

□ File No.: PS/00244/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 05/18/2021 filed  
claim before the Spanish Data Protection Agency. The claim is directed  
against MINISTRY OF EDUCATION, CULTURE, SPORTS AND YOUTH, of the  
CCAA de la RIOJA with NIF S3333001J (hereinafter, the claimed party). The motives  
on which the claim is based are that it has requested, for transparency of information, the  
access to the contracts signed by the defendant regarding education with  
MICROSOFT and has been given a generic response. Relates the response to your request  
of public information obtained on 05/17/2021 from which he deduces the facts.

Bring a copy of:

- Response of the defendant to her request of 04/22/2021 in which she requested: "copy  
email or link to the contracts, agreements/legal acts signed by the  
Community with Microsoft to offer its products to teachers and students, who  
must include all aspects related to GDPR, since Microsoft becomes  
responsible for the treatment and can be used by minors.", in accordance with the  
Article 11 of Law 3/2014, of 11/09, on Transparency and Good Governance of La Rioja."

In the body of the answer it appears: "The consumption of Microsoft online services through  
those referred to are the services offered by this entity free of charge and  
whose  
in:

<https://www.microsoft.com/es-xl/licensing/product-licensing/products>.

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The use agreements are applied at the same moment of the creation of the tenant, under the name ON LINE SERVICES. Additionally, within the use agreement described in the ON LINE SERVICES, reference is made to the DPA (PROTECTION ADDENDUM OF DATA), in which all the information related to the use and data processing."

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5/12

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), said claim was transferred to the claimed party on 06/7/2021,

to proceed with its analysis and inform this Agency within a period of one month, of

the actions carried out to adapt to the requirements established in the regulations

of data protection. Specifically, it was requested:

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"1. The decision adopted regarding this claim.

2. In the event of exercising the rights regulated in articles 15 to 22

of the GDPR, accreditation of the response provided to the claimant.

Report on the causes that have motivated the incidence that has originated the

claim.

Report on the measures taken to prevent the occurrence of similar incidents, implementation dates and controls carried out to check its effectiveness.

3.

4.

5. Any other that you consider relevant.”

On 06/22/2021, this Agency received a written response in which states:

1) Does not consider the claimant's disagreement as a matter of data protection, but with the content of the response to your request in the right of access to the public information provided. What would proceed would be to apply the regime of the claim against that issue.

2) It considers that there are no indications of non-compliance with the regulations for the protection of data that affects the processing of your personal data and that is not being exercising any of the rights recognized in articles 15 to 22 of the GDPR.

"It has been possible to verify that in the Data Protection Annex of services

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online (DPA) which is accessed from the email address provided in the response that was given to the claimant, contains the information related to the obligations that assume the parties with respect to the treatment and security of Customer Data and Personal Data in connection with the Online Services. Among others, they are collected in said information the following aspects: The scope of the Protection Addendum of Data, the nature of the treatment, the ownership of the data, how the disclosure of the same, the roles and responsibilities as responsible and in charge of the treatment, the recognition of the rights as well as questions of security of

the data (notification of security incidents, conducting audits of compliance, conservation and deletion of data...)

THIRD: On 08/05/2021, the claim was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in article 57.1 and the powers granted in article 58.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter GDPR), and in accordance with the established in Title VII, Chapter I, Second Section, of the LOPDGDD, taking knowledge of the following points:

On 02/03/2022, the defendant is requested to:

"Copy of the contract, agreement or legally equivalent document, signed by the Community of La Rioja with Microsoft in order to offer their products to teachers and students."

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The delivery appears in the electronic submission, on 02/04/2022, without obtaining a response, reiterating the request, the shipment being collected on 04/22/2022. On 04/26/2022, the Manifest claimed:

- "The Government of La Rioja did not carry out any contracting, since the services in Education that Microsoft offers for free (A1 license). All the Microsoft online services implicitly accept the use agreements in the same moment of the creation of the tenant, called ON LINE SERVICES. sayings

Agreements can be consulted on the portals of said provider, (see the link):

“License Terms | Microsoft Volume Licensing Program”.

Additionally, within the use agreement described in the "ON LINE SERVICES", it is refers to the DPA (Data Protection Addendum), where you can collect all information related to the use and treatment of the data.”

-“It has been possible to verify that in the Annex of data protection of online services (DPA) which is accessed from the electronic address provided in the response that provided to the claimant contains the information regarding the obligations assumed by the parties with respect to the processing and security of Customer Data and Data Personal in connection with the Online Services. Among others, are collected in said information the following aspects:

The scope of the Data Protection Addendum, the nature of the treatment, the ownership of the data, how the disclosure will take place, the roles and responsibilities as responsible and in charge of the treatment, the recognition of rights, as well as data security issues (notification of incidents security, conducting compliance audits, retention and disposal of data...)”

FIFTH: On 07/7/2022, the Director of the AEPD agreed:

"START SANCTION PROCEDURE for the MINISTRY OF EDUCATION, CULTURE, SPORTS AND YOUTH, of the CCAA of RIOJA, with NIF S2633001J, for the alleged infringement of article 28.3 of the GDPR, typified in article 83.4 a) of the GDPR and for the purposes of prescription in article 73.k) of the LOPDGDD. “

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, on Procedure Common Administrative of Public Administrations, (LPCAP) the sanction that could correspond would be a warning, without prejudice to what results from the instruction.”

SIXTH: On 07/21/2022, the defendant provides:

1) Document of "Data Protection addendum" of the products and services of Microsoft, DPA last update 09/15/2021. These are the general conditions that establishes the obligations regarding the treatment and security of the data client data, professional services data, and personal data in connection with the products and services. It can be highlighted:

“Nature of data processing

; ownership Microsoft will use and process the Data

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Customer, Professional Services Data and Personal Data only

as described below, including the limitations indicated, (a) for provide the Products and Services to the Customer in accordance with the instructions documented from the Client.

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As to the parties, Customer retains all rights, title, and interests in Customer Data and Professional Services Data.

Microsoft does not acquire any rights to Customer Data or Customer Data.

Professional Services, except for the rights Customer grants to Microsoft in this section. This paragraph does not affect Microsoft's rights in the software or services Microsoft licenses to Customer.

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Data processing to provide the Products and Services to the Customer

For the purposes of this DPA, “provide” (also “provide” or “provide”) a

Product consists of:

- Provide functional capabilities that are licensed, configured, and used by the Client and its users, which includes providing experiences of custom user;
- Solve problems (prevention, detection and repair of problems); and
- Continuous improvement (installation of the latest updates and implementation of improvements to user productivity, reliability, efficiency, quality and safety).

For the purposes of this DPA, “provide” (also “provide” or “provide”) Services

Professionals consists of:

- Provide Professional Services, which include technical support services, professional planning, consulting, assistance, data migration, deployment, and Solution/software development.
- Solve problems (prevention, detection, investigation, mitigation and troubleshooting, including Security Incidents and problems identified in the Professional Services or in the Product (or Products) during the provision of Professional Services); and
- Continuous improvement (improvement of the execution, efficacy, quality and safety of the Professional Services and the underlying Product (or Products) based on the problems identified during the provision of the Professional Services, including the installation of the latest updates and repair of software defects).

In providing the Products and Services, Microsoft will not use or process Customer Data

Customer, Professional Services Data or Personal Data for: (a) the user profiling, (b) advertising or similar commercial purposes, or (c) market research aimed at creating new features, services or products,

or for any other purpose, unless said use or treatment is carried out in accordance with  
with the Customer's documented instructions."

There are other sections such as:

-Processing of Personal Data; GDPR containing:

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Roles and responsibilities as controller and processor

Treatment Details

Data Subject Rights: Assistance with Applications

-Data security, which is divided into:

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security practices and policies,

data encryption

Data access

client responsibilities



Compliance audit

Notification of security incidents

-Transfer and location of data

-Preservation and deletion of data

-Confidentiality commitment as treatment manager

-Of notifications and controls on the use of your managers

-The following appendages are distinguished:

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to security measures

B Data subjects and categories of personal data

C addendum of additional guarantees

-ANNEX 1 standard contractual clauses additional to the standard contractual clauses of 2021.

The "standard contractual clauses, appendix 1 and appendix 2, in data importer name", MICROSOFT.

-ANNEX 2 Terms in accordance with the GDPR, which includes:

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Relevant obligations under the GDPR: articles 28, 32 and 33

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2) Copy of Microsoft Press Release from the Microsoft page, which reflects a note

press release of 06/06/2014, indicating that "the AEPD confirms the guarantees of the services Microsoft corporate offices in the cloud for data export, indicating that the Agency confirms that Microsoft contracts offer adequate guarantees for customers who entrust their personal data to Microsoft within the framework of corporate services Office 365, Dynamics CRM online and Microsoft AZURE for the transfer data international. "

It indicates that the AEPD "has analyzed the company's contract models for service corporative cloud services under the protection of the LOPD". "The AEPD considers the ga-Warranties from Microsoft as a Data Importer" Microsoft's contractual framework for data export has been based for years on contractual clauses type in order to regulate the export of European customer data to suppliers of services established outside the European Union. Includes a link that supposedly leads to the resolution of 05/09/2014, IT 32/2014.

3) Copies of parts of minutes of meetings of the Council with schools since 06/06/2014 in which references are made to assembly of infrastructures for work with ICTs in the classroom, and the implementation of the Microsoft suite software that will be integrated into RACIMA and the creation of new portals on demand from the centers. Also from meetings in October 2014 on ICT training.

4) Copy of a MICROSOFT document, consisting of an email from 07/08/2014 to a person from the Ministry, welcoming the driver's license service center MICROSOFT volume (VLSC). To access VLSC with the permissions you have been assigned, you must first register and validate the email address professional that was provided to Microsoft for VLSC.

5) Copy of the MICROSOFT license number where the signature of 07/31/2014, from the Government of La Rioja. Contract "campus School. Enrollment for Education Solutions. Azure only enrollment."

6) Copy of an email from Volume Licensing Service Center

Microsoft, of 08/08/2014 to a responsible person, of a General Directorate of Information and communication technologies of the Ministry, with the number of customer contract, and the registration number with acceptance of the registration of "Microsoft enrollment for Education Solutions" and mention of the activation of "online services" that will be sent to the person designated in the registration as administrator "online services".

7) Copy of an agenda of a meeting of 10/15/2014, of teaching staff and the Ministry in which the implementation of face-to-face training and virtual from December to March on the Office 365 suite.

8) Copy of invoice, amount 0, from Microsoft, for the month of February 2015 from Microsoft to Government of La Rioja, Ministry of Public Administrations and Finance - element:

Office 365 e-1 educational environment for students and teachers, protection

Online exchange for students and teachers

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9) Copy of two printed sheets of 02/25/2015 from the office.com portal with Office 365, start the free trial with the account settings, which contains the email [edu@larioja.org](mailto:edu@larioja.org), with the data of a person responsible for the Ministry of Education, appearing "Office 365 education E 3 for teachers and for students".

10) Copy of the platform development maintenance service contract

RACIMA for centers supported with public education funds from the Government of

La Rioja of 06/30/2022.

SEVENTH: On 02/21/2023, the following proposed resolution was issued:

"That by the Director of the Spanish Agency for Data Protection the violation of article 28.3 of the GDPR, in accordance with article 83.4.a) of the GDPR, and for the purposes of prescription in article 73. k) of the LOPDGDD, imputed to the DEPARTMENT OF EDUCATION, CULTURE, SPORTS AND YOUTH, of the CCAA of la RIOJA with NIF S3333001J."

Faced with it, no allegations are received.

EIGHTH: Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: The claimant on 04/22/2021 requests the defendant a "copy of email or link to the contracts/agreements/legal acts signed with MICROSOFT to offer its products to teachers and students" in accordance with Article 11 of Law 3/2014, of 11/09 on Transparency and Good Governance of La Rioja. In the response obtained, dated 05/17/2021, the defendant indicates a link in the containing information from MICROSOFT online services where you can obtain information about the licensing programs and Informs you that "licensing agreements use are applied at the same moment of the creation of the tenant under the name ON LINE SERVICES". Within the agreement reference is made to the DPA-protection addendum of data - in which all the information related to the use and treatment of of the data. The page informs "When you subscribe to an online service under the product terms and conditions, data processing and terms of security are defined in the Online Services Data Protection Annex (DPA). He DPA is an addendum to the Product Terms and Conditions (formerly OST). No in accordance with what was delivered, by the generic response, and not including the custom contract

of treatment, the claimant files a claim with this AEPD, which also requested in previous proceedings, and was not provided.

SECOND: In the allegations to the initiation agreement, the defendant has provided a copy of the MICROSOFT OFFICE 365 EDUCATION E-3 customer contract, for teachers and students, Free version signed on 07/31/2014.

The Microsoft contract is signed online and implies acceptance of the use agreements called "on line services", additionally appears in the agreements of use a Data Protection Addendum-DPA-that collects the information

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related to the use and treatment of data and is updated in its versions. in said Addendum includes the conditions of data processing. In addition, they include Appendices and annexes.

## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Agency for the Protection of Data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

## II

Regarding the intervening subjects related to data processing, it is necessary to go to the concept of responsible and in charge of the processing of personal data in Article 4.7 and 8 of the GDPR:

"7) responsible for the treatment" or "responsible": the natural or legal person, authority public, service or other body that, alone or jointly with others, determines the purposes and means of treatment; if the law of the Union or of the Member States determines the purposes and means of processing, the controller or specific criteria for their appointment may be established by the Law of the Union or of the States members;"

8) person in charge of the treatment" or "in charge": the natural or legal person, public authority public authority, service or other body that processes personal data on behalf of the controller of the treatment"

Whether the platform license agreement signed is free or not, is not an obstacle to that in any case the functionality of the software and applications used by MICROSOFT require the introduction of personal data, teachers or/and students, with a purpose or the creation of an account to configure the service within some terms.

General terms of the contract. In this sense, the reference in the abstract to the conditions general terms of the agreement that are exposed on the MICROSOFT website can be accessed available by anyone through the Internet, and it did not constitute what was requested by the claimant, nor which has been repeatedly requested by this AEPD.

One of the principles of the GDPR is to comply with the regulations and prove documentary-

Mind that it is being fulfilled.

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Article 5.1 a) and .2 states:

1. Personal data will be:

a) treated in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

2. The controller will be responsible for compliance with the provisions of paragraph 1 and able to demonstrate it ("proactive responsibility").

The defendant did not contribute before the initiation agreement, despite being expressly requested, the copy of the adherence to the contract or any other written legal act that binds you with MICROSOFT. The people and entities that to provide educational services use use a learning platform with the use of an educational software license, trans- personal data of students and teachers, responsibility of the re-called.

This person in charge is characterized, in accordance with article 4.7 of the GDPR because:

- It is the one that establishes the purpose or result of the treatment, its purposes and the methods of treatment, extension and scope of the tools to be used.
- Establishes on which individuals the data is processed.
- Decisions are made as part or result of treatment.

Companies that perform this type of service (Cloud Computing, educational platforms, tives, data hosting) offer educational centers computer applications structured as "learning platforms" accessible through the Internet that

They can be composed of different types of software. Therefore, in this case, the

The essence of the use of the application is the consideration of the service provider in charge.

treatment on behalf of the person in charge.

As data that is processed through application software, initial

initially to the claimed a violation of article 28 of the GDPR, which indicates:

"1. When a treatment is going to be carried out on behalf of a person in charge of the

treatment, this will only choose a person in charge who offers sufficient guarantees

to apply appropriate technical and organizational measures, so that the treatment

is in accordance with the requirements of this Regulation and guarantees the protection of

the rights of the interested party.

2. The person in charge of the treatment will not resort to another person in charge without the authorization

prior written, specific or general, of the person in charge. In the latter case, the

person in charge will inform the person in charge of any change foreseen in the incorporation or

replacement of other processors, thus giving the controller the opportunity to oppose

said changes.

3. The treatment by the person in charge will be governed by a contract or other legal act with

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under Union or Member State law, which binds the person in charge

regarding the person responsible and establish the object, duration, nature and purpose

of the treatment, the type of personal data and categories of interested parties, and the

obligations and rights of the person in charge. Said contract or legal act shall stipulate, in

particular, that the person in charge:



a) will process personal data only following documented instructions from the responsible, including with respect to transfers of personal data to a third party country or an international organization, unless required to do so by virtue of Law of the Union or of the Member States that applies to the person in charge; in that case, the person in charge will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of interest public;

b) will guarantee that the persons authorized to process personal data have committed to respect confidentiality or are subject to an obligation of confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;

e) assist the controller, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that this can comply with its obligation to respond to requests that have as their object the exercise of the rights of the interested parties established in chapter III

f) will help the controller to ensure compliance with the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the person in charge;

g) at the choice of the person in charge, he will delete or return all personal data once Once the provision of treatment services ends, and will delete the copies existing unless the retention of personal data is required under Union or Member State law;

h) will make available to the controller all the information necessary to demonstrate compliance with the obligations established in this article, as well as for

enable and assist in the performance of audits, including inspections, by the controller or another auditor authorized by said controller.

In relation to the provisions of letter h) of the first paragraph, the person in charge shall inform immediately to the controller if, in their opinion, an instruction violates this Regulation or other provisions on data protection of the Union or of the member states.

9. The contract or other legal act referred to in sections 3 and 4 will consist of written, including in electronic format.

Having provided a copy of the contract for data processing dated

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07/31/2014, verifying the process that led to it, and being of a previous date

upon receipt of the claim and also of the claimant's request for a copy to the

Ministry, it is appropriate to file the accused infraction. Although it could initially

to think that it lacked it, and that it was what motivated the initiation of the procedure, it was has finally contributed.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ARCHIVE the violation of article 28.3 of the GDPR attributed to the

DEPARTMENT OF EDUCATION, CULTURE, SPORTS AND YOUTH, of the CCAA de la RIOJA with NIF S3333001J,

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION,

CULTURE, SPORTS AND YOUTH, of the CCAA of La RIOJA with NIF S3333001J

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

This Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through

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

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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