

□ File No.: EXP202103943

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 October 14, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against CINCON S.C. with NIF J87383295 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

The claimant states that the claimed entity has on its website a
form that collects personal data for access to a free class in your
facilities and points out that, in the information on data processing provided by
the claimed entity, not all the information required by the regulations of
data protection, since there is no record of the period during which the data will be kept.
personal data provided by customers.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party, to
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP), was collected on the same date it was released
provision, on November 5, 2021, as stated in the acknowledgment of receipt that

work on file.

No response has been received to this transfer letter.

THIRD: On January 14, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On March 11, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), typified in Article 83.5 of the GDPR.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in the LPACAP on March 14, 2022 and after the term granted for the

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formulation of allegations, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed

in the agreement to open the procedure - establishes that if no

allegations within the stipulated period on the content of the initiation agreement, when

it contains a precise statement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement

beginning of the sanctioning file determined the facts in which the

imputation, the infraction of the RGPD attributed to the claimed and the sanction that could

prevail. Therefore, taking into consideration that the respondent has not

formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: In the information on data processing provided by the entity claimed on its website when accessing the form that must be filled in by the potential customers for access to a free class at your facility, you will not be includes all the information required by the data protection regulations, since that the period during which the personal data provided will be kept is not stated by customers.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD, grants to each authority of control and according to what is established in articles 47 and 48.1 of the LOPDGDD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in 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 regarding the principles of treatment, provides that the data

Personal data will be "processed in a lawful, fair and transparent manner in relation to the

interested ("legality, loyalty and transparency")."

Manifestation of this principle of transparency is the obligation incumbent upon the responsible for the treatment of informing, in the terms provided in article 13

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of the RGPD, to the owner of the personal data when they are obtained directly

Of the interested:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or to the place where they are made available.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

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III

In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it. In accordance with the evidence that is available and that has not been distorted during the sanctioning procedure, it is considered that the claimed party has violated the article 13 of the RGPD since the form that you must fill out to access a free class at its facilities does not duly inform of the period during which the They will keep the personal data provided.

The known facts are considered to constitute an infraction, attributable to the claimed party, for violation of article 13.2 of the RGPD, which states that "In addition of the information mentioned in paragraph 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to ensure fair data processing and transparent:

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period.

Article 83.5 RGPD establishes that violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20,000 EUR 000 maximum or, in the case of a company, an amount equivalent to 4 Maximum % of the global total annual turnover of the financial year above, opting for the highest amount:

b) the rights of the interested parties under articles 12 to 22

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered mild has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679.”

IV

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term -article 58. 2 d). According to the provisions of article 83.2 of the RGPD,

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the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine.

In this case, based on the facts set forth, it is considered that the sanction that should be imposed is an administrative fine for the infraction committed. The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. In order to determine the fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

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For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of

personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

f) Affectation of the rights of minors

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

exist

interested".

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controversies

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The balance of the circumstances contemplated, with respect to the infraction committed

by violating the provisions of article 13.2 of the RGPD, it allows a fine of 500

€ (FIVE HUNDRED EUROS).

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: IMPOSE CINCON S.C., with NIF J87383295, for an infraction of the

Article 13.2 of the RGPD, typified in article 83.5 of the RGPD, a fine of €500

(FIVE HUNDRED EUROS).

SECOND: REQUEST CINCON S.C., with NIF J87383295, under the

provided in article 58.2 d) of the RGD, so that within ten business days from this act of notification proves before this body the adoption of the following measure:

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The adequacy of the information regarding the period during which it will be kept your personal data for those people who fill out the form collection of data from those who request access to a free class in their installations.

THIRD: NOTIFY this resolution to CINCON S.C..

Warn the sanctioned party that he must make the imposed sanction effective once the

This resolution is executive, in accordance with the provisions of art. 98.1.b)

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

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Public Administrations (hereinafter LPACAP), within the voluntary payment period

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 17

December, 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 Department of 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

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

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