

□ Procedure No.: PS/00408/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On June 19, 2019, 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 he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
reclaimed).

SECOND: In accordance with the provisions of article 65 of Organic Law 3/2018, of
December 5, Protection of Personal Data and guarantee of rights
(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the
Data Protection Delegate that you may have appointed, requiring you to
to send the requested information and documentation to this Agency. East
request for information was made within the framework of the file with code of
reference E/06805/2019.

THIRD: Once the period of one month that was given to the claimed person for
inform the Spanish Agency for Data Protection, as indicated in the
second background, without the respondent providing the pertinent response, the
The claim was admitted for processing on September 19, 2019.

FOURTH: In relation to the investigation actions referenced with the
code E/08848/2019, a new request for information was sent to the respondent,
alluding to the claim outlined in the first antecedent, so that, within the term of
ten working days, submit to this Agency the information and documentation that

it was pointed out in it. The request, which was made in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (hereinafter, LPACAP), was collected by the responsible on October 22, 2019, as stated in the certificate of Mail that works in the file.

FIFTH: On November 29, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged infringement of Article 58.1 of the RGPD, typified in Article 83.5 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD).

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SIXTH: The aforementioned initial agreement was collected by the person in charge on the 16th of December 2019 as stated in the Post Office certificate that works in the proceedings.

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

SEVENTH: On February 19, 2020, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction B.B.B., with NIF ***NIF.1, for a violation of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, with a penalty of warning.

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.

EIGHTH: The motion for a resolution, which was registered as output on the 19th of February 2020 with registration number 015783/2020, was collected by the person in charge, as stated in the Post Office certificate in the file.

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

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The information requirements indicated in the second background and fourth, they were notified in accordance with the provisions of article 42 of the LPACAP.

SECOND: The respondent has not responded to the information requirements carried out by the Agency within the periods granted for it, namely:

1st. The request made within the framework of the file with reference code E/06805/2019, in which the deadline to respond was one month.

2nd. The request made within the framework of the investigative actions referenced with code E/08848/2019, in which the deadline to respond was ten business days.

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THIRD: The notification of the agreement to initiate this procedure

sanctioning party was collected by the person in charge on December 16, 2019. No

arguments were presented to the initiation agreement.

FOURTH: The notification of the proposed resolution was made through Correos, being collected by the person in charge on February 25, 2020.

They presented arguments to the proposed resolution.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGDPD recognizes to each control authority, and according to the provisions of articles 47 and 48.1 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 sought the Spanish Data Protection Agency the information requested. With the indicated conduct of the defendant, the power of investigation that article 58.1 of the RGDPD confers on the control authorities, in this case, the AEPD, has been seen hampered.

Therefore, the proven facts are deemed to constitute an infraction, attributable to the claimed, for violation of article 58.1 of the RGDPD, which provides that each

The control authority will have, among its investigative powers:

“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 facilitate any information required for the performance of its functions; b) carry out investigations in the form of data protection audits; c) carry out a review of the certifications issued under article 42, paragraph 7; d) notify the person in charge or the person in charge of the treatment of the alleged violations of this Regulation; e) obtain from the controller and the

in charge of the treatment access to all personal data and to all the information necessary for the exercise of its functions; f) gain access to all premises of the controller and processor, including any equipment and means of data processing, in accordance with the Procedural law of the Union or of the Member States.”

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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".

III

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 to the exercise of its investigative powers.

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

competent data protection authority.”

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

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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.

In the initial assessment it is appreciated that no aggravating circumstance is applicable, and

They have considered, as mitigating factors, the following facts:

- Art. 83.2 a) RGPD: the nature, seriousness and duration of the infringement,

taking into account the nature, scope or purpose of the operation of treatment in question, as well as the number of interested parties affected and the level of damages suffered. It has been taken into account that the claimed is a self-employed entrepreneur.

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 B.B.B., with NIF ***NIF.1, for a violation of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to B.B.B.

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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