File number: PS/00329/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following:

BACKGROUND

FIRST: On 05/20/2020, it had entry in this Spanish Agency of

Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),

through which you formulate a claim against the entity MIFARMA ON-LINE STORE,

S.L., with CIF B02518041 (hereinafter, MIFARMA or the claimed one), due to the possible

violation of the confidentiality of your personal data. The reasons on which he bases

the claim are as follows:

The claimant states that she bought sanitary products on the website "***URL.1", between

them, some pregnancy tests and ovulation tests. When you receive the package you realize

that the invoice is attached to the outside of the package, which made it possible for all the

people who have had contact with said shipment could access the list of

the products purchased, as well as their identification data, ID and address.

He states that this information reveals his state of health, that is,

pregnancy. He understands that his right to privacy has been violated and adds that

contacted the aforementioned website, without receiving a satisfactory response.

He provided a photograph of the package received, on the outside of which you can see the invoice that

is cited in the claim, dated 05/04/2020, the total amount of which amounts to 42.71

euros. As stated in this document, the shipment was made through the Service of

Post.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred to the claimed on 06/05/2020, in accordance with the provisions of the Article 65.4 of the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD). Saying transfer, carried out through the Electronic Notification Service, resulted expired.

THIRD: The claim was admitted for processing by agreement of 09/17/2020.

FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirectorate General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD.

As a result of the research activities carried out, it is manifest the following:

1. On 10/29/2020, a letter was received from the MIFARMA entity informing that the process of sending packages to ***LOCALIDAD.1 is established by the own Postal Service, as established in the Order of the Ministry of Treasury of 07/29/2016 and the Resolution of the Director of the Tax Agency of ***LOCATION.1 of 07/02/2017.

For shipments dispensed from the Single Administrative Document (DUA) of import
in *** LOCATION.1, the Postal Service, as carrier, is obliged
to communicate to the Tax Agency of ***LOCALIDAD.1 (ATC) the entry of each
shipment and to provide some information contained in the invoice or value declaration,
such as those related to the sender and NIF, recipient and NIF, value and description of the
merchandise, packages and weight in Kg (Third paragraph, points 1 and 2, of the Resolution of the
Director of the Tax Agency of ***LOCATION.1).

The Tax Agency of ***LOCALIDAD.1 reserves the right to withhold the shipment,
require Correos to submit additional documentation or not authorize
the DUA waiver.

Add MIFARMA that the Postal Service informs you that the invoice has to travel
in triplicate outside the shipment in a plastic packinglist that the Service itself
Correos provides, in which the data of the sender and recipient must appear, their CIF
o NIF and detailed content, so that customs can check it.

They end by pointing out that they have reviewed the system for sending packages to
***LOCATION.1, in conjunction with the Postal Service and transport agencies,
to avoid similar incidents in the future, and that they have proceeded to implement a
series of internal measures to strengthen compliance with protection regulations
of data (appointment of the figure of the Data Protection Delegate,
update of the record of treatment activities and preparation of a
security breach management procedure and a breach registration form
incidences).

Among other things, with his response brief he attached a copy of the documentation
Next:

. Resolution of the Director of the ATC, dated 07/02/2017, clarifying the
conditions for clearance of low-value shipments exempt from Tax

Canary Indirect General.

. Response provided by the respondent to a complaint email that was sent by the

complainant, in which he protests against the large number of people who have been able to access

to personal information, including your partner who received the package. in this answer

the following is indicated:

"… all orders that are sent for customs inspection are sent with the

documentation in an envelope. If customs reviews it, you have to extract the documentation

of the envelope, and I am afraid that in this process they have left visible information on the package.

We will speak with our Post Office managers so that they contact the destination Customs and

comment on the case so that it does not happen again".

2. Requested information from the entity Sociedad Estatal de Correos y Telégrafos, S.A.,

S.M.E. (hereinafter Correos or Correos Service) on the data that must be

visible on the outside of the package, dated 05/18/2021 the response issued is received

by the aforementioned entity, in which it states that it is necessary to be able to access the

information related to the recipient's data and the content of the package and, therefore,

that it is exposed, even when the shipment was exempt from the

need for DUA. According to Correos, this need is accredited based on the

following circumstances or rules:

a) Concurrence of a special tax regime for importation into the Islands

***LOCATION.1 for the purposes of the General Indirect Canary Islands Tax (IGIC) and the

Arbitration on Imports and Deliveries of Goods in the Islands ***LOCATION.1

(AIEM), which requires Customs to declare as an import shipments addressed to

this destination, as regulated in Law 20/1991, of June 7, modifying the

fiscal aspects of the Fiscal Economic Regime of ***LOCATION.1. and quote the

Articles 8.1 and 67.2 of this regulation, which define imports for the purposes of the IGIC and

the AIEM, respectively.

This importation determines the taxable event in both taxes and, in

Consequently, the need to carry out the corresponding customs procedure and the

accrual of a fee.

b) On the need to carry out customs procedures, regardless of the

Requirement or not of SAD, Correos states the following:

The special fiscal regime of the Islands ***LOCALIDAD.1 implies that the State Customs

(State Tax Administration Agency - AEAT) and the Autonomous Administration

Canaria have to control commercial exchanges between the Peninsula and

Balearic Islands and that territory, both in the expedition and in the introduction of merchandise.

This is established in the explanatory statement of the Resolution of July 11, 2014, of the

Department of Customs and Special Taxes of the AEAT, which includes

the instructions for the formalization of the Single Administrative Document (DUA),

used to carry out customs formalities.

This Resolution (Appendix XVI) includes a series of simplifications for the

customs processing in exchanges between the Peninsula and the Islands

***LOCATION.1, excluding the formalization of the DUA in certain cases. Nevertheless,

This does not mean that there is no need to carry out a customs procedure on importation, given

that the operation in any case has to be declared to Customs (for example,

by means of a declaration of low value: document CN23).

On the contrary, according to Correos, the invoice is always necessary, in accordance with

indicated in Appendix XVI of the aforementioned Resolution, when it states that, in cases

in which DUA is not required, "the issuing company must include in its invoice or

other commercial or transport document, your intention to avail yourself of the procedure

including in it the expression T2LF-Goods without shipping declaration".

Without this information, it would not be possible to know whether or not the shipment is exempt from DUA, for how much the information that is collected is what determines its origin; amount and consequent tax settlement; and the nature of the shipment (which will determine controls sanitary, phytosanitary, veterinary, pharmaceutical, etc.); recipient details (the importer and taxpayer in the IGIC and AIEM, and tax responsible for the customs declaration and liquidation, where appropriate, of the tax accrued to the import, according to articles 21 and 76.1.b) of the aforementioned Law 20/1991).

In cases where customs formalities are carried out by third parties on behalf of the consignee of the shipment (for example, by a customs agent or by the carrier) is equally essential the existence of the invoice and the possibility of being able to know its content to carry out said customs procedures, completely independent of the need to formalize the DUA.

The Resolution of the Director of the Canary Islands Tax Agency of July 2, 2017, which clarifies the conditions for the customs clearance of shipments of low value exempt from IGIC, also refers to cases that do not require the formalization of the DUA of import at the entry of merchandise in *** LOCATION.1, which normally coincides with the cases exempt from IGID and AIEM, for having a value below certain thresholds.

This Resolution, in its Third Section, regulates the "obligation of the operators of transportation to file a simplified declaration or benefit from the simplifications for the clearance of Low Value", and contemplates the obligation to present before the ATC a written statement, not subject to a formal model, detailing the origin, recipient (including tax identification number), packages and kilos, a description of the goods, their value and a number of the item of the summary declaration, together with the commercial documentation of the consignment. Is contemplated also that the operator can choose to benefit from the simplified procedure for the low-value shipment referred to in Appendix IX, section 2.1. letter b), of the Resolution of July 11, 2014 of the Department of Customs and Taxes Specials of the State Tax Administration Agency.

c) The procedure to follow for the customs clearance of postal items that are considered low value exempt from IGIC, as indicated in the Appendix IX of the aforementioned Resolution of 07/11/2014, establishes that the goods are understood to be declared in customs for consumption (regime 40 or 49) at the time of its presentation, in the terms provided in article 141.3 RDCAU. The operator postal must add to the summary declaration the data of the CN23 declaration, as a specific customs declaration for this type of shipment established by the regulations of the Universal Postal Union (UPU) to which Correos belongs.

Article 20-001.2.6 of the UPU Convention Regulations provides that "the CN 23 customs declarations will be securely fastened on the outside of the shipment, preferably placed inside a transparent adhesive envelope. to title exceptional, and if the shipper prefers, these declarations may be included in a sealed envelope within registered shipments if they contain precious objects indicated in article 19.6.1 of the Agreement or within shipments with value declared".

Additionally, the UPU in its Joint WCO-UPU Guide for Customs Clearance

postal, with respect to article 20-0012.6 of the Regulations of the UPU Convention indicates what

follow:

“This article encourages the use of transparent envelopes so that the CN 23 formula is

visible, but can also be removed for inspection by customs and then placed

back in the envelope.

Correos understands that this proves the need for the shipment data, as well as

such as those of its recipient, are exposed on the outside of the package, with

regardless of whether it is an exceptional shipment of the formalization of the

DUA.

FIFTH

access to the information available on the claimed entity in “Axesor”. (...).

: Dated 07/05/2021, by the General Subdirectorate for Data Inspection

SIXTH: On 07/22/2021, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the MIFARMA entity, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in the

Article 83.5.a) of the aforementioned Regulation; and classified as very serious for the purposes of

prescription in article 72.1.a) of the LOPDGDD.

In the opening agreement it was determined that the sanction that could correspond,

attended the existing evidence at the time of opening and without prejudice to what

resulting from the investigation, would amount to a total of 60,000 euros (sixty thousand

euros).

Likewise, it was warned that, if the infractions are confirmed, they may lead to the

imposition of measures, in accordance with the provisions of article 58.2.d) of the RGPD.

SEVENTH: Having been notified of the aforementioned initiation agreement, the entity claimed submitted a written

in which he requests the file of the sanctioning procedure or, alternatively, the

imposition of a smaller fine, in accordance with the following considerations:

1. You understand that your actions comply with the regulations applicable to sending packages to

*** LOCATION.1 and those established by the Postal Service, according to which it is

It is necessary that the information related to the data of the recipient is exposed in the

outside of the package. In this regard, it states that “the invoice that is included in the envelope

affixed to the package is included inside out so that it cannot be seen by

third parties”, without MIFARMA being able to control the manipulation carried out by agents

billing throughout the process.

It considers reproduced the arguments set by Correos and the procedure to follow,

that are detailed in the start-up agreement, and adds that they are of interest the

requirements of the information that must be presented in customs and the regulation of the

Universal Postal Union (UPU), formed by the UPU Convention, whose article 20

regulates customs control, and article 156 of the Regulations of the UPU Convention, which

establishes the possibility of fastening on the outside of the shipment inside an envelope

transparent in a sealed envelope customs declarations, the obligation to

detail the contents of the shipment in those declarations and the obligation of the operators

appointed to inform their clients on how to carry out the

customs formalities.

According to MIFARMA, the use of the sealed envelope is intended for sending

valuable objects, which is not your case.

He warns that, in accordance with those provisions, he has limited himself to following the

instructions received from the designated operator, in this case, the Post Office.

In accordance with the foregoing, MIFARMA concludes that the requirements of

guilt and illegality necessary for the imposition of a sanction and that it does not

It is up to you to assume responsibility for a procedure that is given to you by

Correos, in compliance with its own regulations and that of customs, and that it has acted

convinced that the procedure followed was the right one and, finally,

instance, in defense of the client to avoid charging fees.

According to MIFARMA, "the fact that the invoice appeared visibly attached to the

package is the way of proceeding that Correos envisages for sending packages to

***LOCATION.1".

2. The respondent entity has responded to the claimant's request, informing her about

the procedure followed and the reason why the invoice was visible.

It states that it is in an intermediate position between the guarantee of the

interests of the claimant and compliance with the rules on sending packages

to ***LOCATION.1.

3. Notwithstanding the foregoing, it states that it has launched the adoption of measures to

strengthen data protection and avoid similar events:

. In front of the client, it undertakes to modify the Privacy Policy to inform

of the precise form of the form of shipment of packages to ***LOCALIDAD.1, making

reference to the formal requirements provided for in customs regulations and the possible

intervention of this authority in handling the package; to send u mail

customer to remember those formalities; carry out direct tracking of shipments; Y

propose to Correos and, where appropriate, to Customs, the use of QR codes to access the

content of the invoice that is included in the envelope attached to the package.

. Before Correos, to inform you of the need to reinforce security and

confidentiality; agree on the use of an opaque or less transparent envelope; request that you

report any incident; and discuss possible additional measures with the operator.

. Before the customs entity, although it has no relationship with that authority, it proposes

inform about the need to reinforce confidentiality in the envelope attached to the

package and discuss additional measures.

4. In relation to graduation criteria, MIFARMA invokes the principle of

proportionality and states the following:

. The lack of intentionality is proven, having acted in the conviction of

that the means were adequate and to have diligently deployed actions to

adapt their conduct to data protection requirements.

. There is no record that the complainant has suffered any harm or that MIFARMA has

obtained economic or reputational benefit, rather the opposite, for the investment

that leads to the plan of measures arranged.

. The entity has acted in good faith, according to the regulations that regulate its activity, without

intention to violate the personal data protection regulations, and in the trust

to be in compliance with the applicable regulations.

. The denounced fact is unique and isolated, without MIFARMA being a repeat offender.

EIGHTH: On 03/14/2022, a resolution proposal was formulated in the sense of

that the Director of the Spanish Agency for Data Protection declares the

inexistence of infraction, with filing of the actions, in relation to the

imputation to the MIFARMA entity of a possible violation of the provisions of the

article 5.1.f) of the RGPD.

The mentioned resolution proposal was notified to the claimed entity. the term

granted to it to formulate allegations elapsed without this Agency

any letter has been received. However, once the deadline was exceeded,

written in which MIFARMA expresses its agreement to the proposed resolution.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

1. Through the website "mifarma.es", the claimant acquired from the MIFARMA entity a

series of health products, including pregnancy tests and ovulation tests.

2. For the purchase outlined in Proven Fact 1, the MIFARMA entity issued the

corresponding invoice, dated 05/04/2020, containing the data

identification of the claimant, DNI and address, as well as the list of products

purchased and its amount.

3. The request made by the claimant to MIFARMA was sent by this entity to

through the Postal Service by parcel post. The MIFARMA entity adhered

the order invoice on the outside of the package, in a transparent envelope, with the

information contained in it visible.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD 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.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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

Article 5 of the RGPD establishes the principles that must govern the treatment of personal data. personal data and mentions, among them, that of “integrity and confidentiality”:

"1. The personal data will be:

(…)

f) processed in such a way as to ensure adequate security of personal data, including protection against unauthorized or unlawful processing and against loss, accidental destruction or damage, through the application of technical or organizational measures appropriate (“integrity and confidentiality”).

(…)”.

Confidentiality is closely linked to the “security of the treatment” regulated in article 32 of the RGPD, which entails the adoption of

appropriate technical and organizational measures to ensure such security. East

article states the following:

"1. Taking into account the state of the art, the application costs, and the nature, the

scope, context and purposes of the treatment, as well as risks of probability and severity

variables for the rights and freedoms of natural persons, the person in charge and the person in charge

of the treatment will apply appropriate technical and organizational measures to guarantee a level

appropriate to the risk, which, where appropriate, includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure confidentiality, integrity, availability and resilience

permanent treatment systems and services;

c) the ability to restore the availability and access to personal data in a

fast in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the measures

technical and organizational to guarantee the security of the treatment.

2. When evaluating the adequacy of the level of security, particular consideration will be given to the

risks presented by the processing of data, in particular as a consequence of the

accidental or unlawful destruction, loss or alteration of transmitted personal data,

stored or otherwise processed, or unauthorized communication or access to such

data.

3. Adherence to an approved code of conduct under article 40 or to a mechanism of

certification approved under article 42 may serve as an element to demonstrate the

compliance with the requirements established in section 1 of this 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 controller or processor and having access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States".

The GDPR defines personal data security breaches as "all those breaches of security that cause the destruction, loss or accidental or unlawful alteration of personal data transmitted, stored or processed otherwise, or unauthorized communication or access to such data".

It should be noted that the RGPD does not establish a list of security measures that are applicable according to the data being processed, but that establishes that the person in charge and the person in charge of the treatment will apply measures technical and organizational that are appropriate to the risk involved in the treatment, taking into account the state of the art, the application costs, the nature, scope, context and purposes of the treatment, the risks of probability and severity for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and proportionate to the detected risk, pointing out that the determination of technical measures and organizational must be carried out taking into account: pseudonymization and encryption, capacity to guarantee confidentiality, integrity, availability and resilience, the ability to restore availability and access to data after an incident, process verification (not audit), evaluation and assessment of the effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security, particularly taking into account the risks presented by the processing of data, such 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 and that could cause damages

physical, material or immaterial.

In this same sense, Recital 83 of the RGPD states the following:

“(83) In order to maintain security and prevent the treatment from violating the provisions of the

this Regulation, the person in charge or the person in charge must evaluate the risks inherent to the

treatment and apply measures to mitigate them, such as encryption. These measures must guarantee

an adequate level of security, including confidentiality, taking into account the state of

the technique and cost of its application with respect to the risks and the nature of the data

personal to be protected. When assessing the risk in relation to the safety of the

data, the risks arising from the processing of the data must be taken into account

such as accidental or unlawful destruction, loss or alteration of personal data

transmitted, stored or otherwise processed, or unauthorized communication or access

to said data, susceptible in particular to cause physical, material or

immaterial”.

In accordance with what is stated in Recital 74 of the RGPD, the person in charge of the

treatment it is necessary to be able to demonstrate that the measures adopted are effective:

“The responsibility of the data controller for any

processing of personal data carried out by himself or on his behalf. In particular, the

responsible must be obliged to apply timely and effective measures and must be able to

demonstrate compliance of processing activities with this Regulation,

including the effectiveness of the measures. Such measures must take into account the nature, scope, context and purposes of the treatment as well as the risk to the rights and freedoms of natural persons".

These technical and organizational measures are included as part of the principle of active responsibility, which requires a prior assessment by the person responsible for treatment of the risk that could be generated by the treatment of personal data, from which the appropriate measures will be adopted.

With the RGPD, the anticipation of the infringement or injury of rights is sought to avoid it. This proactive focus on the "permanent implementation" of security measures security implies that they are not static, but dynamic, corresponding to the person in charge of treatment to determine at all times what are the measures of security measures necessary to guarantee the confidentiality, integrity and availability of personal data and mitigate or eliminate the risks for people rights. The first step is to carry out a "risk analysis" to assess threats.

It is the person in charge or in charge of treatment who must prove said diligence with a solid and effective internal control system. Therefore, it will not be enough to simply formal demonstration of compliance, but this principle requires a prior attitude, conscious, diligent and proactive on the part of the organizations in front of all the processing of personal data that they carry out.

Whether these measures are mandatory, or how they are applied, will depend on factors that must be taken into account in each case, such as the type of treatment and the risk that said treatment implies for the rights and freedoms of the interested parties.

Consequently, due diligence must be appropriate to the level of risks in the data protection and the characteristics of the organization.

The concept of due diligence can be defined as "the measure of prudence,

activity or assiduity that can reasonably be expected, and with which normally

acts, an organization prudently and reasonably in the circumstances

determined; not measured by an absolute standard, but depending on the facts

relating to the case in question". Therefore, due diligence is an ongoing process.

observation and prevention of the negative effects of the activities of entities

on data protection.

III

In the present case, as stated in the Proven Facts, the claimant made

an order of products marketed by MIFARMA.

In order to carry out the supply of the products in question, the entity claimed

used the parcel service of the Postal Service and arranged the package

adhering abroad the invoice corresponding to the order, which was presented to the

Postal Service for transportation to ***LOCALIDAD.1, place of residence of the

recipient.

The respondent has informed this Agency that this way of operating for shipments

made to ***LOCALIDAD.1 is adequate in accordance with the regulations relating to

formalization of customs formalities in low-value shipments and adjusts to the

instructions of the Postal Service, according to the regulation of the Universal Postal Union

(UPU), made up of the UPU Convention and the UPU Convention Regulations, which

establish the possibility of subjecting customs declarations outside the

shipment inside a transparent envelope, as well as the obligation to detail the content

of the shipment in those declarations and the obligation of the designated operators of

inform their clients on how to carry out customs formalities.

In accordance with the foregoing, MIFARMA concludes that the requirements of

guilt and illegality necessary for the imposition of a sanction and that it does not

It is up to you to assume responsibility for a procedure that is given to you by

Correos, in compliance with its own regulations and that of customs, and that it has acted

convinced that the procedure followed was the right one and, finally,

instance, in defense of the client to avoid charging fees.

The issue raised must be analyzed in accordance with the circumstances and rules that are

set forth below.

Law 20/1991, of June 7, modifying the fiscal aspects of the Regime

Fiscal Economy of ***LOCALIDAD.1, establishes in its article 8 that, for the purposes of

IGIC, the entry of goods into the Islands is considered import ***LOCATION.1

from any other part of Spanish territory, whatever the purpose for

to be destined or the condition of the importer.

Likewise, according to article 67 of the same Law 20/1991, the AIEM is subject to

imports of tangible personal property included in Annex I of the Law of the

Autonomous Community of ***LOCALIDAD.1 4/2014, of June 26, by which

modifies the regulation of the tax on imports and deliveries of goods in

the Islands ***LOCALIDAD.1, meaning import, for such purposes, the entry

permanent or temporary property of tangible personal property in the territorial scope of the

Islands ***LOCATION.1, whatever their origin, the purpose to which they are destined or

the status of the importer.

On the other hand, the Regulation for the management of taxes derived from the Regime

Economic and Fiscal of ***LOCALIDAD.1, approved by Decree 268/2011, of 4 of

August, regulates the management of foreign trade operations in the IGIC and in the

AIEM, establishing that the goods that arrive in the territory of the Islands

***LOCATION.1 are subject to surveillance and control by the ATC, which will be exercised

in coordination with the AEAT, which act under a single window agreement.

In accordance with article 88.1 of this Regulation, any good that is introduced

in the Islands *** LOCATION.1 must be the subject of an import declaration

relative to the taxes derived from the Economic and Fiscal Regime of ***LOCATION.1.

Therefore, the importation of shipments addressed to the Islands ***LOCALIDAD.1 determines

the need to carry out the corresponding customs procedure. According to articles 89 and

90 of the aforementioned Regulation, the declaration made in writing must be submitted

before the Canary Islands Tax Administration, in the official model called Document

Single Administrative (DUA), approved by Regulation (CEE) 2454/93, of the

Commission, of July 2, 1993; and must accompany, among other documents, the

commercial invoice of imported goods.

The Resolution of 07/11/2014, of the Department of Customs and Special Taxes

of the AEAT, collects the instructions for the formalization of the Single Document

Administrative (DUA), used to carry out customs procedures.

For small shipments made by or destined for an individual, it is declared in the

aforementioned Resolution of 07/11/2014 that cannot be excluded from the controls

customs, but attempts are made to reduce the administrative burden on operators and

they establish simplifications for their declaration.

This Appendix IX of this resolution details the "simplifications provided for

clearance of low value and small shipments". Goods that can be received to this franchise shall be declared for free circulation upon presentation to customs in the case of postal delivery, but authorization is required for this, which must requested to the Special Delegation of the AEAT of ***LOCALIDAD.1 or to the Canary Islands Tax Administration through the "tax return request form" simplified".

For the purposes of this appendix, in the case of importation of goods, it shall have the Consideration of "low value" the merchandise that can benefit from the exemption of the General Indirect Canary Islands Tax provided for in numbers 16º, 17º, 18º, 19º, 27º.C or 28 of article 14.3 or in article 14.11 of Law 20/1991, of June 7, of modification of the fiscal aspects of the Fiscal Economic Regime of ***LOCATION.1 (samples without commercial value, advertising printed matter, objects of an advertising nature without commercial value sent free of charge by the suppliers, materials of little value for the decoration of pavilions of the exhibitors, goods contained in travellers' personal luggage, small shipments of goods sent without consideration by an individual and the imports of goods whose global value does not exceed 150 euros, except products alcoholics, perfumes and tobacco). The franchise limit refers to the entire shipment, even if they are different goods.

The indicated threshold of 150 euros, with the exceptions indicated, applies to shipments of "low value" since from the day 06/29/2017, date of entry into force of Law 3/2017, of June 27, on General State Budgets for the year 2017, whose second final provision, sections one and three, gave new wording to the Articles 14.11 and 73.2 of Law 20/1991, of June 7, when modifying the regulation relating to low-value shipments in the respective scope of the General Tax Indirect Canary Islands (IGIC) and Tax on imports and deliveries of goods

in the Islands ***LOCALIDAD.1 (AIEM), raising the economic threshold in the case of

IGIC and suppressing it in the case of the AIEM).

Regarding postal shipments (packages) that are considered low value,

the goods are understood to be declared in customs for consumption at the time of shipment.

presentation, provided that the postal operator adds to the summary declaration the

following data from the CN23 declaration: dispatch office, airport of origin,

cargo airport, cargo document, location of the merchandise, type and number

of packages, gross weight, description of the merchandise, value of the shipment, identification of the

recipient and sender.

This resolution of 07/11/2014 has been modified by Resolution 2508/2017, of the

same Department of the AEAT. In relation to Appendix IX, it is provided that

operators that carry out an integrated service of collection, transport, dispatch of

customs and express delivery within a specific period, keeping localized and under

control the merchandise throughout the duration of the service and that they are operator

Economic Authorization (AEO) of simplifications may be authorized to use the

procedure arranged for “low value” shipments. In the case of

introductions into the Islands *** LOCATION.1 of Union goods that are not

subject to other types of restrictions or prohibitions, within the framework of the Convention

VEXCAN, may be authorized to use this procedure the operators that

assume responsibility for the transport of the goods after their

introduction in this territory, without being required to be an economic operator

authorized (AEO) of simplifications.

Likewise, in relation to the simplified declaration procedures of the

taxes accrued on imports, the Ministry of Finance of the Government of

***LOCALIDAD.1 issued the Order of 07/29/2016, by which the obligation to

present the Single Administrative Document (DUA), for the declaration of taxes

on importation required for shipments of low value (in force at the time of

dispatch of the merchandise to which the claim refers and modified

subsequently by Order of 07/29/2021).

According to the provisions of this Order, the exoneration in the presentation of the declaration

written through DUA is applied to the cases of exemption to the importation of

goods contemplated in article 14, sections 11 and 3.28º, of Law 20/1991. I know

extends to all returns covered by the low value exemption (those

whose value does not exceed 150 euros, with the exceptions indicated), as well as

small shipments without consideration sent from private individual to private individual.

In these cases, operators are required to submit a declaration

simplified prior to release of the assets. It is a statement

in writing, not subject to a formal model, detailing the origin, the

recipient (including tax identification number), packages and kilos they represent,

a description of the assets, their value, and the item number of the

summary declaration, which must be accompanied by the commercial documentation of the

Shipping.

In shipments constituted by postal packages, this obligation is understood without

prejudice to the specific rules of these shipments, approved by virtue of the

provided for in article 104 of the Regulation for the management of taxes derived from the

Economic and Fiscal Regime of ***LOCALITY.1 approved by Decree 268/2011,

of August 4. However, the waiver of presentation of SAD is also

applicable in relation to shipments of postal parcels in identical conditions and

with the same requirements.

This obligation to present a written declaration together with the documentation

commercial, prior to the release of goods whose importation should not be

object of DUA declaration, is also contemplated in the Resolution of the Director of

the Tax Agency of ***LOCALIDAD.1 of 07/02/2017, which clarifies the

conditions for clearance of low-value shipments exempt from tax

general indirect canary.

According to this Resolution, operators may choose to submit that declaration

simplified or, instead, by availing themselves of the simplified procedure for the

dispatch of "low value" referred to in Appendix IX, section 2.1, letter b), of the

Resolution of 07/11/2014, of the Department of Customs and Special Taxes of

the State Tax Administration Agency, which contains the instructions

for the formalization of the single administrative document (DUA). To be able to follow

this procedure provided for in Appendix IX the operator must be authorized

previously, under the conditions and with the requirements regulated in the aforementioned Resolution

and, in particular, in accordance with the specialties provided for in the framework of the Convention

VEXCAN.

In the present case, the shipment made by MIFARMA of the products acquired by

the claimant, as a private consumer residing in the Islands ***LOCATION.1,

from the point of view of the rules that govern the formalization of formalities

customs, meets the conditions set to be qualified as a shipment of

Low value. It is a single sale of goods to the same recipient in

amount less than 150 euros, exempt from IGID.

Therefore, the customs clearance of the merchandise is exempt from the formalization

of the Single Administrative Document (DUA) and can take advantage of the procedures

simplified, previously described. The shipment is made by postal parcel and

There are also circumstances for these customs procedures to be carried out by the

postal operator, in this case, the Post Office.

This entails the need for Correos to know the details of the sale necessary

to declare the goods for consumption, as well as the possibility that the

respective documentation is available on the outside of the package.

As established by the Order of 07/29/2016 of the Ministry of Finance of the Government

of ***LOCALIDAD.1, the operator may choose to file a declaration

simplified (not subject to a formal model, detailing the origin, the

recipient (including tax identification number), packages and kilos they represent,

a description of the assets, their value, and the item number of the

summary declaration), which must be accompanied by commercial documentation,

as is the invoice issued for the sale of the products presented for dispatch.

It should also be taken into account that the Post Office not only undertakes

to the sending of the postal package to the Islands ***LOCALIDAD.1 and to the presentation to

dispatch of the merchandise, but rather the Correos entity itself is in charge of

introduce the merchandise in the territory of the Islands ***LOCALIDAD.1 and its delivery in

the address indicated by the claimant.

Therefore, all the people who access the information corresponding to the shipment

in question, including the invoice that gave rise to the claim, belong

to the entity in charge of those tasks, as a transport company and as

operator before the Canary Islands Tax Agency.

All these people, employees of the Postal Service, are subject to the duty

of confidentiality, which is a complementary obligation to the duty of secrecy

professional, which is incumbent not only on the person in charge and in charge of the treatment but also on

anyone who intervenes in any phase of the treatment, and whose purpose is

prevent leaks of personal data not consented to by their

Headlines.

In this regard, article 5, "Duty of confidentiality", of the LOPDGDD, indicates the

Next:

"1. Those responsible and in charge of data processing as well as all the people who

intervene in any phase of this will be subject to the duty of confidentiality to which

refers to 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 responsible or in charge of the treatment had ended.

These circumstances show that there has been no disclosure to

third parties of the personal data of the claimant included in the invoice issued by

MIFARMA on the occasion of the order of products made by it, which was

attached to the outside of the package ready for supply so that the operator

designated could formalize the mandatory customs formalities, so that they do not

there are unauthorized third parties who have improperly accessed the information.

In accordance with this evidence, it is considered that the exposed facts do not

do not comply with the provisions of article 5.1.f) of the RGPD, proceeding the file of the

penalty procedure.

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

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the non-existence of infraction, with file of the proceedings,

in relation to the imputation to the entity MIFARMA TIENDA ON-LINE, S.L., with CIF

B02518041, of a possible violation of the provisions of article 5.1.f) of the

GDPR.

SECOND: NOTIFY this resolution to MIFARMA TIENDA ON-LINE, S.L.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency