



Procedure No.: PS/00283/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 01/21/2020 filed claim before the Spanish Data Protection Agency. The claim is directed against IRRIGATION COMMUNITY "EL PÓSITO" with NIF G23039548 (hereinafter, the claimed). The reasons on which the claim is based are that it has published in the Bulletin Official of the Province of Jaén (BOPJ) of ***DATE.1 an edict under the literal "debt communication" followed by the name and surnames in which your name and their surnames associated with the debt and the concept "spill", agreed at the Board of 06/29/2019.

Provide a copy of the BOPJ in the "unofficial announcements" section, indicating that against said administrative act in accordance with the provisions of the revised text of the law of waters, it is possible to appeal to the Guadalquivir Hydrographic Confederation.

As quantity, ***AMOUNT.1 is indicated.

SECOND: In view of the facts denounced in the claim and the documents, the Subdirector General for Data Inspection proceeded to carry out the transfer to the claimed on 3/12/2020, showing the electronic delivery as "automatic rejection" to the within ten days according to paragraph 2 of article 43 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations (in what successively, LPACAP).

The shipment is reiterated on 06/15/2020, exceptionally by postal mail.

The claimed on 08/03/2020 states that the notification in the BOPJ comes determined before the "resistant attitude of the now claimant, who does not accept the notifications by burofax for the payment of the spills that correspond to you as commoner of our Community, finding himself in a situation of historical non-payment, accumulating numerous debts. In compliance with the provisions of Law 39/2015, and after trying to do it via burofax, he went to the Official Gazette of the Province, including the complete administrative act, with standing of appeal. We understand that we are facing the assumption established in the first section of the Seventh Additional Provision of the Law on Data Protection and Guarantee of Digital Rights". "However, if part of the Organism to which I am addressing was informed that the proceeding would have been the provisions of the second paragraph, we will undoubtedly proceed in such a way in the future, Although we understand that we are involved in the provisions of the first paragraph, when notifying the administrative act in its entirety".

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The respondent states that "attached documentation accrediting the refusal of the claimant to accept burofax notifications of the amount claimed".

In this case, it is one dated 10/19/2017 which, although it does not indicate its content, is accompanied by the letter of 10/16/2017 requiring the payment of ***AMOUNT.2 "advance of energy 2017" plus ***AMOUNT.3 (euro per olive tree 2017). There are also other written request for payment with dates for example 09/16 to 10/16/2017 in which concept figure "euro per olive tree 2017" broken down into vega olive trees and rain-fed olive trees. The result of the shipment that appears on the certificate is "not delivered. Left notice" and another

with "not delivered, surplus".

There is another burofax dated 09/10/2019, with the same result dated 09/10/2019, with written to the claimant of "attached accompanies receipt of expenses according to agreed spill in the general meeting of the community held on 1/06 of the currents". Likewise, provides other burofaxes with the same results from other years, 2015, and a letter of order of urgency of the President of the claimed entity of 2015.

THIRD: On 9/3/2020, the claim is admitted for processing.

FOURTH: On 09/24/2020, the Director of the AEPD agreed:

“ FIRST: START A PUNISHMENT PROCEDURE for the COMMUNITY OF IRRGATORS "EL PÓSITO", with NIF G23039548, for the presumed infraction of the article 5.1.c) of the RGPD, in accordance with article 58.2.b) and 83.5.a) of the RGPD.”

“ FOURTH: THAT for the purposes provided in art. 64.2 b) of the LPACAP, the sanction that could correspond would be a warning.”

In front of the electronic notification, the result of "expired" was produced, by not accessing its content, after the term granted. Against the agreement were not registered allegations.

FIFTH: The proposed resolution issued by the instructor contains the following tenor:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with warning to the IRRIGATION COMMUNITY "EL PÓSITO", with NIF G23039548, for an infringement of article 5.1.c) of the RGPD, in accordance with article 83.5 a) of the GDPR.”

There was a first shipment via post to AVDA. OF ANDALUCIA 15, PEAL OF BECERRO, Jaén of the proposal signed on 04/14/2021, with the result returned to origin, 04-22-2021 due to "wrong address".

On 05/07/2020, the proposal was sent again by electronic notification, without that the claimed party access its content, and at the same time, through postal mail

to the same referred address, as the result "unknown".

It should be mentioned that the physical address is the one that the entity recorded as address in your response to the transfer of the claim.

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PROVEN FACTS

The defendant published in the Official Gazette of the Province of Jaén on ***DATE.1

1)

an edict under the literal "debt communication" followed by the name and surnames of the claimant, associated with the debt ***AMOUNT.1, which it maintains with the Community and the concept "spill", agreed at the meeting of 06/29/2019, indicating that in the face of said administrative act in accordance with the provisions of the consolidated text of the law of waters, it is possible to appeal to the Guadalquivir Hydrographic Confederation.

two)

The defendant, before publishing said data, handled documents of request for payment to the claimant and burofaxes with unsuccessful delivery attempts, for not being withdrawn by the claimant during the years 2017 or 2019. In the concepts of the debts demanded at that time, included "energy advance 2017" or "euro per olive tree 2017" broken down into vega olive trees and dry land olive trees. It is unknown if these amounts bear some relation to that of the spill that is exposed in the Bulletin, being different figures.

3)

The respondent stated that she published the notification of the administrative act by the

previous unsuccessful requests made to the debtor community member.

4)

The respondent responded in the processing of the transfer of claim, consigning as address Avenida de Andalucía 15, Peal de Becerro, Jaén. The letter of transfer, delivered via post and it was addressed to the aforementioned address, being picked up on 06/26/2020. A the claimed party has been sent the notification of the proposed resolution on one occasion electronically and again by post to the aforementioned address, without having accessed in the first case, and without being delivered by post

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The Irrigation Communities limit their actions to the distribution of water and administration of its powers in police matters on the concessional resource, under the tutelage of the basin organizations, the Hydrographic Confederations. the shelter of its operation can be found in articles 81 to 91 of the Consolidated Text of the Water Law (RD Leg. 1/2001 of 20/07) and articles 198 to 231 of the Regulations of the Hydraulic Public Domain (RD 849/1986, of 11/04), as well as in the statutes and Ordinances drawn up by the community itself and approved by the basin.

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These Communities are public law entities of a corporate nature, not territorial and associative-based, subject to the tutelage of the Basin Organizations or Hydrographic Confederations.

The jurisprudence has examined its legal nature, for example in the judgment of the Supreme Court, Third Chamber, Contentious-Administrative, Section 5, of 02/1/2011, Rec. 5670/2006, which in its fourth legal foundation indicates:

"The examination of the legal nature of the Irrigation Communities must start of article 82 of the current Water Law that by regulating the nature and legal regime of user communities --- genre that the Community class is a part of Regantes, article 81.1 --- indicates that they have the character of corporations of rights public cho, attached to the Basin Organization, which will ensure compliance with its statutes or ordinances and for the good order of the use, and that they will act in accordance me to the procedures established in this Law, in its regulations and in its statutes and ordinances, in accordance with the provisions of Law 30/1992, of 26 November, on the Legal Regime of Public Administrations and the Procedure Common Administrative, adding article 81 that the statutes or ordinances, which re- will be written and approved by the users themselves, and must be submitted for approval administration, to the River Basin Agency, will regulate the organization of the communities of users, as well as the exploitation in regime of internal autonomy of the hydraulics inherent to the use.

Being the primary public function of the Irrigation Communities to manage and distribute promote among its members the collective use of granted public waters, in the exercise of such function they are invested with a series of powers, of which it is possible stand out:

- 1) The organizational and normative power, by means of such Statutes and Ordinances, taking into account the minimum organizational contents related to equity in order to contribute cover expenses, the guarantee of the political rights of its members and the functional democratic process of its members (article 82.2);
- 2) The enforceability of their acts, in the terms provided in Law 30/1992 (article 84.5);
- 3) The use of the substitutive execution for acts that impose on the users a obligation to act of a non-personal nature (article 83.1);
- 4) The use of the enforcement procedure for the collection of their liquid debts, accrued for maintenance, cleaning and improvement expenses and for the administration and distribution distribution of the waters, due to subsidiary execution or debts from multiple fees and indemnities imposed by the Irrigation Courts or Juries (article 83.1. and 4);
- 5) The power to settle factual disputes that arise between users, as well as to impose fines for the infractions foreseen in the Ordinances and indemnity. rations (article 84.6); Y,
- 6) The character of beneficiaries of the forced expropriation and the imposition of easements-men (article 83.2).

Well then, the indicated powers justify that the Water Law submits its exercise to guardianship by the Basin Organization, which will exercise it in two ways:

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- 1) Through the approval of its Statutes and Ordinances and their modifications, with the

except that you cannot deny the approval of the statutes and ordinances, nor introduce produce variants in them, without prior opinion of the Council of State (article 81.1); Y,

2) Through the appeal against Agreements of the General Meeting and the Board of Governors good.

Its nature as a Public Law Corporation has also been reviewed by the Court.

Constitutional Law in its STC 227/1988, declaring in its Foundation of Law 24

that "The user communities regulated by the Law are, as expressly stated

in art. 74.1 of the same, Public Law Corporations, attached to the Agency

of the basin (or to the corresponding Autonomous Hydraulic Administration, in accordance with

the fourth additional provision), so that the State is competent to regulate the ba-

ses of its legal regime "In the case of Public Law Corporations, as it is

the case of communities of users of public waters, whose purpose is none other than

the autonomous management of the hydraulic assets necessary for the common uses

classes of the same, in regime of participation by the interested parties".

However, together with this public function, in the Irrigation Communities there is no

ignore the existence of a purely private interest, of a professional nature, which

was present in its historical origins, as groups of farmers for the

self-management and distribution of irrigation water in an efficient, orderly and equitable way,

character that survives today, despite the fact that the historical evolution of these groups

tions has been characterized by a tendency to accentuate their public functions, even

that without denaturing or eliminating its character as a private group to satisfy

protect the interests of the community members.

Therefore, it can be concluded that the Irrigation Communities are part of the denomination

Corporate Administration, characterized by being entities endowed with legal personality

dicas those to whom the Law attributes the management of public purposes, which makes them Administrators.

Public administrations, but at the same time that they satisfy the private interests of their

members, being therefore

mixed public-private entity, as well as other types of

associative entities provided for in our legal system, such as the Professional Associations

them, the Chambers of Commerce, Industry and Navigation and the extinct Chambers of the

Urban Property.

The Consolidated Text of the Water Law establishes in article 83.1 the powers to

execute by themselves and at the user's expense the unfulfilled agreements that impose

an obligation to do, so that the cost of the subsidiary performance will be payable

through administrative enforcement.

nature

In addition, article 83.4 provides that "Debts to the user community for expenses

of conservation, cleaning or improvements, as well as any other motivated by the administration.

tion and distribution of the waters, will tax the farm or industry in whose favor they were carried out,

being able the community of users to demand its amount by the administrative route of urgency,

and prohibit the use of water until they are satisfied, even when the farm or human industry

these changed owner. The same criterion will be followed when the debt comes from

finances and indemnities imposed by the irrigation courts or juries".

On the other hand, their acts are enforceable without prejudice to their challenge on appeal.

before the basin organization; enjoy sanctioning power to which must be added

that by legal mandate and with autonomy, exercise the functions of police, distribution and

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administration of the waters that have been granted by the Administration (article 199.2

of the Hydraulic Public Domain Regulation).

The judgment of the Supreme Court, First Chamber, Civil, of 02/14/1994 indicates in its second legal foundation indicates:

“The configuration of the Irrigation Community as public does not imply that it is identified that totally with the territorial or superior public administrations, but that as it is only assimilated with them, given the possibility of exercising administrative powers by specific legal delegation or attribution, as is also deduced from the doctrine of Constitutional Court referred to above. And this because, in no case, it is necessary to ignore the private base substratum that integrates these sectoral Corporations. Hence the administrative powers or faculties are exercised by delegation or specific attribution. Thus, the "self-management" technique is used in these Corporations by conferring powers that normally correspond to state entities.

Its private substratum is the one that has posed the greatest problems, since it is clear that these Corporations have a public personification, however and due to of their origin and configuration, they also assert the private interests of the members.

In reality, their formation as Public Administrations, exclusively comes from-terminated to the extent that they are holders of public functions granted by law or delegated by the Administration. In this way, the Irrigation Communities are assigns the organization of the exploitation of irrigation, jurisdictional powers through the Irrigation and Police Juries of the water shifts, canals and other ins-collective felling.

The question takes definitive concreteness, having to decide if the Community of cars has acted or exercised its own administrative functions, in the limited aspects attributed Buid by Law or delegation; only in this case the actions of the Corporations will qualify as administrative.

It is necessary to define the specific legal regime that regulates relations between the Community

ity and its members.”

It is obligatory to bring up the report of the AEPD 156/2003 that is published in the web, in which it is pointed out about "The consultation raises the public or private nature of the files are the responsibility of the Irrigation Community”

In relation to this issue, it should be noted that, although the LOPD defines in its article side the system of files of public and private ownership, does not establish a concept thereof. For this reason, the delimitation must be based on the criteria that determine they undermine the legal-public or legal-private nature of the person responsible for the file.

This conclusion is reached taking into account the peculiarities established for the of publicly owned files, since they could only be constituted in the event that they are developed as a consequence of the exercise of a administrative jurisdiction, as can be deduced from article 21.1 of the LOPD, which allows It allows the transfer between Public Administrations when it is founded in the exercise of the same competencies. In this same sense, article 20 of the Law requires that the files are subject to the guardianship of an Administration with the power to dictate the corresponding General provision for the creation of the file.

Therefore, it is considered that the delimitation of the regime applicable to ownership files public and private authority must be based on a double criterion: on the one hand, the person responsible

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of the file must be a Public Administration and another, in the cases that could would pose greater complexity, it would be necessary for the file to be created as consequence of the exercise of public powers.

As indicated in the query, article 82.1 of the Consolidated Text of the Law on Waters, approved by Royal Legislative Decree 1/2001, of June 20, states that the Co-Irrigation communities "have the character of public law corporations, attached to the Basin Agency, which will ensure compliance with its statutes or ordinances. zas and for the good order of use. They will act in accordance with the procedures established in this Law, in its regulations and in its statutes and ordinances, in accordance with the provisions of Law 30/1992, of November 26, on the Legal Regime of Public Administrations and the Common Administrative Procedure".

That said, the delimitation of the legal nature of the so-called corporations of public law has been an issue widely debated by the administrative doctrine view, not having reached at the present time an unequivocal thesis on this particular.

However, the jurisprudence of our Supreme Court has repeatedly analyzed this issue in numerous judgments, the citation of which should be recalled at this time.

In particular, they deserve special attention, in terms of the legal-public or legal nature.

private doctor of the irrigation communities, two Judgments of the Third Chamber of the Tri-Supreme Court of May 3, 1999 (RJ 3599 and 3600), in which it is stated that:

"The Irrigation Communities do not constitute, despite their name, communities assets and rights lacking legal personality, nor civil societies, by as defined by arts. 392 and 1665 of the Civil Code (...). Before, on the contrary, at the ner User Communities, according to art.74. 1 of the current Water Law, «the character of Public Law Corporations, attached to the Basin Organization, which oversees will be responsible for the fulfillment of its Statutes or Ordinances and for the good order of the chamiento", and having been and being, in any temporary circumstance and as recognized the First Chamber of this Court in Judgment of December 10, 1990, legal entities legal-public association-based and, generally, mandatory constitution and belonging

cia necessary, as deduced from the arts. 228 and following of the Law of 13 of

June 1879 and results from arts. 73 and following of the current one, supervised by the Administration

and with independent legal personality, it is clear that, if this personality, which

is unique, it cannot be divided into a personality of public law when they act

administrative powers and another of private law when it does so in the field of re-

juridical relations that deserve this qualification".

However, what is indicated in the aforementioned Judgment, which could help to consider that

the files of the irrigation communities would in any case have the nature of fi-

files of public ownership, must be complemented with the doctrine emanating from the

Supreme Court, referring to the legal-public or legal-private nature of the activities

data developed by them.

In this sense, the Judgment of the First Chamber of the High Court, of October 26,

2000 (RJ 8552) states that:

"the jurisprudence in sentences, of this Chamber of December 10, 1990 and June 20

of 2000 and of the Contentious-Administrative Chamber Second Section of May 3

of 1999, recognizing the nature of Public Law Corporations of the Community

Irrigators, defines it as legal-public entities with an associative base, tutelage-

given by the Administration and with independent legal personality, understanding that in

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relation to this character nor can its unique personality be divided into one of Law

when acting administrative powers, and another of private law when

does in the area that deserves this qualification, but nevertheless this area of action

tion in different fields of the right of the Irrigation Community, is decisive to reside the jurisdictional scope, so that (...) the competent jurisdiction in his case is determined by the nature of the acts being prosecuted, thus the Contentious-Administrative jurisdiction is responsible for knowing the acts of these Public Law Corporations adopted in the exercise of public functions, co-responding to this civil jurisdiction the knowledge of the legal relations born in the field of private law

From the jurisprudence that has just been reproduced, it follows that, without prejudice to the public legal nature of public law corporations, their activity can reach be put into effect in the field of public legal relations, in which case, the acts of the Corporation will be subject to administrative law, having the condition authentic administrative acts, dictated in the exercise of administrative powers or, on the contrary, said activity may be carried out in the field of legal relations. co-private, so that their actions lack the power of empires, not holding the Corporation any differential feature of the counterparty, and being subject to the control of civil or social jurisdiction.

Taking into account what has just been indicated and the opinion repeatedly expressed by this Data Protection Agency regarding the public or private nature of other public law corporations, such as professional associations or chambers commerce, industry and navigation, it must be concluded that the files of the corporations of irrigators will be considered public or private depending on of the public or private nature of the purposes that justifies the realization of the corresponding treatment.

In this way, they will be publicly owned, and will have to be created and regulated by the general provision referred to in article 20 of the Organic Law

15/1999 the files of the Irrigation Community that had been created for the

exercise by the same of powers of public law, such as those related to the agreements referred to in article 84.5 of the Water Law or those related with the decisions of the juries, referred to in article 84.6, as well as the related tioned with the levies that the community can claim by way of urgency, to the referred to in article 83.1 of the Water Law.

However, those files linked to

Community activities that do not involve the exercise of powers of public law public, such as, for example, those referring to their personnel, which were not found will be linked to the Community by a statutory relationship, but by a relationship above fully involved in labor law.

In the case presented, the elaboration of a census of the members of the community will perform for the exercise of the powers of public law attributed to it by the Water Law, given that article 81.1 of the Law imposes the duty on all the users to become a community of irrigators, for which it is essential to know determine who has such a condition.

In this way, it should be considered that the file to which the query expressly refers will have the character of a file of public ownership.”

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III

The Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD) in its seventh additional provision:

“Identification of interested parties in notifications through advertisements and

publications of administrative acts” states:

"1. When it is necessary to publish an administrative act containing personal data of the affected party, they will be identified by their name and surnames, adding four random numerical figures of the national identity document, foreign identity number, passport or equivalent document. When the publication refers to a plurality of affected parties, these random figures must alternate.

When it comes to notification through advertisements, particularly in the assumptions referred to in article 44 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations, the affected exclusively by means of the complete number of your national identification document. identity, foreign identity number, passport or equivalent document.

The LPCAP distinguishes notification, publication, articles 44 and 45. The first deals with:

“When those interested in a procedure are unknown, the place of the procedure is ignored. notification or, if this was attempted, the notification could not have been made, it will be by means of an announcement published in the «Official State Gazette», while the

Article 45 refers to the fact that "Administrative acts will be published when so established by the regulations governing each procedure or when advised reasons of public interest appreciated by the competent body”, and establishes that “in In any case, they will be published, with notification effects” in the cases indicated.

(indeterminate plurality of people, selective procedure), which are not the ones correspond to this assumption.

For notification and publication, the LPCAP also provides for article 46, which indicates:

Indication of notifications and publications

"If the competent body appreciates that the notification through announcements or the publication of an act injures rights or legitimate interests, it will be limited to publishing in the

Official newspaper that corresponds a brief indication of the content of the act and the place where the interested parties may appear, within the period established, to knowledge of the full content of the aforementioned act and proof of such knowledge."

In the notification carried out in the Bulletin, the claimant's data was contained with the addition that it was a debt from an approved spill, which verifies the commission of the indicated infraction.

IV

Article 6.1 of the RGPD establishes the assumptions that allow the treatment to be considered lawful. processing of personal data, and although there may be authorization for the treatment of personal data, data of the community member with that associate status, this will always be within the framework

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appropriate and proper, not being pertinent, nor appropriate the sending to an official newspaper of the complete data that identifies it together with the summary of the debt and its condition of debtor.

Although the partners have as a common base the application of the Statutes, and the data in order to manage their relationship, the rest of the rules must be respected in force. Article 5.1 c) of the RGPD points out:

"1. The personal data will be:

“c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated;”

The publication of the resolution in question in an official gazette, posted on the Internet and

is accessible through the newsletter page, constitutes an automated processing of personal data, which is in the scope of application of the RGPD.

Excessively exposing the claimant's identifying data and information to him associated, it is considered that the claimed in the treatment carried out has infringed said principle. To this must be added that the condition is preached in public that for the Community deserves its associate as a debtor, disclosing to third parties a piece of information associated with information that undermines their rights, violating confidentiality of the matter in relation to the person of the affected party, a circumstance that would not have been produced from having adjusted to the provisions of article 5.1.c) in accordance with the LPCAP that allow the way of publication as notification with requirements. being able use the publication as an instrument or procedure to advance in the collection of the spills, its notification does not require that the claimant be classified as a debtor who affects your privacy when what is intended with the publication is that the communication is taken for granted in an official and reliable manner.

On the other hand, the origin of the act that is published would be of interest, in order to distinguish the legal regime applicable to the Community in question. If the source of the spill comes of the relationship of the claimant as a user of the Irrigation Community in matters referring to the pure competence of a public nature of the Community, could be its data exposed as a means of notification, respecting the principles of the RGPD, one of the which is referred to in article 5.1.c) mentioned. Examples of this could be actions of the Community and its community members as a concessionaire and the distribution of water among them, conceived as use, administration and distribution among its members of collective uses of public waters.

If the act that was notified is due to relationships that as a user have more to do with the private interests of the members that make up the Community: uses as or in a private association regime such as conditioning of

land, crops, etc., unrelated to the use of water as a good of

public domain, could be classified as private actions that result in the interest

of the community members, and the notification of those debts generated with origin in this type of

actions, would not enjoy the possibility of notifying through the Official Gazette, being its

common civil law regime.

It would therefore be about the applicability of public prerogatives or not depending on the root

from which the Community-communer relationship proceeds, which supposes the requirement of said

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spills and the consequent faculty for its publication. On the other hand, it pours out

reference to extraordinary expenses that are split, and in any case a

non-public medium such as an official bulletin

Accepting that the origin is a consequence of the public powers of the

claimed, it is estimated that article 5.1.c) of the RGPD is violated due to the circumstances

marked.

This infraction is found in article 83.5 of the RGPD that indicates:

v

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;"

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) send a warning to all controllers or processors when treatment operations have infringed the provisions of these Regulations.

to;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

The Spanish legal system has chosen not to fine entities public, as indicated in article 77.1. g) and 2. 4. 5. and 6. of the LOPDDGG: "1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

"g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law."

"two. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning them with a warning. The resolution will also establish the measures to be taken to stop the conduct or correct the effects of the offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

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that depends hierarchically, where appropriate, and those affected who had the status of interested, if any."

"4. The resolutions that

fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction."

As a conclusion, the Irrigation Communities are Public Law Corporations, assigned to the River Basin Organization (or to the corresponding regional hydraulic administration) pending) being entities endowed with legal personality to which the Law confers with the purpose of proceeding to the collective self-administration of the uses of waters that are granted to them, for public purposes and hence they are endowed with powers administrative, which makes them Public Administrations. However, also

At the same time, they satisfy the private interests of their members, thus being of a mixed nature. public-private. As communities of public water users, they have as a fi-purpose, the autonomous management of the hydraulic assets necessary for the collective actions of the same, in a regime of participation by the interested parties, being the professional private interest the private grouping to satisfy the interests ses of the commoners.

In this case, it is considered that the action object of the complaint violates the

article 5.1. c) of the RGPD.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE "EL PÓSITO" IRRIGATION COMMUNITY, with NIF

G23039548, for an infringement of article 5.1.c) of the RGPD, as indicated in article

83.5 a) of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the IRRIGATION COMMUNITY "EL

POSITION".

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

C/ Jorge Juan, 6

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13/13

Against this resolution, which puts an end to the administrative procedure in accordance with art. 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 period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

of this act, as provided for in article 46.1 of the aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through

any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1

October. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within the period of

two months from the day following the notification of this resolution, I would

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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