the evidence required, among them that society "is in the process of disintegration and that He has been without operations for 6 months".

The proposed resolution was notified by electronic means, being made available to provision of the claim on 03/23/2022 being rejected in accordance with the provisions of article 43.2, second paragraph, of the LPACAP, with the effects provided for in article 41.5 of the LPACAP, dated 04/03/2022. The notification of that writing was reiterated exceptionally through postal mail that was received by the claimed party on 04/13/2022. The Editorial has not made any objections to the proposed resolution.

In this regard, it should be taken into consideration that according to article 41.7 LPACAP "When the interested party is notified by different channels, it will be taken as date of notification that of the one that would have occurred first." So

Therefore, the term granted to evacuate the procedure of allegations to the proposal of resolution concluded on 04/19/2022, ten business days computed from 04/03/2022, date of rejection of the electronic notification.

It has been indicated that the respondent - who had access by postal mail to the letter in which he was notified of the opening of the trial phase and the evidence requested - sent an email to the DPD of the AEPD in which he stated, among other things, that the limited company was in the process of disintegrating and operations for six months. In line with this Editorial statement, we have to underline that none of the circumstances he mentions are equivalent to the extinction of the corporate legal person. The respondent party does not even prove the dissolution of the company, indicating that, once the dissolution has been agreed, while the liquidation is carried out, the company retains its legal personality (article 371 of the Royal Legislative Decree 1/2010, approving the Consolidated Text of the Law

of Capital Companies, TRLSC) In any case, the public deed of extinction of the

The company must be registered in the Mercantile Registry (R.M.), article 396 of the TRLSC.

In that sense, as stated in Proven Fact 7), as of 03/22/2022 the last

inscription that appeared in R.M. in the name of the limited company that is part

claimed in this file was dated 09/18/2020 and dealt with the constitution

of the company, the declaration of its sole proprietorship and the appointment as

Sole administrator of B.B.B. In short, on 03/22/2022 there was no such thing in the R.M.

no registration from which it can be inferred that the company was in the process of

dissolution, so the manifestation of the claimed, as the legal person

continues to exist, it is irrelevant for the purposes of this disciplinary proceeding.

This being the case, having been accredited in the file that the web page of the

which is the owner of the claimed party, despite including three data collection forms

personal, did not report in the terms to which it was bound by article 13

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

12/16

of the RGPD, it is concluded that that entity incurred a violation of this

provision that is subsumable in the offending type of article 83.5.b) of the RGPD.

The LOPDGDD, for prescription purposes, qualifies in article 72.1.h) as a

very serious infraction “The omission of the duty to inform the affected party about the

processing of your personal data in accordance with the provisions of articles 13 and 14

of Regulation (EU) 2016/679 and 12 of this organic law.”

IV

The corrective powers that the RGPD attributes to the AEPD as a control authority

are listed in article 58.2, sections a) to j). Among them, section b) refers to directing a warning to the person in charge or in charge of treatment when processing operations have violated the provisions of this Regulation; section i), to the imposition of an administrative fine in accordance with GDPR article 83; section d), to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, when applicable, in a certain way and within a certain period specified and section g), to order the deletion of personal data with according to articles 16, 17 and 18.

Article 83.5. of the RGPD establishes an administrative fine sanction (article 58.2.i) for the behaviors that are typified in it, without prejudice to the fact that -as provided in article 83.2. of the RGPD- administrative fines can be imposed together with other corrective measures provided for in article 58.2 of the RGPD.

Notwithstanding the foregoing, recital 148 of the RGPD admits the possibility that for the behaviors that are typified in sections 4, 5 and 6 of article 83 of the RGPD the administrative fine foreseen in those precepts can be replaced by directing the responsible or in charge of the treatment a warning contemplated in the article 58.2.b) of the RGPD.

Recital 148 states:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.” (The underline is our)

The mention that recital 148 of the RGD makes the infringement minor nothing has to do with the classification that the LOPDGDD makes of infractions in very serious, serious and minor. Classification that operates solely for the purposes of prescription. In this case, for prescription purposes, the infringement attributed

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

13/16

to the claimed party is considered a very serious infringement (article 72.1.h LOPDGDD)

The lightness or seriousness of the conduct contrary to the RGD referred to in the Recital 148 is linked to the risk that the infringing conduct entails for the rights of individuals, in particular for the clients of the responsible entity of the treatment. And in assessing the risk, it must be taken into account, among other elements, the volume of customers.

Opinion 2016/679, WP 253, of the Article 29 Working Group (hereinafter GT29) makes these considerations regarding the corrective measure of warning:

“[...] by evaluating the facts of the case in light of the general criteria provided for in article 83, paragraph 2, the competent supervisory authority may decide that in a particular case it is more or less necessary to impose a measure correction in the form of a fine.

[...]

Recital 148 introduces the notion of 'minor infringements'. sayings

Violations may constitute violations of one or more provisions of the

Regulation cited in article 83, paragraphs 4 or 5. However, the evaluation of

the criteria provided for in Article 83, paragraph 2, may lead to the authority

of control considers, for example, that in the specific circumstances of the case the

violation does not entail a significant risk to the rights of the data subjects and does not

it affects the essence of the obligation in question. In such cases, the fine may be

replaced (although not always) by a warning.[...]

Recital 148 does not oblige the supervisory authority to always substitute a fine

for a warning in case of a minor infraction [...] but rather it offers that

possibility, after a concrete evaluation of all the circumstances of the case.

[...]

However, the effective, proportionate and dissuasive reaction to a violation of the

article 83, paragraph 5, will depend on the circumstances of the case.” (The underline is

our)

In the present case, evaluating the facts in light of the criteria "provided for in the

article 83 section 2” of the RGPD, as advised by Opinion 2016/679 of the GT29, the

infringement of article 13 of Regulation 2016/679 for which the company is responsible

claimed party must be qualified as “minor”.

In this sense we can refer to section a) of article 83.2. of the RGPD that refers to

“a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well

such as the number of interested parties affected and the level of damages that

have suffered.”

In relation to this circumstance, it turns out that in the alleged fact that is the subject of the

claim we have no news that there has been any affected, or that there have been generated damages to an interested party. Furthermore, it must be emphasized that the claimant has not even stated that he had completed any of the forms that are published on the website of the claimed party through which

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

14/16

it collects personal data or that it had tried to fill in any of them.

He has limited himself to declaring, referring to the Editorial, that "they are concerned" because has informed them that the forms on its website do not comply with the regulations of data protection.

There are also no indications that the Publisher's website was widely distributed or that it that its users were numerous. On the contrary, in this sense it is noted that the claimed party began its social operations on 08/21/2020; the claim formulated against her was presented to the AEPD on 09/08/2020 -only ten days later- and the Agency verified on 10/02/2020 -therefore, less than two months after the claimed party will start its social operations- the existence on its website of personal data collection forms in which the information was not offered which is mandatory in accordance with article 13 of the RGPD.

The circumstance described in section g) of article 83.2. GDPR – "g) the categories of the personal data affected by the infraction"- can also be taken as a reference to weigh the minor nature of the infraction that is attributed to the claimed and, therefore, the advisability that in the event that here examines whether the corrective warning measure is adopted.



Regarding this circumstance (g) of article 83.2 of the RGPD, this AEPD comes understanding that, although the term category used in that provision initially refers, making a literal and strict interpretation of the norm, to the heading of article 9 of the RGPD, "Treatment of special categories of data personal", thus concluding that the RGPD classifies personal data, only, in specially protected and the rest, a systematic and teleological interpretation of the article 83.2.g) of the RGPD connects this precept with other classifications offered the GDPR text.

In this sense, recitals 51 and 75 of the RGPD distinguish a group of data which, by their nature, are particularly sensitive due to the significant risk they may pose in the context of your treatment for fundamental rights and freedoms. Data whose common denominator is that their processing involves a significant risk to the rights and freedoms fundamental because it could cause physical, material or immaterial. This group or category of particularly sensitive data includes the categories of specially protected data regulated by article 9 of the RGPD - This is how recital 51 of the RGPD is pronounced - and, in addition, many other data are not regulated in that provision.

Recital 75 of the RGPD mentions in detail the personal data whose treatment may carry a risk, of varying severity and probability, to rights and freedoms of natural persons as a consequence of the fact that they can cause physical, material or immaterial damages. Among these he refers to those whose treatment "could give rise to problems of discrimination, usurpation identity or fraud, financial loss, reputational damage, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of the pseudonymization or any other significant economic or social damage".

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

15/16

In the factual assumption that concerns us, it is verified that none of the data

data that could be collected through the forms published on the page

Publisher's website has the character of sensitive data. For this reason, from the point of

view of the "type of data to which the data collection forms refer" the

conduct of the claimed contrary to article 13 of the RGPD must also

be rated as mild.

In response to the indicated and for the reasons stated, having been accredited

the infringement of article 13 of the RGPD for which the Publisher is responsible,

infringement typified in article 83.5.b) of the RGPD, it is agreed to adopt against it

the following corrective measures:

(I) Address a warning in accordance with article 58.2.b) RGPD.

(II) Order you, in accordance with article 58.2.d) RGPD, that within 15 days

computed since this resolution is enforceable, in accordance with the

provided in article 98.1.b) of the LPACAP, proceed to adopt the necessary measures

so that the treatment operations comply with the obligation of information that

Articles 12 and 13 of the RGPD are imposed unless the entity claimed proves before

this Agency that has canceled its website.

The respondent is informed that failure to comply with the measures

corrective measures that are imposed could constitute a new infraction that

would lead to the opening of a new sanctioning administrative procedure

directed against her. Such infraction is typified in article 83.6 RGPD and is

sanctioned with an administrative fine of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous year, opting for the highest amount.

Therefore, in accordance with the applicable legislation,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a WARNING to EDITORIAL RIBADEO S.L., with NIF B01864982, for an infringement of article 13 of the RGPD, typified in article 83.5.b) of the GDPR.

SECOND: ORDER EDITORIAL RIBADEO, S.L., with NIF B01864982, pursuant to of article 58.2.d) of the RGPD, for an infringement of article 13 of the RGPD typified in Article 83.5.b) of the aforementioned Regulation, which, within a period of 15 days computed since this resolution is enforceable, proceed to adopt the measures necessary to comply with the information obligation imposed by articles 12 and 13 of the GDPR.

THIRD: NOTIFY this resolution to EDITORIAL RIBADEO S.L., with NIF B01864982.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

16/16

Against this resolution, which puts an end to the administrative procedure in accordance with article 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of article 90.3 a) of the LPACAP,

The firm resolution may be provisionally suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in article 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-100322

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

