

□ Procedure No.: PS/00251/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: FESMC UGT MADRID (hereinafter, the claimant) on the 13th of February 2020 filed a claim with the Spanish Agency for the Protection of Data. The claim is directed against CONSEGURIDAD S.L. with NIF B85937902 (in later, the claimed one).

The reasons on which the claim is based are that the respondent has a system of CCTV, where it records the images of all the people who enter and work in the installations.

However, the respondent party has not appointed a Delegate of Data Protection (hereinafter DPD) and therefore no rights can be exercised.

Together with the claim, it provides recordings from the video surveillance cameras.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes foreseen in article 37 of the aforementioned rule, or to these when they were not designated, it was given transfer of the claim to the claimed entity so that it proceeded to its analysis and respond to the complaining party and to this Agency within a month.

An attempt has been made to transfer the claim to the claimed party, for analysis and communication to the claimant of the decision adopted in this regard, in twice, the first through electronic notification that expired without being

collected by the respondent on June 16, 2020, the second notification was made by certified mail and has also been returned by the Postal Service with the indication "absent distribution" on July 7, 2020.

THIRD: On August 10, 2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Data Protection Agency agreed to admit processing the claim filed by the claimant against the claimed.

FOURTH: On September 21, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 37.1 b) of the RGPD, in relation to article 34.1 ñ) of the LOPDGDD, typified in accordance with article 83.4 of the RGPD.

FIFTH: Formal notification of the initiation agreement, the claimed party at the time of this resolution has not submitted a brief of arguments, so it is

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application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement. This may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, for which a Resolution is issued.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The defendant, a private security company, has not appointed a Data Protection Delegate.

SECOND: The respondent has not responded to this Agency.

FOUNDATIONS OF LAW

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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

Article 37 of the GDPR establishes the following:

"1. The person in charge and the person in charge of the treatment will designate a delegate of data protection provided that:

b) the principal activities of the controller or processor consist of processing operations that, due to their nature, scope and/or purposes, require regular and systematic observation of data subjects on a large scale,"

In this sense, the LOPDGDD determines in its article 34.1) and 3):

"Appointment of a data protection delegate"

"1. Those responsible and in charge of the treatment must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation (EU) 2016/679 and, in any case, in the case of the following entities:

ñ) Private security companies.

3. Those responsible and in charge of the treatment will communicate within the period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the regional data protection authorities, designations, appointments and cessation of the data protection delegates both in the cases in which

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are obliged to their designation as in the case in which it is voluntary.”

III

In accordance with the available evidence, it is considered that the denounced fact of the lack of designation of DPD by a security company private, when carrying out the claimed processing of personal data on a large scale, and being a private security company we are faced with the violation of the article 37.1b) of the RGPD in relation to article 34.1 ñ) of the LOPDGDD.

On the other hand, note that the installation of video surveillance cameras can be carried out in order to guarantee the safety of goods and people, being legitimized for them, if there is an information poster, as provided in article 22 section 4 LOPDGDD.

IV

Article 83.7 of the RGPD establishes that: "Without prejudice to the corrective powers of supervisory authorities pursuant to Article 58(2), each Member State may establish rules on whether and to what extent administrative fines can be imposed on public authorities and bodies established in that Member State.

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.

v

Article 73 of the LOPDDG indicates: "Infringements considered serious

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, 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:"

v) Failure to comply with the obligation to appoint a data protection delegate when their appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law."

The art. 83.4 of the RGPD establishes that "violations of the provisions following will be sanctioned, in accordance with section 2, with administrative fines

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EUR 10,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 2% of the total global annual turnover of the previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43"

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGD:

As aggravating the following:

☐ In the present case, the number of interested parties is an aggravating circumstance.

affected, since the claimed person performs a processing of personal data to large scale due to the number of clients it has (article 83.2 a).

☐ Basic personal identifiers are affected (article 83.2 g)

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CONSEGURIDAD S.L., with NIF B85937902, for a infringement of Article 37.1 b) of the RGD, in relation to article 34.1 ñ) of the LOPDGD, typified in accordance with article 83.4 of the RGD, a fine of €50,000 (fifty thousand euros).

SECOND: NOTIFY this resolution to CONSEGURIDAD S.L.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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.

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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 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 art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution 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 registers provided for in art. 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

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