

□ Procedure No.: PS/00417/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00417/2021, instructed by the Spanish Agency for

Data Protection before the SPANISH ASSOCIATION FOR EDUCATION

ONLINE, with CIF.: G87816245, (hereinafter, "the claimed party"), for alleged

infringement of Regulation (EU) 2016/679, of the European Parliament and of the Council, of

04/27/16, regarding the Protection of Natural Persons with regard to the

Treatment of Personal Data and the Free Circulation of these Data (RGPD); and of

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

guarantee of digital rights, (LOPDGDD) and for the alleged infringement of the Law

34/2002, of July 11, on Services of the Information Society and Commerce

Electronic (LSSI), and based on the following:

### BACKGROUND:

FIRST: On 04/28/21, he entered this Agency, a brief presented by

the complaining party, in which it indicated, among others, the following:

"On January 8, I asked to exercise my rights in front of the person claimed, following the indications that I put in the mail itself, without having a response, since I have not asked to receive any mail from this person/company. On February 13, I received the same email and I asked again for the removal of personal data, from wherever they had my data, no response. With dates March 4 and April 14 I receive again the same messages, violating my right to delete my personal data".

The following documentation is attached to the written claim:

- Copy of the email received by the claimant on 01/08/21, from the

\*\*\*EMAIL.1 address, containing an advertising message.

- Copy of the email sent by the claimant that same day,

01/08/21, to the email address \*\*\*EMAIL.1, requesting the

“LOW” of personal data from being in the entity's systems.

- Copy of the email received by the claimant on 02/13/21, from the

address \*\*\*EMAIL.1, containing the same advertising message.

- Copy of the email sent by the claimant that same day,

02/13/21, to the email address \*\*\*EMAIL.1, requesting once

plus the "LOW" of your personal data from the entity's systems.

- Copy of the emails received by the claimant on 03/04/21

and 04/14/21, from the address \*\*\*EMAIL.1, containing the same messages

advertisements than in the first two emails sent.

In the advertising emails sent by the claimed entity, it can be

read, among others, the following message:

“(...)Come in and enroll before the places run out at \*\*\*URL.1

(...) If you want to unsubscribe, tell me by replying to this email”.

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2/7

SECOND: On 05/07/21 and 05/18/21, this Agency addressed

informative request to the claimed party, in accordance with the provisions of the

Article 65.4 of the LOPDGDD Law.

THIRD: On 08/13/21, by the Director of the Spanish Agency for

Data Protection agreement is issued to admit the processing of the complaint

filed by the claimant, in accordance with article 65 of the LPDGDD Law, to the

assess possible rational indications of a violation of the rules in the field of

the powers of the Spanish Data Protection Agency.

FOURTH: On 08/18/21, by the Director of the Spanish Agency for

Data Protection, a sanctioning procedure is initiated against the claimed party, for

infringement of article 17 of the RGPD, in relation to article 12 of the aforementioned

Regulation, for not responding to the request for deletion of the personal data of the

claimant from its databases, with an initial penalty of 3,000 euros (three thousand

euros) and for the infringement of article 21) of the LSSI, regarding the sending of emails

electronic advertising without the mandatory consent of the recipient, with a

initial penalty of 2,000 euros (two thousand euros), all based on the provisions of art.

64.2 b) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (LPACAP).

FIFTH: Notification of the initiation of the file on 08/31/21, as of today, no

there is evidence that the respondent has made allegations to the agreement to start the

process. In this sense, article 64.2.f) of the LPACAP - provision of which

the one claimed in the agreement to open the proceeding was reported - establishes that,

if allegations are not made within the stipulated period on the content of the agreement of

initiation, when it contains a precise pronouncement about the

imputed responsibility, may be considered a resolution proposal. 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 respondent has not made allegations to the agreement to initiate the file and in

attention to the provisions of article 64.2.f) LPACAP, the aforementioned initial agreement is

considered in this case proposed resolution.

PROVEN FACTS:

1.- As indicated by the claimant in his brief, although he requested to exercise his rights of

deletion of data and not to send any more advertising emails,  
following the indications that he put in the mail that he received from the claimed,  
You have not received any response to your request and you have received emails again  
advertisements after exercising their rights.

Documentation that proves the attempts to  
unsubscribe from the systems of the claimed, asking her not to send  
more advertising emails and the emails you received after  
with advertising messages.

## FOUNDATIONS OF LAW

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3/7

a) On the right to delete personal data:

I.- Competition:

Is competent to resolve this Sanctioning Procedure, the Director of the  
Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the  
GDPR Regulation, and, as established in arts. 47, 64.2 and 68.1 of the Law  
LOPDGDD.

b) About sending advertising emails:

Is competent to resolve this Sanctioning Procedure, the Director of the  
Spanish Agency for Data Protection, in accordance with the provisions of art.  
43.1, second paragraph, of the LSSI Law.

II- Summary of the facts:

In the present case, the claimant indicates that, after receiving an email

advertising of the claimed entity without its prior consent, tried to exercise its right to delete your personal data before the entity, "following the indications that he put in the mail itself", without obtaining any response. One month later he received another advertising email from the entity with the same message and tried again to exercise your right to delete your personal data, but he didn't have an answer either. After that, he returned to receive up to two new emails in the following months, with the same advertising message.

III- On the right to suppress personal data exercised by the claimant:

Article 12 of the GDPR establishes the following:

- 1.- The person responsible for the treatment will take the appropriate measures to facilitate the interested all information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.
2. The person responsible for the treatment will facilitate the interested party in the exercise of their rights in under articles 15 to 22. In the cases referred to in article 11, paragraph 2, The person in charge will not refuse to act at the request of the interested party in order to exercise their rights under articles 15 to 22, unless you can show that you are not in conditions to identify the interested party.
3. The data controller will provide the interested party with information regarding their proceedings on the basis of a request under articles 15 to 22, and, in any case, within one month from receipt of the request. Saying The term may be extended for another two months if necessary, taking into account the

complexity and number of requests. The person in charge will inform the interested party of

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4/7

any such extension within one month of receipt of the

request, indicating the reasons for the delay. When the interested party submits the

request by electronic means, the information will be provided by electronic means

when possible, unless the interested party requests that it be provided in another way.

For its part, article 17 of the RGPD, on the right to delete data

personal, ("the right to be forgotten"), establishes that:

1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete personal data without undue delay when any

of the following circumstances: a) the personal data is no longer necessary in

relation to the purposes for which they were collected or otherwise processed; 4.5.2016

L 119/43 Official Journal of the European Union EN (b) the interested party withdraws the

consent on which the processing is based in accordance with article 6,

paragraph 1, letter a), or Article 9, paragraph 2, letter a), and this is not based on another

legal basis; c) the interested party opposes the treatment in accordance with article

21, paragraph 1, and other legitimate reasons for the treatment do not prevail, or the

interested party opposes the treatment in accordance with article 21, paragraph 2; (...)"

According to the evidence available at this time, the

exposed facts suppose the violation of article 17 of the RGPD, in application of the

Article 12 of the aforementioned Regulation, upon verifying that the entity did not act

diligently, by not removing the claimant's personal data from its databases

data, in a timely manner.

For its part, article 72.1.k) of the LOPDGDD considers it very serious, for the purposes of prescription, "The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of the Regulation".

This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, in order to set the amount of the penalty to impose, it is considered appropriate to grade it according to the following criteria aggravating factors established in article 83.2 of the RGPD:

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The duration of the violation, taking into account the scope or purpose of the treatment operation in question, as well as the damages caused to the interested, (section a). In this case, the complainant requested the deletion of your personal data up to two times, on 01/08/21 and 02/13/21, but continued to receive advertising emails, on 03/04/21 and 04/14/21 (two months after having exercised for the first time your right to deletion of your personal data).

The facts object of the claim are attributable to a clear lack of diligence on the part of the claimed party, (paragraph b), since having received up to on two occasions the request for deletion of personal data of their

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5/7

systems ignores such requests and continues to send emails

advertising electronics.

The balance of the circumstances contemplated in article 83.2 of the RGD, with

Regarding the infraction committed by violating the provisions of article 17 of the

RGD, in relation to article 12 of the aforementioned Regulation, allows a penalty to be set

of 3,000 euros, (three thousand euros).

IV.- Regarding the sending of emails with advertising messages:

In the present case, the claimant indicates that he has received up to four emails

advertising emails of the claimed party without having given their consent to

this, even asking her not to do it again.

In this sense, article 21 of the LSSI provides the following:

"1. The sending of advertising or promotional communications by

email or other equivalent means of electronic communication

previously they had not been requested or expressly authorized by the

their recipients.

2. The provisions of the preceding section shall not apply when there is a

prior contractual relationship, provided that the provider had legally obtained

the contact details of the recipient and will use them to send communications

commercial references to products or services of your own company that are

similar to those initially contracted with the client.

In any case, the provider must offer the recipient the possibility of opposing the

processing of your data for promotional purposes through a simple procedure

and free, both at the time of data collection and in each of the



commercial communications addressed to you.

When the communications have been sent by email, said

means must necessarily consist of the inclusion of an email address

electronic or other valid electronic address where this right can be exercised,

sending communications that do not include said address is prohibited.”

Therefore, according to the evidence available at this time,

and without prejudice to what results from the investigation, the facts exposed could

suppose the violation of article 21 of the LSSI, by the claimed party, by

send advertising emails without the prior consent of the recipient.

The aforementioned infraction is typified as "minor" in art. 38.4.d) of said

standard, which qualifies as such, "The sending of commercial communications by e-mail

electronic or other equivalent means of electronic communication when in said

shipments do not meet the requirements established in article 21 and do not constitute

Serious offense".

Pursuant to the provisions of article 39.1.c) of the LSSI, minor infractions

may be sanctioned with a fine of up to €30,000.

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6/7

In accordance with the precepts indicated, in order to set the amount of the penalty to

impose, it is considered appropriate to grade it according to the following criteria

aggravating factors established in article 40 of said regulation:

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The existence of intentionality, an expression that must be interpreted as

equivalent to a degree of guilt according to the Judgment of the

National High Court of 11/12/07 relapse in Appeal no. 351/2006,

corresponding to the claimed entity the determination of a system of

Obtaining informed consent that is in accordance with the mandate of the LSSI.

Situation that in the present case has not existed.

In accordance with these criteria, it is considered appropriate to impose a penalty of 2,000

euros (two thousand euros), for the infringement of article 21 of the LSSI, regarding the sending of

advertising emails without the mandatory consent of the recipient.

#### V- Penalty

In accordance with the criteria indicated in the previous points, it is considered appropriate

impose a total penalty of 5,000 euros (five thousand euros): 3,000 euros for the

infringement of article 17 of the RGPD and 2,000 euros for the infringement of article 21 of the

LSSI.

In view of the foregoing, the following is issued:

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#### RESOLVE

FIRST: IMPOSE THE SPANISH ASSOCIATION FOR EDUCATION

ONLINE, with CIF.: G87816245, a fine of 5,000 euros (five thousand euros): 3,000

euros for the infringement of article 17 of the RGPD and 2,000 euros for the infringement of the

Article 21 of the LSSI.

SECOND: NOTIFY this resolution to the SPANISH ASSOCIATION FOR

ONLINE TEACHING, and report the result to the complaining party.

Warn the sanctioned party that the sanction imposed must be made effective once it is

enforce this resolution, in accordance with the provisions of article 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-

Public Administrations (LPACAP), within the voluntary payment period indicated in article

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, me- upon deposit in the restricted account N° ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank, S.A. or 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 will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid until the 5th of the second following month or immediately after.

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7/7

In accordance with the provisions of article 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is will make public, once it has been notified to the interested parties. The publication is made will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the established in articles 112 and 123 of the LPACAP, the interested parties may interpose have, optionally, an appeal for reconsideration before the Director of the Spanish Agency of Data Protection within a period of one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned legal text.

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 interested party do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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