

□ Procedure No.: PS/00020/2021

RESOLUTION OF EXPIRATION OF THE ACTIONS

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following

FACTS

FIRST: Through the "Internal Market Information System" (hereinafter

IMI), regulated by Regulation (EU) No: 1024/2012, of the European Parliament and of the

Council, of October 25, 2012, (IMI Regulation), whose objective is to promote the

cross-border administrative cooperation, mutual assistance between States

members and the exchange of information, was received in this Spanish Agency of

Data Protection (AEPD), a notification under article 56 of the Regulation

(EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, regarding

to the Protection of Natural Persons with regard to Data Processing

Personal Information and the Free Circulation of these Data (hereinafter, GDPR). This

notification (IMI number 78728), launched on 09/19/2019 by the protection authority

of Italy (SA Italy- Supervisor for the Protection of Personal Data, in

hereinafter, the Italian Control Authority), was intended to identify the

main supervisory authority to investigate the processing activities carried out

about the distributors ("riders") of the Italian company Foodinho SRL, which is dedicated to the

transportation and delivery of food and other goods through a computer platform

property of the company based in Spain GLOVOAPP23, S.L., which is the

parent company of the business group of which Foodinho SRL and others are a subsidiary

companies based in other states within and outside the European Economic Area.

The Italian Control Authority indicated that, in the framework of an investigation into

company Foodinho SRL, it was discovered that the activities involved in the delivery

of food or other items by the distributors (“riders”) with the help of a platform specific technique (used by Foodinho SRL and owned by GLOVOAPP23, S.L.) involved the processing of a wide range of personal data: location geographic (in real time); monitoring of each delivery step through a mobile application that was downloaded to the delivery man's mobile; conservation system of data on communications exchanged with the operator of the platform through emails, chats and phone calls; time of delivery (both estimated and actual); routes followed; compliance with orders; valuations of the dealers by customers or vendors; scores of reputation.

In turn, the Italian Control Authority pointed out that, during its investigation, observed indications that the data of the couriers who made deliveries in Italy could be seen by operators who were in other countries outside of Italy. For these reasons, he requested an investigation regarding the data processing of the distributors carried out by GLOVOAPP23, S.L. and its subsidiaries to verify compliance with article 5.1.a) (lawfulness, loyalty and transparency) in relation to article 13 (information to be provided to the interested party) and article 88 (treatment in the workplace); of article 5.1.c), 5.1e) and 5.2 (minimization of

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data, limitation of the conservation period and proactive responsibility, respectively); Article 22 (automated individual decisions); from the article 32 (safety of treatment); of article 25 (data protection from the design and

default); Article 30 (registration of processing activities); of article 35

(data protection impact assessment); of article 37.7

(communication to the supervisory authority of the data protection officer) and the

Article 44 et seq. (transfers to third countries) of the GDPR.

Given its nature of cross-border personal data processing, this Agency is

declared itself competent to act as main control authority and created the case

registration number 89995, dated 11/12/2019, in the IMI system. According to

information incorporated into IMI, have declared themselves interested in this procedure

the control authorities of Italy and Poland.

SECOND: In view of the facts stated, the Sub-Directorate General for Inspection

of Data proceeded to carry out actions for its clarification, under the protection of the

powers of investigation granted to control authorities in article 58.1 of the

GDPR.

THIRD: On January 29, 2021, the Director of the AEPD adopted a

draft agreement to initiate disciplinary proceedings, of which

formal knowledge to GLOVOAPP23, S.L., in accordance with the provisions of the

Article 64.2 of Organic Law 3/2018, of December 5, on Data Protection

Personal and Digital Rights Guarantee (LOPDGDD). following the process

established in article 60 of the GDPR, 01/30/2021 was shared in the IMI system

the draft agreement to start the sanctioning procedure and they will be

informed the control authorities concerned that they had four weeks from

that moment to formulate pertinent and reasoned objections. within the term

granted for this purpose, the two supervisory authorities concerned submitted their

pertinent and reasoned objections for the purposes of the provisions of article 60 of the

GDPR.

FOURTH: On June 3, 2021, the Director of the AEPD adopted a project

revised agreement to initiate disciplinary proceedings. following the process established in article 60 of the GDPR, on June 4, 2021 this document in the IMI system and the control authorities were informed interested parties that they had two weeks from that moment to raise objections relevant and motivated. Once the term for this purpose has elapsed, the two authorities of interested parties did not present pertinent and reasoned objections in this regard, for what was considered that all the control authorities were in agreement with said revised draft decision and were bound by it, in accordance with the provisions of section 6 of article 60 of the GDPR.

FIFTH: On June 24, 2021, the Director of the Spanish Agency for Data Protection agreed to start a sanctioning procedure against GLOVOAPP, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 13 of the GDPR, typified in article 83.5 of the GDPR; for the alleged infringement of article 35 of the GDPR, typified in the article 83.4 of the GDPR; for the alleged infringement of articles 25 and 32 of the GDPR,

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typified in article 83.4 of the GDPR and for the alleged violation of article 5.1.e) of the GDPR, typified in article 83.5 of the GDPR.

SIXTH: The initiation agreement is notified to GLOVOAPP on July 5, 2021, to through the Electronic Notification Service and Authorized Electronic Address, according to the certificate that appears in the file.

SEVENTH: On July 7, 2021, GLOVOAPP files a document through the which requests the extension of the term to adduce allegations.

EIGHTH: On July 9, 2021, the examining body agrees to extend the term requested up to a maximum of five days, in accordance with the provisions of the Article 32.1 of the LPACAP.

The extension agreement is notified to GLOVOAPP on July 9, 2021.

NINTH: On July 24, 2021, it is received at this Agency, on time and form, letter from GLOVOAPP in which it alleges allegations and after stating what his right agrees, he ends up requesting that the sanctioning procedure be archived filed against GLOVOAPP.

TENTH: On October 11, 2021, the procedure instructor agrees the opening of a test practice period, which is notified to GLOVOAPP in dated October 21, 2021, in the following terms:

"1. The documentation from the IMI that has given rise to the previous investigation actions, the documents obtained and generated by the Inspection Services before GLOVOAPP23, S.L., the Report of previous inspection actions that are part of the file E/10077/2019 and the documentation from IMI on the draft decision and the revised draft decision.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement of start PS/00020/2021 presented by GLOVOAPP23, S.L. as of July 24, 2021, and the documentation that accompanies them".

ELEVENTH: On October 27, 2021, the instructor of procedure formulated a Resolution Proposal, in which it proposes that due to the Director of the AEPD addresses a warning to GLOVOAPP23, S.L., with NIF

B66362906, for the alleged infringement of article 13 of the GDPR, typified in the article 83.5 of the GDPR; that GLOVOAPP23, S.L. that within 30 days proceed to include in the privacy policy for representatives, as well as in all the documentation addressed to the distributors, that decisions are being made automated individual; that GLOVOAPP23, S.L. that within 60 days proceed to carry out an impact assessment regarding data protection personnel of the treatment of the data of the distributors; and that it be sanctioned GLOVOAPP23, S.L. for the alleged infringement of articles 32 and 25 of the GDPR, typified in article 83.4 of the GDPR with an administrative fine of FIVE HUNDRED FIFTY THOUSAND EUROS (€550,000).

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Dated November 5, 2021, through the Notification Service

Electronic and Electronic Address Enabled, the Resolution Proposal is notified.

TWELFTH: On November 8, 2021, GLOVOAPP presents a writing through which it requests the extension of the term to adduce allegations.

THIRTEENTH: On November 17, 2021, the examining body agrees to the extension of the requested term up to a maximum of five days, in accordance with the provisions of article 32.1 of the LPACAP.

The extension agreement is notified to GLOVOAPP on November 17, 2021.

FOURTEENTH: On November 26, 2021, it is received at this Agency, in time and form, writing from GLOVOAPP in which it alleges allegations to the proposal of

resolution and after stating what is appropriate to his right, he ends up requesting that file the sanctioning procedure initiated against GLOVOAPP.

FIFTEENTH: On December 3, 2021, the Director of the AEPD adopted a draft resolution of the disciplinary procedure. following the process established in article 60 of the GDPR, that same day it was uploaded to the IMI system and informed the control authorities concerned that they had four weeks from that moment to formulate pertinent and reasoned objections. Within the term to such effect, the supervisory authority of Poland presented its pertinent objections and motivated for the purposes of the provisions of article 60 of the GDPR.

SIXTEENTH: On January 5, 2022, the Director of the AEPD adopted a revised draft resolution of the disciplinary procedure. following the process established in article 60 of the GDPR, that same day it was uploaded to the IMI system and informed the control authorities concerned that they had two weeks from that moment to formulate pertinent and reasoned objections. Within the term to such effect, the supervisory authority of Poland presented its pertinent objections and motivated for the purposes of the provisions of article 60 of the GDPR.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

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Procedures in case of possible violation of data protection regulations

II

Article 64 of the LOPDGDD determines the following, regarding the procedures

in case of possible violation of data protection regulations:

“(…)

2. When the purpose of the procedure is to determine the possible existence of an infringement of the provisions of Regulation (EU) 2016/679 and of this law organic, will begin by means of a start-up agreement adopted on its own initiative or as claim consequence.

If the procedure is based on a claim made before the Spanish Agency

The Data Protection Agency, in advance, will decide on your admission to procedure, in accordance with the provisions of article 65 of this organic law.

When the rules established in article 60 of the

Regulation (EU) 2016/679, the procedure will begin by adopting the

draft agreement to initiate disciplinary proceedings, of which the

formal knowledge to the interested party for the purposes provided in article 75 of this law organic.

Once the claim is admitted for processing, as well as in the cases in which the Spanish Agency

The Data Protection Agency acts on its own initiative, prior to the agreement

beginning, there may be a phase of preliminary investigation actions, which will be governed

as provided in article 67 of this organic law.

The procedure will have a maximum duration of nine months from the date of date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed- After this period, its expiration will occur and, consequently, the file of actions nes.

3. The procedure may also be processed as a result of the communication to the Spanish Data Protection Agency by the data control authority another Member State of the European Union of the claim made before it, when the Spanish Agency for Data Protection had the status of authority of main control for the processing of a procedure in accordance with the provisions of Articles 56 and 60 of Regulation (EU) 2016/679. It will be in this application case the provisions of section 1 and the first, third, fourth and fifth paragraphs of the paragraph 2.

4. The processing deadlines established in this article as well as those for admission to procedure regulated by article 65.5 and the duration of the previous actions of investigation provided for in article 67.2, will be automatically suspended when information, consultation, request for assistance or Mandatory pronouncement of a body or agency of the European Union or of a or several control authorities of the Member States in accordance with the provisions in Regulation (EU) 2016/679, for the time between the request and the notification of the pronouncement to the Spanish Data Protection Agency”.

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In accordance with the provisions of the transcribed article, the disciplinary procedure must

understood to have expired if, after more than nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement, has not been proceeded to issue and notify the resolution of the disciplinary procedure.

In the present case, the draft initiation agreement was signed on January 29, 2021. By virtue of section 4 of article 64 of the LOPDGDD, the terms of the procedure were suspended four times:

- From January 30, 2021 to February 27, 2021, period during which shared in the IMI System the draft decision to start the procedure disciplinary measure, so that the interested authorities could present their pertinent and reasoned objections.

- From June 4 to 18, 2021, period during which it was shared in the IMI system the revised draft decision to initiate proceedings disciplinary measure, so that the interested authorities could present their pertinent and reasoned objections.

- From December 3 to 31, 2021, period during which it was shared in the IMI system the procedural resolution decision project disciplinary measure, so that the interested authorities could present their pertinent and reasoned objections.

- From January 5 to 19, 2022, period during which it was shared in the IMI system the revised draft resolution of the disciplinary procedure, so that the authorities concerned could present their objections relevant and motivated.

The term of nine months of maximum duration of the disciplinary procedure ended on January 21, 2022 and currently the procedure is still pending completion, so its expiration must be declared.

Prescription of the offense

On the other hand, article 95.3 of the aforementioned LPACAP, determines that:

"The expiration will not produce by itself the prescription of the actions of the individual or of the Administration, but expired procedures will not interrupt the term of prescription.

In the cases in which it is possible to initiate a new procedure for not the prescription has been produced, the acts and procedures may be incorporated into it. whose content would have remained the same if the expiration had not occurred. In any case, in the new procedure the formalities of allegations, proposition of evidence and hearing to the interested party."

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Therefore, in accordance with what has been indicated, by the Director of the Spanish Agency for Data Protection, IT IS AGREED:

FIRST: DECLARE the EXPIRATION of this disciplinary proceeding, with number PS/00020/2021.

SECOND: NOTIFY this Resolution to GLOVOAPP23, S.L.

Against this resolution, which puts an end to the administrative process as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations, and in accordance with the provisions of the arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reversal before the Director of the Agency Spanish Data Protection Agency within a period of one month from the day

following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National Court,
in accordance with the provisions of article 25 and paragraph 5 of the provision
additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction
Contentious-Administrative, within a period of two months from the day following
to the notification of this act, as provided in article 46.1 of the aforementioned Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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