

□ Procedure No.: PS/00314/2020

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) dated March 6, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against CITY COUNCIL OF FUENTE EL SAZ DE JARAMA with

NIF P2805900D (hereinafter, the claimed).

The reasons on which the claim is based are that the aforementioned council lacks a
data protection officer.

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), with reference number E/03620/2020, transfer of

said claim to the respondent, on June 5, 2020, so that he could proceed with his

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

THIRD: On October 5, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD.

FOURTH: On October 20, 2020, the respondent submits a written

stating that he has already complied with the obligation to have a protection delegate

of data

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The city council did not have a Data Protection Officer.

SECOND: Currently, after the claim filed against the city council, it has a Data Protection Delegate.

FOUNDATIONS OF LAW

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

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II

The Public Administrations act as data controllers of personal character and, on some occasions, they exercise functions of those in charge of treatment, for what corresponds to them, following the principle of responsibility proactively, meet the obligations that the RGPD details, among which is included, the obligation to appoint a data protection delegate and communicate it to this

AEPD

The obligation is imposed by article 37 of the RGPD, which indicates:

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

a) the treatment is carried out by a public authority or body, except those

courts acting in the exercise of their judicial function;”

Article 37.3 and 4 of the RGD indicates about the appointment of the DPD "When the

The person responsible or the person in charge of the treatment is a public authority or body,

may designate a single data protection delegate for several of these

authorities or bodies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the

in charge of the treatment or the associations and other organisms that represent

categories of managers or managers may designate a protection delegate

of data or they must designate it if so required by the Law of the Union or of the States

members. The data protection delegate may act on behalf of these

associations and other organizations that represent those responsible or in charge.”

The LOPDGDD determines in its article 34.1 and 3: "Appointment of a delegate of

Data Protection "

Those responsible and in charge of the treatment must designate a delegate

1.

data protection law in the cases provided for in article 37.1 of the Regulation

Document (EU) 2016/679 and, in any case, in the case of the following entities:

3. Those responsible and in charge of the treatment will communicate within a period of ten

days to the Spanish Agency for Data Protection or, where appropriate, to the authorities

regional authorities for data protection, appointments, appointments and dismissals of

the data protection delegates both in the cases in which they are

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

The infringement is considered as such in article 83.4.a of the RGD, which states: “4. The

Violations of the following provisions 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:

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

Article 83.7 of the RGPD indicates:

"Without prejudice to the corrective powers of the control authorities under article 58, paragraph 2, each Member State may establish rules on whether it is possible, and in what measure, impose administrative fines on authorities and public bodies established in that Member State."

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

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

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

In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGDD, indicates:

1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

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

2 “When those responsible or in charge listed in section 1 commit any of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning the same with warning. The resolution will also establish the measures that appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected. would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any.”

4. The resolutions that fall on the data protection authority must be communicated. in relation to the measures and actions referred to in the preceding sections.

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

III

Article 73 of the LOPDDG indicates: Infractions considered serious

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

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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.”

By means of a letter of allegations dated October 20, 2020, the CITY COUNCIL

DE FUENTE EL SAZ DE JARAMA, has stated that it has already designated Delegate

Data Protection.

Despite this, the Spanish Agency for Data Protection sanctions the claimant with

a sanction of warning since it should have had a delegate of

data protection in accordance with the provisions of article 37 of the RGPD,

since May 25, 2018, when the GDPR came into force.

Considering the aforementioned precepts and others of general application,

the Director of the Spanish Data Protection Agency RESOLVES:

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE EL SAZ DE JARAMA CITY COUNCIL, with

NIF P2805900D, for an infringement of article 37 of the RGPD, typified in article

83.4 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF FUENTE EL

JARAMA SAZ.

THIRD

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.

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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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