

□ Procedure No.: PS/00322/2020

RESOLUTION R/00583/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00322/2020, instructed by the Spanish Agency for
Data Protection to LOSADA ADVOCATS S.L., given the complaint filed by
A.A.A., and based on the following,

BACKGROUND

FIRST: On November 3, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against LOSADA
ADVOCATS S.L. (hereinafter, the claimed party), through the Agreement that is transcribed:

<<

Procedure No.: PS/00322/2020

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of
Data and based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated April 21, 2020
filed a claim with the Spanish Data Protection Agency.

The claim is directed against LOSADA ADVOCATS S.L. with NIF B17634296 (in
later, the claimed one).

The grounds on which the claim is based are the receipt by the claimant of
an email without a blind copy sent by the claimed party to dozens of
recipients, including the claimant.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/12

A copy of the message, dated 04/19/2020, is provided.

SECOND: The present claim was transferred to the respondent on June 5, 2020, requiring him to send to this Agency, within a period of one month, information about the response given to the claimant for the facts denounced, as well as the causes that have motivated the incident and the measures adopted, but the entity claimed has not answered within the period indicated.

THIRD: On September 18, 2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Data Protection Agency agreed admit for processing the claims presented by the claimant against the claimed party.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The RGPD establishes in article 5 the principles that must govern the treatment of personal data and mentions among them that of "integrity and confidentiality".

The article notes that:

"1. The personal data will be:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

In turn, the security of personal data is regulated in article 32 of the GDPR.

Article 32 of the RGPD "Security of treatment", establishes that:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to taking into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/12

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States".

The violation of article 32 of the RGPD is typified in the article

83.4.a) of the aforementioned RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43.

(...)"

For its part, the LOPDGDD in its article 71, Violations, states that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements considered serious":

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/12

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679 are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

g) The violation, as a consequence of the lack of due diligence, of the technical and organizational measures that have been implemented in accordance with required by article 32.1 of Regulation (EU) 2016/679".

III

The facts revealed in this claim are specified in receipt by the claimant of an email without a blind copy sent by the claimed to dozens of recipients, including the claimant.

The GDPR defines personal data security breaches as

"all those violations of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data”.

From the documentation in the file, there are clear indications of

that the claimed party has violated article 32 of the RGPD, when there was a breach of

security in their systems by sending an email without a blind copy, to eight

recipients, including the claimant, to whom it informs of the blocking of their accounts.

It should be noted that the RGPD in the aforementioned provision does not establish a list of

the security measures that are applicable according to the data that is

object of treatment, but it establishes that the person in charge and the person in charge of the

treatment will apply technical and organizational measures that are appropriate to the risk

that the treatment entails, taking into account the state of the art, the costs of

application, the nature, scope, context and purposes of the treatment, the risks of

probability and seriousness for the rights and freedoms of the persons concerned.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/12

Likewise, the security measures must be adequate and

proportionate to the detected risk, pointing out that the determination of the measures

technical and organizational information must be carried out taking into account: pseudonymization and

encryption, the ability to ensure the confidentiality, integrity, availability and

resiliency, the ability to restore availability and access to data after a

incident, verification process (not audit), evaluation and assessment of the

effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security,

particularly taking into account the risks presented by the processing of data, such as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data and that could cause damages physical, material or immaterial.

In this same sense, recital 83 of the RGPD states that:

“(83) In order to maintain security and prevent the treatment from violating the provisions of this Regulation, the person in charge or the person in charge must evaluate the risks inherent to the treatment and apply measures to mitigate them, such as encryption. These measures must ensure an adequate level of security, including the confidentiality, taking into account the state of the art and the cost of its application regarding the risks and the nature of the personal data that must be protect yourself. When assessing the risk in relation to data security, take into account the risks arising from the processing of personal data, such as the accidental or unlawful destruction, loss or alteration of personal data transmitted, stored or otherwise processed, or the communication or access is not authorized to said data, susceptible in particular to cause damages physical, material or immaterial.

IV

In accordance with the available evidence and without prejudice to the resulting from the investigation, the documentation provided shows that on 19 April 2020, the respondent sends an email without a blind copy to dozens of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

recipients, including the claimant, which could constitute, on the part of the claimed, two infractions, one against the provisions of article 32 of the RGPD and another against the provided in article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

v

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

- b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;
- 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 a certain way and within a specified period;
- i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

SAW

Article 72.1.a) of the LOPDGDD states that "according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/12

This infraction can be sanctioned with a fine of €20,000,000 maximum.

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

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant

active (article 83.2 b)

☐ Basic personal identifiers (name, surname) are affected.

two, domicile), according to article 83.2 g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE against LOSADA ADVOCATS S.L.

with NIF B17634296 for alleged violations of articles 5.1 f) and 32 of the

RGPD, typified in articles 83.5 a) and 83.4 a) of the RGPD respectively.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicate-

do that any of them may be challenged, where appropriate, in accordance with the provisions

in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the

Public Sector (LRJSP).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/12

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the Sanctions that could correspond would be the following:

☐

☐

for the infringement of article 32 of the RGPD, typified in article 83.4 a) of the RGPD, the corresponding sanction would be a warning, requiring the respondent to proceed to adopt the necessary measures to stop the conduct that is the subject of this complaint, which has caused the security breach denounced, so that the effects of the infraction committed and its adaptation to the requirements contemplated in article 32 of the RGPD, as well as as the provision of means accrediting compliance with what is required.

for the infringement of article 5.1 f) of the RGPD, typified in article 83.5 a) of the RGPD the sanction that would correspond would be a fine for an amount of 10,000 euros (ten thousand euros) without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to LOSADA ADVOCATS S.L. with NIF B17634296 granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in relation to

with the alleged infringement of article 5.1 f) of the RGPD, the claimed party may recognize

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

10/12

their responsibility within the term granted for the formulation of allegations to the

this initiation agreement; which will entail a reduction of 20% of the

sanction to be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 8,000 euros, resolving the

procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the

present procedure, carry out the voluntary payment of the proposed sanction, which

which will mean a reduction of 20% of its amount. With the application of this

reduction, the sanction would be established at 8,000 euros and its payment will imply the

termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. The pay
volunteer of the amount referred to in the preceding paragraph may be made at any
time prior to resolution. In this case, if it were appropriate to apply both
reductions, the amount of the penalty would be established at 6,000 euros.

In any case, the effectiveness of any of the two reductions mentioned
will be conditioned to the withdrawal or renunciation of any action or resource in via
administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the
amounts indicated above, (8,000 or 6,000 euros) must make it effective
by depositing it in account number ES00 0000 0000 0000 0000 0000 open to
name of the Spanish Data Protection Agency at CAIXABANK Bank,
S.A., indicating in the concept the reference number of the procedure that appears in
the heading of this document and the reason for the reduction of the amount to which
welcomes

Likewise, you must send proof of payment to the General Subdirectorate of
Inspection to proceed with the procedure in accordance with the quantity
entered.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/12

The procedure will have a maximum duration of nine months from the
the date of the start-up agreement or, where applicable, of the draft start-up agreement.
Once this period has elapsed, it will expire and, consequently, the file of
performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

>>

: On November 21, 2020, the claimant has proceeded to pay the

SECOND

the sanction in the amount of 6,000 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/12

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations.

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00322/2020, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to LOSADA ADVOCATS S.L.

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.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

936-031219

www.aepd.es

sedeagpd.gob.es