

□ File No.: PS/00528/2021

RESOLUTION OF PUNISHMENT 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 party) dated November 6,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against EDUCATION MINISTRY IN MOROCCO -
RABAT with NIF S2818065A (hereinafter, the MINISTRY). The reasons on which he bases
the claim are as follows:

That on April 13, 2020, (...), he sent an email to the address of the
Counselor of Education of the Embassy of Spain in Morocco. The aforementioned mail
The electronic document was printed, formalizing a physical record that was given a registration number.
entry. The same was photographed and disseminated by the Ministry in the group of
Whatsapp of the directors of educational centers in Morocco, who, in turn,
they spread it to the chats of the schools.

Likewise, it states that the same image of the e-mail was filtered, arriving
to the journalist B.B.B., who through her twitter account publishes it in full on
April 16, 2020.

It considers that all this has meant that it has been made known to third parties not
authorized private information, such as the reasons and opinions that she reflected in
email, as well as your personal email address.

Provide along with the claim:

- Image of the broadcast email
- Screenshot of the post on Twitter.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the MINISTRY, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

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The transfer was sent on 12/28/2020, through the Notification Service Electronic and Electronic Address Enabled / certified mail / GEISER (Management Integrated Registry Services) and was returned as "expired"; reiterating the transfer by certified mail, notified on 04/08/2021

No response was received to this transfer letter.

THIRD: On 04/15/2021, in accordance with article 65 of the LOPDGDD, the claim filed by the CLAIMANT party was admitted for processing.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD.

Within the framework of these preliminary investigation actions, it was sent to the Ministry letter of transfer of the claim and request for information, of April 28, 2021,

which was notified electronically. Work in the file Certificate issued by the Electronic Notification Service and Authorized Electronic Address of the FNMT-RCM, notification from the AEPD addressed to the Ministry through that means, being the date of making available in the electronic headquarters of the organism the 28 of April 2021 and the automatic rejection date on May 9, 2021, after having Ten calendar days have elapsed since it was made available for access according to paragraph 2, article 43, of the law 39/2015, of October 1, of the Procedure Common Administrative of Public Administrations.

Subsequently, a new request for information was sent, dated March 28, June 2021, which was notified electronically and received by the Counseling that same day, as stated in the acknowledgment of receipt that works in the proceedings.

The Ministry responded to the request by means of a document filed on the 12th of July 2021.

From the previous investigation actions carried out, it has been known that the following extremes:

On April 28, 2021, the existence on Twitter of the publication of the claimant's letter of resignation, made by the journalist named in the complaint. It is verified that it appears as the date of the published on April 16, 2020.

Information and documentation requested from the MINISTRY, its representatives state the following:

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- The claimant held a public position (...) whose statements and actions

in the exercise of their functions produced effects on third parties and, consequently,

were publicized for the knowledge of all public officials

Spaniards stationed in Morocco.

- The email by which he reported his resignation from his charges was an act

administrative of notorious transcendence, by modifying the composition of the members and

representatives of officials stationed in Morocco, therefore dealing with

a public and not a private act.

- Since it was not a personal email, it was registered as an entry in the aforementioned

Counseling of education and brought to the attention of educational superiors and the

Inspection Service of the Ministry of Education and Vocational Training (in

forward MEFP).

- Eleven educational centers located in eight cities depend on the aforementioned Ministry.

Moroccans, having the Ministry the competences to inform all the personnel of

said educational centers, through their directors, of any publication,

circumstance or measure that affects them. The teaching staff numbers more than 350

teachers.

- (...).

- It is possible to understand the dissemination of the electronic mail object of the file as a duty of

information to dependent personnel, especially with the complicated situation

generated by the COVID-19 pandemic and the declaration dated March 16,

2020 of the state of alarm in Morocco, which forced the adoption of very urgent measures

to guarantee pedagogical continuity and information and communication with the

educational community, among other aspects. For this, the group of

Institutional WhatsApp with the directors and directors of educational centers.

- (...) to manage the context of exceptionality that arises as a consequence of the COVID-19 pandemic and the states of health emergency that, due to it, are declared in Spain and Morocco.

- Among the functions of said Cabinet were those of supervising the various integrated measures within the framework of the prevention and monitoring of the virus, establishing communication channels with those responsible for the centers and with the competent authorities in the educational and health field of both countries.

- One of the principles of the Ministry was - and still is - maximum transparency and dissemination for the knowledge of the educational community of the measures taken in

For the sake of participation, joint construction and mutual respect among all members of this community, especially in such difficult and complex times organizationally like the first months of the pandemic. In that sense, from the Ministry of Education, the aforementioned WhatsApp group was created

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institutional destined to the Directors of the educational centers, where it was sent both institutional documentation of the Ministry and the Ministry of Education Moroccan national, at any day and time.

- (...).

- The news spread is made within a WhatsApp group constituted ad hoc from the Ministry to promote immediate communication and transparency information on any matter that, directly or indirectly, affects the context exceptional generated by the pandemic.

- The aforementioned group was made up of the members of the Prevention Cabinet, Surveillance and Monitoring of the Ministry and the eleven directors of the educational centers dependent on it, not only as maximum representatives of the Administration in them, but also as heads of all their staff teacher. (...).

- Regarding the publication on Twitter by the journalist, the Ministry indicates unaware of that circumstance.

Requested information on whether employees sign a commitment to confidentiality for the performance of their duties in the agency, as well as a copy of the confidentiality agreement signed in your case by the advisor who carried out the diffusion, or accreditation of equivalent measures, the representatives of the claimed have stated that, although a commitment to confidentiality on the part of the employees, the group of officials and the rest of the public employees, by the mere fact of having been appointed or having signed a employment contract, they abide by the duty of secrecy necessary for the performance of their functions, the defendant being unaware that it has transpired confidential information by its public employees.

They indicate that the dissemination of the news object of the complaint is carried out, not only presupposing the duty of confidentiality and respect for ethical principles and of conduct that affects public employees, teachers and non-teachers who integrated this group, but taking into account the relevance of the same, being the Staff Board a fundamental interlocutor between the Ministry and the staff teaching and non-teaching staff in their area of management.

They add that the Personnel Board itself, (...), has repeatedly claimed the Ministry the maximum informative transparency and dialogue in all those issues that could affect teaching and non-teaching staff. In this regard,

indicate that they provide a copy of an email sent by the claimant on the 22nd of March to different members of the educational community (with visible recipients and private mail), by which they forwarded the document sent to the Ministry and the Embassy asking for permanent contact and transparency. It is not said mail between the documentation provided.

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A copy of the information and instructions issued to the personnel with in relation to the protection of the personal data they handle, as well as the measures adopted to prevent similar incidents from occurring, implementation dates and controls carried out to verify its effectiveness in its case, before which the representatives of the defendant have stated that he has addressed the centers and educational community all the information and documentation sent by the Delegate of Data Protection of the MEFP and links and contact information of competent bodies in the matter.

FIFTH: On January 27, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the MINISTRY OF EDUCATION IN MOROCCO - RABAT, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 5.1.f) and article 32 of the RGPD, typified respectively in article 83.5 and 83.4 of the GDPR.

The start agreement was electronically notified to the MINISTRY. This is required by the

article 14.2 of Law 39/2015 of Common Administrative Procedure of the Public Administrations (LPACAP) according to which "In any case they will be obliged to interact through electronic means with the Administrations Public to carry out any formality of an administrative procedure, to the least, the following subjects: a) Legal persons".

Work in the file Certificate issued by the Electronic Notification Service and of the Authorized Electronic Address of the FNMT-RCM, which records the sending of the initiation agreement, notification from the AEPD addressed to the MINISTRY, through that means being the date of availability in the electronic headquarters of the agency on January 31, 2022 and the automatic rejection date on February 11 of 2022.

Article 43.2. of the LPACAP establishes that when the notification by means electronic devices is mandatory -as is the case in this case- "it is shall be understood as rejected when ten calendar days have elapsed since the disposition of the notice without accessing its content." (The underlining is from the AEPD).

Add that articles 41.5 and 41.1, third paragraph, of the LPACAP establish, respectively, that:

When the interested party or his representative rejects the notification of a administrative action, it will be recorded in the file specifying the circumstances of the notification attempt and the means, considering the procedure completed and following the procedure. (The underlining is from the AEPD)

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Regardless of the means used, notifications will be valid

provided that they allow proof of their sending or making available, of the

reception or access by the interested party or his representative, of its dates and times, of the

full content, and the true identity of the sender and recipient of the

same. The accreditation of the notification made will be incorporated into the file.

SIXTH: Article 73.1 of the LPCAP determines that the term to formulate

allegations to the Home Agreement is ten days computed from the day following the

of the notification.

Article 64.2.f) LPACAP - provision of which the respondent was informed in the

agreement to open the procedure- establishes that in case of not carrying out

allegations within the stipulated period on the content of the initiation agreement, it

may be considered a resolution proposal when it contains a pronouncement

about the imputed responsibility". (The underlining is from the AEPD). In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On April 13, 2020, (...), the claimant sent an email

to the address of the Education Counselor of the Embassy of Spain in Morocco.

SECOND: The aforementioned email was printed, formalizing a physical record at

which was given entry number.

THIRD: Said email was photographed and disseminated by the MINISTRY in the group of Whatsapp of the directors of the educational centers of Morocco, who, in their Once, they spread it to the school chat rooms.

FOURTH: Apart from the reasons and opinions that she reflected in the email, your personal email address also appears.

FIFTH: On April 16, 2020, the image of said letter is published in its entirety in the twitter account of the journalist B.B.B.

SIXTH: The respondent acknowledges, in relation to the email sent by the claimant, that an image of it was taken, which was recorded as an entry in the Ministry of Education and shared in the Whatsapp group of the directors of

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educational centers in Morocco for understanding that it is an act administrative and, therefore, public and not private.

FOUNDATIONS OF LAW

Competition and applicable regulations

Yo

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

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

control authority and as established in article 47 and 48.1 of the Organic Law

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

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

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Previous questions

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists carrying out a processing of personal data, since the MINISTRY carries out, among other treatments, the collection, registration, use and conservation of the following personal data of natural persons, such as: name, address of email, among others.

The MINISTRY performs this activity in its capacity as responsible for the treatment, since it is who determines the purposes and means of such activity, by virtue of article 4.7 of the RGPD.

Article 4 paragraph 12 of the RGPD defines, in a broad way, the "violations of security of personal data" (hereinafter security breach) as "all those breaches of security that cause the destruction, loss or alteration accidental or illicit of personal data transmitted, conserved or processed in another form, or unauthorized communication or access to said data."

In the present case, there is a security breach of personal data in the circumstances indicated above, categorized as a breach of confidentiality, when

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have been unduly exposed, through Whatsapp messages, data personal to an indeterminate number of people.

It should be noted that the identification of a security breach does not imply the imposition of a sanction directly by this Agency, since it is necessary analyze the diligence of those responsible and in charge and the security measures applied.

Within the principles of treatment provided for in article 5 of the RGD, the integrity and confidentiality of personal data is guaranteed in section 1.f) of article 5 of the RGD. For its part, the security of personal data comes regulated in articles 32, 33 and 34 of the RGD, which regulate the security of the treatment, notification of a violation of the security of personal data to the control authority, as well as the communication to the interested party, respectively.

III

Article 5.1.f) of the RGD

The MINISTRY is charged with the commission of an infraction for violation of Article 5.1.f) of the RGD, which states that:

"1. The personal data will be:

(...)

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")."

Article 5 of the LOPDGDD, Duty of confidentiality, states the following:

"1. Those responsible and in charge of data processing, as well as all

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship of the obligor with the person in charge or in charge of the treatment".

In the present case, the principle of confidentiality has been violated since it is known that a document from the part of the

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claimant, unduly exposing personal data contained in the itself to an indeterminate number of people, also making it possible to knowledge to unauthorized third parties (journalist).

IV

Classification of the infringement of article 5.1.f) of the RGPD

The aforementioned infringement of article 5.1.f) of the RGPD supposes the commission of the infringements typified in article 83.5 of the RGPD that under the heading "General conditions for the imposition of administrative fines" provides:

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

the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes 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.

For the purposes of the limitation period, article 72 "Infringements considered very serious" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation 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. (...)"

In the present case, the infringing circumstances provided for in the indicated precepts.

v

Sanction for the infringement of article 5.1.f) of the RGPD

Article 77 "Regime applicable to certain categories of responsible or data processors" of the LOPDGDD provides the following:

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"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

3. Without prejudice to what is established in the previous section, the data protection authority data will also propose the initiation of disciplinary actions when there are sufficient evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on disciplinary or sanctioning regime that result of application.

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution imposing the The sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or Autonomous Gazette that correspond.

(...)

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 under this article. (...)"

Therefore, once the infringement of article 5.1.f) of the RGPD has been confirmed, it is appropriate to sanction

with a warning to the MINISTRY

SAW

Article 32 of the GDPR

The MINISTRY is charged with the commission of an infraction for violation of Article

32 of the RGD, which states 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

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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 account shall be taken of

takes 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.

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 person in charge or the person in charge and

has access to personal data can only process said data following

instructions of the person in charge, unless it is obliged to do so by virtue of the Right of

the Union or the Member States.

In the present case, the data have not been processed in a way that has guaranteed

your confidentiality. Thus, an email was converted into an image and

its dissemination as is, through whatsapp and without anonymizing data that did not come from

communicate, to an undetermined number of people - staff of the MINISTRY and

Teaching Centers-, with the conviction that they acted correctly and that

they could divulge it that way, ending up being communicated, in addition, to a

person who does not belong to said staff (journalist).

This reveals inadequate awareness/training of staff on how they should

The personal data will be treated in a way that guarantees the confidentiality of the data.

themselves, reflecting a lack of appropriate organizational measures to do so.

7th

Classification of the infringement of article 32 of the RGPD

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The aforementioned infringement of article 32 of the RGD of 2018 supposes the commission of the infringements typified in article 83.4 of the RGD that under the heading "General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the 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; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes 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.

For the purposes of the limitation period, article 73 "Infringements considered serious" of the LOPDGDD indicates:

"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:

f) The lack of adoption of those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of the Regulation

Sanction for the infringement of article 32 of the RGPD

Article 83 “General conditions for the imposition of administrative fines” of the

RGPD section 7 establishes:

“Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of

responsible or in charge of the treatment” of the LOPDGDD provides the following:

“1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

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c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

(...)

3. Without prejudice to what is established in the previous section, the data protection authority data will also propose the initiation of disciplinary actions when there are sufficient evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on disciplinary or sanctioning regime that result of application.

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or Autonomous Gazette that correspond.

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 under this article. (...)"

Therefore, confirmed the infringement of article 32 of the RGPD, it is appropriate to sanction with a warning to the MINISTRY

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 THE MINISTRY OF EDUCATION IN MOROCCO - RABAT, with NIF S2818065A, for an infringement of Article 5.1.f) of the RGPD, typified in the Article 83.5 of the RGPD, a sanction of WARNING.

SECOND: IMPOSE THE MINISTRY OF EDUCATION IN MOROCCO - RABAT, with NIF S2818065A, for an infringement of Article 32 of the RGPD, typified

in Article 83.4 of the RGPD, a sanction of WARNING

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THIRD: NOTIFY this resolution to the COUNCIL OF EDUCATION IN

MOROCCO - RABAT.

FOURTH:

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

COMMUNICATE this resolution to the Ombudsman,

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 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.

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