

□ Procedure No.: PS/00239/2021

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 complaining party) dated January 30, 2020,
filed a claim with the Spanish Data Protection Agency. The
claim is directed against MERCEDES GERENCIA, S.L. with NIF B87950697 (in
hereafter, the party claimed).

SECOND: In view of the foregoing, there are indications of a possible
breach of the provisions of Regulation (EU) 2016/679 (General Regulation
of Data Protection, hereinafter RGPD), which has motivated the opening of the
procedure E/02296/2020.

THIRD: On July 3, 2020, the claim was admitted for processing
filed by the claimant, under the provisions of article 65.5 of
the LOPDGDD.

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 the RGPD, and in accordance with the provisions of the Title
VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

FIFTH: Within the framework of investigation actions E/05687/2020, it was sent to
the party claimed a request for information, regarding the claim
outlined in the first section, so that within a period of ten business days
before this Agency the information and documentation indicated therein. The

The request was registered as output on November 16, 2020 with number

O00007128s2000018921.

The request for information, which was made by electronic means in accordance with

the rules established in Law 39/2015, of October 1, on the Procedure

Administrative Common of Public Administrations (hereinafter, LPACAP), was not

collected by the person in charge within the period of making available, as stated in

the Notific@ certificate that is in the file, understanding that it has been rejected

in accordance with article 43.2.

SIXTH: Although the notification was validly made by electronic means,

considering the procedure carried out in accordance with the provisions of article 41.5 of the

LPACAP, for information purposes, a copy was sent by mail that was notified

irrefutably on January 25, 2021. In said notification, he was reminded

your obligation to interact electronically with the Administration, and you will be

informed of the means of access to said notifications, reiterating that, as regards

thereafter, you will be notified exclusively by electronic means.

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SEVENTH: Regarding the required information, the person in charge has not sent

any response to this Spanish Data Protection Agency.

EIGHTH: On June 1, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged

violation of Article 58.1 of the RGD, typified in Article 83.5 of the RGD

Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR).

The aforementioned initial agreement, which was registered on June 1, 2021 with number registration O00007128s2100039123, was not collected by the person in charge, understood to be rejected in accordance with the provisions of art. 43.2 of the LPACAP in dated June 12, 2021, as stated in the Notific@ certificate that works in the proceedings.

According to the provisions of art. 41.5 of the aforementioned LPACAP, "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure."

After the period of ten business days granted in the initial agreement for the presentation of pleadings, the respondent party has not presented pleadings.

NINTH: On August 10, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction MERCEDES GERENCIA, S.L., with NIF B87950697, for an infraction of the Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €3,000 (three thousand euros).

Likewise, the procedure was revealed so that within a period of ten days could allege whatever he considered in his defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP.

TENTH: The proposed resolution, which was registered on August 10, 2021 with registration number O00007128s2100056349, was not picked up by the responsible, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP on August 21, 2021, as stated in the Notific@ certificate

what works in the file.

After the period of ten business days granted in the resolution proposal for the presentation of pleadings, the respondent party has not presented pleadings.

ELEVENTH: According to the report collected from the AXESOR tool, the entity MERCEDES GERENCIA, S.L. is a SME (Microenterprise), constituted in 2017, and with a turnover of 4,905,394 euros in 2018.

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

In this procedure, the following are considered proven

FACTS

FIRST: The information requirement indicated in the fifth antecedent was notified electronically, in accordance with the provisions of article 43 of the LPACAP, and a copy of it was reliably delivered by post.

SECOND: The respondent has not responded to the request for information carried out by the Agency within the period granted for it, within the framework of the investigation actions referenced with the code E/05687/2020, in which the The deadline to respond was ten business days.

THIRD: The notification of the agreement to initiate this procedure sanctioning was carried out electronically through the Notific@ system, not being collected by the person in charge and, consequently, understood as rejected as provided for in art. 43.2 of the LPACAP, dated June 12, 2021. No allegations to the initiation agreement.

FOURTH: The notification of the resolution proposal was made electronically to through the Notific@ system, not being collected by the person in charge and understanding rejected in accordance with the provisions of art. 43.2 of the LPACAP dated August 21 of 2021. No arguments were presented to the proposed resolution.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and solve this procedure.

II

The defendant is imputed the commission of an infraction for not having tried to the Spanish Agency for Data Protection the information that was required.

With the aforementioned conduct of the defendant, the power of investigation that the Article 58.1 of the RGD confers on the control authorities, in this case, the AEPD, has been hampered.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to the claimed party, for violation of article 58.1 of the RGD, which provides that each control authority will have, among its powers of research:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information

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that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or in charge of the treatment the presumed infractions of the present Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of in accordance with the procedural law of the Union or of the Member States.”

III

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: "no facilitate access in breach of article 58, section 1”.

In the same article it is established that this infraction can be sanctioned with a fine. twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) as a maximum of the global total annual turnover of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority

of competent data protection.”

IV

Based on the facts set forth, it is considered that it is appropriate to impute to the party

claimed for the violation of article 58.1 of the RGPD typified in article 83.5 e)

of the GDPR. The sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. In

Consequently, the sanction to be imposed must be graduated according to the criteria

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

v

Finally, it is appropriate to graduate the sanction to be imposed according to the criteria that

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

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In the initial evaluation it is appreciated that no mitigating factor is applicable, and

has considered, as aggravating, the following fact.

- Art. 83.2 b) RGPD: the intention or negligence in the infringement. It is a

company that is not newly created and should have procedures

established for the fulfillment of the obligations contemplated by the regulations of

data protection, among them, to respond to the requirements of the authority

of control.

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 MERCEDES GERENCIA, S.L., with NIF B87950697, for a infringement of Article 58.1 of the RGD, typified in Article 83.5 of the RGD, a fine of 3,000.00 euros (three thousand euros).

SECOND: NOTIFY this resolution to MERCEDES GERENCIA, 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 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.

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

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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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuan, Resolution 4/10/2021

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