

□ Procedure No.: PS/00062/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: AAA (hereinafter, the claimant) dated March 20, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against PREDASE SERVICIOS INTEGRAL SOCIEDAD

LIMITADA with NIF B02547164 (hereinafter, the claimed). The reasons on which he bases
the claim are as follows:

"[...] SECOND. - On the Internet page with the domain name

«www.predase.es», and under the commercial name «PREDASE», they offer, among others,

Regulatory compliance services in the field of Regulation (EU) 2016/679 and

Organic Law 3/2018. [...]

THIRD. - By scrolling down the browser sidebar on the page of

start, you have access to various links related to the presence in different

Internet social networks of the natural or legal person acting under the name

"PREDASE" commercial.

In relation to data protection services, it stands out, in the margin

left side of the screen, the image of a padlock that includes the legend «RGPD /
LOPD», [...]

FOURTH. - Clicking on the image of the aforementioned padlock links to a

publication in the public profile of «PRÉDASE» in the social network Google+, in which

a quadrilateral appears that groups the graphic symbols of «PRÉDASE» and of the

SPANISH DATA PROTECTION AGENCY, without distinguishing between them,

and adding to the set the contact details of the natural or legal person who acts under said commercial name. [...]

SIXTH.- In this sense, the grouping of the graphic symbols of «PRÉDASE» and the SPANISH DATA PROTECTION AGENCY, considered as a whole homogeneous within the same quadrilateral, without distinguishing between its components, and adding to the set the contact details of the natural or legal person acting under said trade name, could constitute an illegal act consisting of create "the appearance that one is acting in the name, on behalf of or in collaboration with the Spanish Agency for Data Protection", in relation to the publication or indiscriminate communication of its offer of services in matters of data protection to your entire network of contacts in the Google+ social network and to any controllers and processors who visit your website Internet for the purpose of contracting professional compliance services regulations in this area.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/16

SEVENTH. - Consequently, this alleged misleading and illegitimate use of the graphic symbol of the SPANISH DATA PROTECTION AGENCY can suppose an aggressive practice in terms of data protection, generating the image of a false endorsement of the aforementioned control authority in relation to the services offered by the natural or legal person acting under the trade name "PRESENT".

EIGHTH. - Said practice has its supposed continuation in a second performance

that presumably could incur in letter c) of the Additional Provision
sixteenth of Organic Law 3/2018, which considers an aggressive practice in terms of
of data protection the performance of “commercial practices in which the
decision-making power of recipients by reference to the possible imposition
sanctions for non-compliance with personal data protection regulations»:

"It can not be true!!!! You are not yet adapted to the new general regulation of
data protection (RGPD). DO NOT wait for them to sanction you, find out at C/
***ADDRESSB.1 or ***URL.1” [...]

NINTH.- As a corollary of what has been exposed up to here, the facts and factual elements
related in this writing could suppose a presumed conjunction of
aggressive practices in terms of data protection, through interference
undue not only in the image and powers of the Spanish Protection Agency
Data, but also in the autonomy of the will of those responsible and
those in charge of the treatments, through an alleged distortion of the spirit of the
legal regulations on data protection.

TENTH. - The Internet page with the domain name «***URL.1» does not facilitate the
general information established in article 10 of Law 34/2002, of July 11, on
information society services and electronic commerce.

Likewise, despite the fact that it has a personal data collection form,
nor does it provide a privacy policy in order to comply with
what is established in articles 12 (right of transparency) and 13 (right of
information) of Regulation (EU) 2016/679 of the European Parliament and of the Council,
of April 27, 2016, regarding the protection of natural persons in what
regarding the processing of personal data and the free circulation of these data and
which repeals Directive 95/46/CE (General Regulation for the protection of
data)."

Together with the claim, it provides screenshots of the website, of the Google+ social network and Facebook for evidentiary purposes of what is indicated in the writing. Also, it incorporates copy of the Notarial Acceptance Deed granted before the notary of the city of ***LOCALIDAD.1, D. B.B.B., on March 18, 2019, Protocol No. 620, of the content of the web page that leads to the profile of PREDASE in the social network GOOGLE+.

SECOND: On April 23, 2019, proceedings are carried out in this Agency to to state that, after an analysis of the web page that constitutes the object of the C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/16

claim (www.predase.es), does not have the same identification of your responsible or information regarding privacy policy.

THIRD: The claim was admitted for processing on April 29, 2019.

FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the established in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the rights (hereinafter LOPDGDD).

As a result of the investigative actions carried out, the report prepared

by the acting inspector reveals the following:

☐ "Regarding the fact of using the logo of this Agency together with

the PREDASE logo and contact information, this is confirmed by

the deed of notary act presented by the claimant of the content of the page

website that leads to the PREDASE profile on the GOOGLE+ social network where they appear

grouped together, and as a whole, the PREDASE logo, the logo of this Agency, the

European flag, and PREDASE contact information.

☐ Regarding the denounced fact of the publication on the social network FACEBOOK and

indicated in the claim according to the sixteenth additional provision, letter c) that

establishes aggressive practice in terms of data protection:

"Carry out commercial practices in which the decision-making power of the

recipients by referring to the possible imposition of sanctions for

non-compliance with the personal data protection regulations.

It is verified that in the FACEBOOK profile of PREDASE, dated March 12

2019, the following content was published:

"It can not be true!!!! You are not yet adapted to the new general regulation of

data protection (RGPD). DO NOT wait for them to sanction you, find out at C/

***ADDRESS.1 or ***URL.1."

As of the date of this report, access to this publication is still available. Diligence is recorded in

the SIGRID system with the publication's screen print.

☐ It is also verified that the website of PREDASE, a company of

advice, among other issues, on data protection, lacks a policy

of privacy and collects data in its contact form without the need for

acceptance of treatment.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/16

It is recorded in the SIGRID diligence system with the only content page of the site

Web.

☐ Nor is the ownership of the website reported as stated in article 10 of

Law 34/2002, of July 11, on services of the information society and

electronic commerce, mentioning the commercial brand as the company name

PREDARE

☐ Dated June 28, 2019 it is received in this Agency, with registration number

032629/2019, document sent by ORANGE ESPAGNE, S.A.U. reporting that the

ownership of the line ***TELÉFONO.1 that appears on the website corresponds to

C.C.C., with DNI ***NIF.1 and installation address in the street ***ADDRESS.1,

***LOCATION.1.

☐ Carrying out a search in the Central Mercantile Registry, the

company PREDASE SERVICIOS INTEGRAL SOCIEDAD LIMITADA, with address

coincident with the one that appears on the denounced website and in which the owner of the

contact telephone number that appears on the website is listed as the sole administrator.

It is recorded in the SIGRID system, as an associated object, a report from the Mercantile Registry

Central.

☐ For all the above, it can be affirmed that the reported facts are true and

that the company responsible for the website referred to in the complaint is PREDASE

COMPREHENSIVE SERVICES LIMITED COMPANY.”

: Consulted on March 10, 2020, the application of the AEPD was

FIFTH

verifies that the only sanctioning procedure in which the

mercantile PREDASE SERVICIOS INTEGRAL SOCIEDAD LIMITADA with NIF

B02547164, is the present procedure.

SIXTH: On March 17, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 13 of the RGPD, typified in article 83.5 of the aforementioned

rule.

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

allegations on June 25, 2020 requesting the file of the procedure

sanctioning and revealed the following:

“[...]

Regarding the data form, it is not operational (nor has it ever been). Of

In fact, it is an addition of a template in order to use the "blue popup" style of the

Contact Form. You can see that it doesn't show any error message in case of

not entering data (or doing so erroneously), nor a satisfactory message in

shipping case. It just redirects directly to the home screen.

It is enough to note that if said form were functional and operative, the date would not have been indicated.

email address to the left of it (since it would be redundant

and unnecessary).”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/16

[...]”

EIGHTH

: On August 10, 2020, the instructor of the procedure agreed to the

opening of a period of practice of tests, taking for reproduced, for purposes evidence of the claim filed by the claimant, the data obtained and generated by the Subdirectorate General for Data Inspection and the allegations filed by the claimant. As it was not possible to notify this period opening practice tests, due to expiration of the electronic notification, on the 1st of September 2020, a reiteration of the document was sent, which was notified on same day 1.

NINTH: On October 5, 2020, the checks carried out on September 21, 25 and 29 and October 5, 2020 on the website www.predase.es.

TENTH: On October 19, 2020, a resolution proposal was formulated, proposing that the defendant be imposed a sanction of reprimand, for a infringement of article 13 of the RGPD, typified in article 83.5 of the same regulation.

In this proposal, a period of 10 days was granted so that the person claimed could allege what he considers in his defense, as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

The proposed resolution was notified on October 30 and the respondent presented brief of allegations on November 13, stating the following:

“[...]

FIRST: In the THIRD, FOURTH and SIXTH points (since the point FIFTH) of the complaint, interprets the alleged union of the PRÉDASE logos and of the AEPD as an association attempt for potential clients.

Assuming that it is a mere question of structural organization of the design web and graphic, any minimally informed person knows how to distinguish between the

Spanish Data Protection Agency and a service provider company

(Call PRÉDASE, AUDIDAT or any other).

As the complainant indicates and appears, clearly in capital letters, in the header of said website, said image belongs to the SOCIAL NETWORKS of the company (not to the services provided, budgets, invoices, or any other document of a public nature that could, effectively, imply an improper use of the AEPD logo).

Indeed, said publication was made on March 12, 2019 and the link corresponds to the Google+ social network, which has not been operational since April 2, 2019 (it was canceled by Google on that date). Following your twisted reasoning and personal, the use of the Facebook, Google or Twitter logos would also imply a deception to any customer who visited your website by giving rise to the mistake that

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/16

PRÉDASE (as in its case AUDIDAT) are part of or act on behalf of said Business.

SECOND: Again in points SEVENTH, EIGHTH and NINTH the denouncer reattributes judicial competences (which border on insult and slander) by directly branding "misleading, illicit, image of false authority, aggressive practices or to restrict decision-making capacity" (since the use of adjective "alleged" preceding all these niceties does not lower the least or subtracts seriousness from his accusations) which in any company is a simple social media advertising campaign.

THIRD: In reference to the alleged breach of Art. 10 of Law 34/2002 of

July 11, as you may well have been able to verify (and according to what you say you have captures of screen 'fedatadas' before a Notary) all contact information: Name (commercial), address, phone and email are clearly visible. Not being mandatory for a self-employed (denomination under which the company operated at the time of its complaint) registration in the Mercantile Registry.

However, and as you can see in the attached document ("Metadata ***METADATA.1") and despite not being mandatory, a simple search in the web metadata (and therefore publicly accessible in any search engine or web browser) if the data of the owner "C.C.C. - ***NIF.1" appears under the "meta tag" ***META TAG.1.

Regarding the data form and as you will have also been able to verify in your impeccable detective work, it is not operational (nor has it ever been). Of

In fact, it is an addition of a template in order to use the "blue popup" style of the Contact Form. You can see that it doesn't show any error message in case of not entering data (or doing so erroneously), nor a satisfactory message in shipping case. It just redirects directly to the home screen (I hope there is left this also duly registered in a notarial public deed).

It is enough to note that if said form were functional and operative, the date would not have been indicated. email address to the left of it (since it would be redundant and unnecessary).

FOURTH: The facts denounced must be considered prescribed based on the sections 1 and 2 of Art. 30 of Law 40/2015 of October 1, on the Legal Regime of the Public Sector, therefore applicable to the AEPD, in terms of the prescription of violations:

1. The infractions and sanctions will prescribe according to the provisions of the laws that

establish. If they do not set prescription periods, very serious infringements they will prescribe after three years, serious ones after two years and minor ones after six months; the sanctions imposed for very serious offenses will expire after three years, those imposed for serious offenses after two years and those imposed for minor offenses after one year.

2. The limitation period for infractions will begin to run from the day on which that the offense had been committed. In the case of continued violations or permanent, the term will begin to run from the end of the offending conduct.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/16

For all of the above, WE REQUEST:

That the Spanish Data Protection Agency FILE THE COMPLAINT based both on the lack of veracity of the reported facts, and on the statute of limitations from the date of the complaint.

FINALLY: From PRÉDASE SERVICIOS INTEGRALES S.L. (current company name of the company) we do not know the motivation of the complainant before the facts above exposed. Only understandable under the desire to intimidate and try to eliminate the competition through complaints and "chuscas and barriobajeras" actions such as the detailed inspection of our website (which, by the way, we are updating together with the computer company, in order to correct the slightest error).

In their eagerness to discredit us or for us to desist in the provision of our services, Mr. A.A.A. (on behalf of AUDIDAT) demonstrates a clear incompetence in your complaint by being unable to locate our postal address to the to address the complaint, which was clearly indicated on the same website

subject of your complaint (thus forcing the AEPD to resort to Orange
Espanne SAU to provide an address that we do not know at all and that nothing
has to do with our mercantile).”

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

In this proceeding, the following are considered proven facts:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/16

FACTS

FIRST: PREDASE SERVICIOS INTEGRALES S.L. is a company of
advice on various matters such as occupational risk prevention, protection
of data or insurance that had the web page on the internet ***URL.1.

SECOND: The website had a contact section for potential interested parties
in its services, including address, telephone, email and a form
data collection.

THIRD: The website lacked a privacy policy and did not provide the
information regulated in article 13 of the RGD, as evidenced in the
previous investigative actions carried out.

FOURTH: The respondent states that the form was not operational and that for that reason
reason the email address was provided.

FIFTH: The website is not accessible in the checks carried out on
days September 21, 25 and 29 and October 5, 2020 since it returns an error of
server permission denial access (Error 403) and object not found
(Additional 404 error).

SIXTH: The website is still not accessible in the checks carried out on the 8th and January 12, 2021, returning the same error indicated in the previous fact.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed the commission of an infraction for violation of article 13 of the RGPD, regarding the information that must be provided when the data is obtained from the interested party, which establishes that:

"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 any;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/16

- 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 fact that they have been borrowed.

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

provide such data;

f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 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 controller plans the further processing of data

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/16

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.”

The violation of this article is typified as an infringement in article 83.5 of the RGPD,

which he considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

[...] b) the rights of the interested parties under articles 12 to 22; [...]”

For the purposes of the limitation period of the infraction, article 72.1 of the LOPDGDD

establishes:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein, and, in particular, the following:

[...] h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679. [...]”.

III

This sanctioning procedure has its origin, as indicated in the agreement beginning and was reiterated in the resolution proposal, in the absence of a policy of privacy of the website www.predase.es. As regards the Complaints regarding aggressive data protection practices (specifically framed in letters b) and c) of the additional provision sixteenth of the LOPDGDD: "generate the appearance that it is acting in name, on behalf of or in collaboration with the Spanish Agency for the Protection of Data or a regional data protection authority in carrying out any communication to those responsible and in charge of the treatments in which the sender offers its products or services" and "carry out commercial practices in the that the decision-making power of the recipients is restricted by referring to the possible imposition of sanctions for non-compliance with the regulations for the protection of personal data", respectively), it means that their regulation is carried out by Law 3/1991, of January 10, on Unfair Competition, not holding the Agency Spanish Data Protection Authority in this matter.

“Article 5 of the RGPD, regarding the principles of the processing of personal data enunciates in its letter to that of "legality, loyalty and transparency", a principle in which at its

Once again, Recital 39 affects: "All processing of personal data must be lawful and loyal. For natural persons, it must be completely clear that they are collecting, using, consulting or otherwise treating personal data that

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/16

concern, as well as the extent to which said data is or will be processed. The beginning of transparency requires that all information and communication regarding the treatment of said data is easily accessible and easy to understand, and that a language is used simple and clear. This principle refers in particular to the information of the interested parties about the identity of the person in charge of the treatment and the purposes of the same and to the information added to guarantee a fair and transparent treatment with regard to the natural persons affected and their right to obtain confirmation and communication of personal data concerning them that are subject to treatment. Natural persons must be aware of the risks, rules, safeguards and rights relating to the processing of personal data as well as the way to assert their rights in relation to the treatment. In particular, the specific purposes of the processing of personal data must be explicit and legitimate, and must be determined at the time of collection. The data Personal information must be adequate, relevant and limited to what is necessary for the purposes for which they are treated. This requires, in particular, ensuring that it is limited to a strict minimum its retention period. Personal data should only be processed if the purpose of the processing could not reasonably be achieved by other means. For ensure that personal data is not kept longer than necessary, the

responsible for the treatment must establish deadlines for its deletion or review periodic. All reasonable steps must be taken to ensure that rectify or delete personal data that is inaccurate. Personal information must be treated in a way that ensures adequate security and confidentiality of personal data, including to prevent unauthorized access or use of said data and the equipment used in the treatment.”

Recital 60 links the duty of information with the principle of transparency, by stating that “The principles of fair and transparent processing require that inform the interested party of the existence of the treatment operation and its purposes. The The data controller must provide the data subject with as much information supplementary information is necessary to guarantee fair and transparent processing, having regard to the specific circumstances and context in which the personal information. The interested party must also be informed of the creation of profiles and the consequences of such elaboration. If personal data is obtained from interested parties, they must also be informed if they are obliged to provide them and the consequences in case they do not do it [...]”. In this order, article 12.1 of the RGPD regulates the conditions to ensure its effective materialization and article 13 specifies what information must be provided when the data is obtained from the interested.

In turn, article 11 LOPDGDD introduces the layered information rule when has:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/16

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679. [...]”.

In relation to the foregoing, the proven facts show that the website

had a contact section for potential clients that included the

telephone, an email and a data collection form, without stating

no section that provided the information that, in accordance with article 13 of the

RGPD, it must be provided about the treatment of data that may be generated

by providing personal data through any of the means of contact

referrals.

As regards the allegation of the respondent made in the brief of

response of June 25, 2020 to the initial agreement, in the sense that the

form was not operational and that by not collecting data effectively,

indicated the email address next to it, it has not been possible to verify the

veracity of said statement about the functionality of the aforementioned form as it is not

possible access to the website in the checks carried out. Now the

The fact that the form has not been operational does not prevent the web page from

must comply with the duty of information established in article 12 of the RGPD and

specified in the subsequent article 13 for situations in which the information is obtained from the interested party, since the collection of personal data is susceptible to also be made through the rest of the published means of contact (and particularly, as the respondent himself points out, through the email address that has been indicated supplying the lack of functionality of the form).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/16

And with regard to the allegations presented by the respondent to the proposal of resolution, and which are objectified in the alleged prescription of the imputed infraction and in the statement that the website is in the process of being updated, the following is noted:

☐ Regarding the possible prescription of the infraction, the respondent alleges that it would be

The provisions of article 30 of Law 40/2015, of October 1, of the

Legal Regime of the Public Sector (hereinafter, LRJSP) and that the facts

denounced must be considered time-barred since, according to the underlined

accompanies this document, the respondent seems to understand that the imputed infraction is

would consider mild (and would prescribe after 6 months) and that the term would begin to

computed from the day it was committed. These arguments cannot

qualify for several reasons:

1. Article 30.1 of the LRJSP provides that "Infringements and penalties

shall prescribe according to the provisions of the laws that establish them. [...]". In this

sense, the LOPDGDD has a Title, the IX, dedicated to the regime

sanctioning Within this title, article 71 establishes that they constitute

infractions the acts and behaviors typified in article 83, sections 4, 5 and 6 of the RGPD as well as those contrary to the LOPDGDD itself and dedicates the articles 72 to 74 to determine a gradation of the infractions in very serious, serious and minor, instituting the statute of limitations for each of them. the levels. Therefore, the applicable limitation period will be the provided in the LOPDGDD.

2. The imputed infraction is subsumed, for these purposes of prescription, in the article 72.1.h) of the LOPDGDD and in this article it is specified that considered very serious and that it will prescribe after 3 years. This is reflected in the Legal Basis V of the initiation agreement and is recalled in the Basis Legal II of the motion for a resolution.

3. With regard to the time of the start of the calculation of the term of prescription, the LOPDGDD does not establish any specific regime, so At this point, the provisions of article 30.2 of the LRJSP with supplementary character. Well, going to this article, it is observed that makes a distinction between "single" or continuous commission offences. Taking into account the nature of the alleged infringement, it seems clear that the omission of the duty to provide the information was maintained, at least, until the date of February 7, 2020, the day on which the diligence is carried out about the website mentioned in the prior action report of inspection that has been collected in the fourth Antecedent. Also, this limitation period would have been interrupted by the notification of the initial agreement, as provided in article 75 of the LOPDGDD.

In conclusion, therefore, in the most favorable scenario for the defendant, the term of prescription of 3 years would have begun on February 7, 2020, leaving interrupted on June 5, 2020, the date on which the notification took place

effectiveness of the agreement to initiate the sanctioning procedure.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/16

☐ With regard to the manifestation of the respondent that the web page is in

update to correct possible errors, it is not possible to verify it, since

that, as reflected in the sixth proven fact of this resolution, the

mentioned website (**URL.1) is not available.

The rest of the allegations are not taken into consideration because they do not deal with the object of this sanctioning procedure.

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 sanction with a warning -article 58.2 b)-, 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 controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

IV

In accordance with the provisions of the RGPD in its art. 83.2, when deciding to impose a

administrative fine and its amount in each individual case will be taken into account

aggravating and mitigating factors that are listed in the aforementioned article, as well as

any other that may be applicable to the circumstances of the case.

In order to set the sanction to be imposed on the defendant, it is considered as concurrent the

following aggravating circumstances:

1. The intention or negligence in the infringement (article 83.2.a) RGPD) since it is

It is a company that offers advice, among other topics, on matters of

data protection, which requires greater diligence in compliance with

the obligations of the matter with respect to which it claims to advise.

2. The continuous nature of the infraction (article 76.2.a) LOPDGDD), since the

The claim filed is dated March 20, 2019 and the diligence of the

previous inspection actions that corroborate the maintenance of the situation in

the website www.predase.es has been carried out on February 7, 2020.

On the other hand, the following circumstances have also been taken into account

extenuating:

1. There is no record of the commission of any prior infringement in terms of protection of

data by the claimed party (article 83.2.e) RGPD).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/16

2. It is a micro-SME for the purposes of the provisions of the Recommendation of the

Commission, of May 6, 2003, on the definition of micro, small and

medium businesses.

Based on the above, it is appropriate to propose a penalty of FIVE THOUSAND EUROS (5,000.00

€).

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 PREDASE SERVICIOS INTEGRALES S. L., with NIF

B02547164, for an infringement of article 13 of the RGD, typified in article 83.5

of the RGD, a fine of FIVE THOUSAND EUROS (€5,000.00).

SECOND: NOTIFY this resolution to PREDASE SERVICIOS

COMPREHENSIVE S.L. and inform A.A.A.

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

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary 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 December 17, 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

16/16

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es