

□ File No.: EXP202104454

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated September 19
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against the City Council of Tavernes Blanques with NIF
P4623900J (hereinafter, the claimed party or City Hall). The reasons in which
the claim is based on are as follows:

The complaining party states that the City Council has not appointed a delegate of
Data Protection.

It has been verified that the defendant has not notified the AEPD of the designation
of the data protection officer.

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 November 18, 2021
as stated in the acknowledgment of receipt in the file.

On December 1, 2021, this Agency received a response letter

indicating: "Although the RPT of this City Council contemplates the position of Manager/ a computer scientist, whose specific functions include the implementation and monitoring of technical mechanisms necessary for the development and compliance with the Law of Data protection, which is currently vacant due to voluntary leave of its owner; this Local Entity by not having personnel who assume the functions of the data protection delegate, given the specialization required by the position, requested date 01/31/2019 to the Provincial Council of Valencia the assistance to give compliance with the obligation to appoint a data protection delegate of this Local Entity, assuming its functions and competences It is accompanied by a written sent and proof of entry registration in this Corporation".

THIRD: On December 22, 2021, in accordance with article 65 of to LOPDGDD, the claim submitted by the claimant was admitted for processing.

FOURTH: On January 24, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, www.aepd.es

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in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged violation of Article 37 of the RGPD, typified in Article 83.4 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written allegations in which, in summary, it stated that on 01/31/2019, it requested the Diputación Provincial de Valencia assistance to comply with the obligation

to designate a data protection delegate of this Local Entity, assuming the Diputación its functions and powers of said figure, taking for granted when not receive resolution denying the request.

SIXTH: On February 21, 2022, the instructor of the procedure agreed perform the following test:

Request the following proof from the Tavernes Blanques Town Council: "In their allegations to the Start Agreement, state that the Diputación assumes its functions and competences of said figure, assuming that they have not received a resolution denying the request. As the Diputación does not answer, it is considered assumed by the same. To provide this Agency with the supporting document that the Diputación Provincial of Valencia assumes the functions and powers of said figure".

SEVENTH: On March 14, 2022, the City Council of Tavernes Blanques states that, in relation to the request made, they initiate the corresponding file for contracting the service.

EIGHTH: On March 30, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency imposed on the City Council of Tavernes Blanques, with NIF P4623900J, for a infringement of Article 37 of the RGPD, typified in Article 83.4 of the RGPD a warning sanction.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The City Council of Tavernes Blanques lacks the figure of delegate of data protection.

SECOND: the respondent states that he requested on January 31, 2019 to the Diputación Provincial de Valencia assistance to comply with the obligation

to designate a data protection delegate by the City Council, assuming this their functions and powers. However, the respondent does not provide a response to that request does not prove to have the data protection delegate according to article 37 of the GDPR.

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THIRD: The City Council of Tavernes Blanques, dated March 14, 2022, has provided in this sanctioning procedure the measures it has adopted, among them it consists:

"The corresponding file for contracting the service is initiated."

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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."

The Public Administrations act as data controllers of

personal character and, on some occasions, they exercise functions of those in charge of

treatment, for what corresponds to them, following the principle of responsibility

proactively, meet the obligations that the RGPD details, among which is included, the

obligation to appoint a data protection delegate and communicate it to this

AEPD

The obligation is imposed by article 37 of the RGPD, which indicates:

"1. The person in charge and the person in charge of the treatment will designate a delegate of

data protection provided that:

a) the treatment is carried out by a public authority or body, except those

courts acting in the exercise of their judicial function;"

Article 37.3 and 4 of the RGPD indicates about the appointment of the DPD "When the

The person responsible or the person in charge of the treatment is a public authority or body,

may designate a single data protection delegate for several of these

authorities or bodies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the

in charge of the treatment or the associations and other organisms that represent

categories of managers or managers may designate a protection delegate

of data or they must designate it if so required by the Law of the Union or of the States

members. The data protection delegate may act on behalf of these

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associations and other organizations that represent those responsible or in charge.”

The LOPDGDD determines in its article 34.1 and 3: "Appointment of a delegate of Data Protection "

1. Those responsible for and in charge of the treatment must designate a data protection delegate in the cases provided for in article 37.1 of the Regulation (EU) 2016/679.

3. Those responsible and in charge of the treatment will communicate within the period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the regional data protection authorities, designations, appointments and cessation of the data protection delegates both in the cases in which are obliged to their designation as in the case in which it is voluntary.

The infringement is considered as such in article 83.4.a of the RGPD, which states: “4. The Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 at 39, 42 and 43;”

Article 83.7 of the RGPD indicates:

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

Article 77.1 c) and 2, 4 and 5 of the LOPDGDD, establishes:

1. The regime established in this article will be applicable to the treatments

of which they are responsible or entrusted:

c) The General Administration of the State, the Administrations of the Autonomous communities and the entities that make up the Local Administration.

2 “When those responsible or in charge listed in section 1 committed any of the offenses referred to in articles 72 to 74 of this organic law, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body on which it reports hierarchically, where appropriate, and those affected who have the condition of interested party, if any.”

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4. The resolutions must be communicated to the data protection authority that fall in relation to the measures and actions referred to in the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.”

III

The facts denounced materialize in that the claimed party lacks data protection delegate in contradiction with what is indicated and required by the

data protection regulations.

In the case at hand, the respondent, on the one hand, stated that he requested the 31 of January 2019 to the Provincial Council of Valencia the assistance to give compliance with the obligation to appoint a data protection officer by the City Council, assuming its functions and powers. However, the part claimed did not provide a response to that request nor did he prove that he had the delegate of data protection according to article 37 of the RGPD and, on the other hand, on the 14th of March 2022, the City Council of Tavernes Blanques states that in relation to the request made, initiate the corresponding file for the contracting from service.

Therefore, we are faced with the violation of article 37.1a) of the RGPD in relation to article 34 of the LOPDGDD.

Article 73 of the LOPDDG indicates: "Infringements considered serious:

IV

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679 are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:"

v) Failure to comply with the obligation to appoint a data protection delegate data when their appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law."

v

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way

and within a specified period...". The imposition of this measure is compatible with the penalty, as provided in art. 83.2 of the GDPR.

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The respondent is obliged in accordance with the provisions of article 37 of the RGPD to appoint a DPD since the treatment is carried out by an authority or public organization. The modality of their hiring, appointment and employment relationship is very wide, you can choose the most appropriate for your specific situation. Consequently, the defendant fails to comply with the obligation established in article 37 of the RGPD and sanctioned in article 83.4.a) of the same.

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 the CITY COUNCIL OF TAVERNES BLANQUES, with NIF P4623900J, an infringement of Article 37 of the RGPD, typified in Article 83.4 of the RGPD, a sanction of warning.

SECOND: REQUEST the CITY COUNCIL OF TAVERNES BLANQUES, with NIF P4623900J

1. The appointment of the Data Protection Delegate.

You must inform this Agency within a month from the notification of this Resolution.

THIRD: NOTIFY this resolution to TAVERNES CITY COUNCIL

WHITE, with NIF P4623900J

FOURTH:

in accordance with the provisions of article 77.5 of the LOPDGDD.

COMMUNICATE this resolution to the Ombudsman,

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->

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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

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