 Procedure No.: PS/00079/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated October 27, 2019

filed a claim with the Spanish Data Protection Agency.

The claim is directed against G.L.P. Instalaciones 86, S.L., with NIF

B66161126 (hereinafter, the claimed one).

The claimant states that on June 28, 2019 he called the number of

commercial telephone number of the Naturgy entity to request a quote for the

carrying out an air conditioning installation in their home, they took their

data and he was informed that the company would contact him shortly

Naturgy collaborator.

Thus, two companies contacted him and both

presented as collaborators of Naturgy.

Having numerous problems with the one claimed by the facility, he filed

claim before Naturgy, their response was that they had not sent him and that they did not

was your authorized installer.

Taking the foregoing into account, you do not know how the company obtained your personal data.

claimed entity.

SECOND: In accordance with the provisions of article 65.4 of the LOPGDD, which

has provided for a mechanism prior to the admission to processing of the claims that are

formulated before the AEPD, consisting of transferring them to the Protection Delegates of

Data designated by those responsible or in charge of processing, for the purposes provided for in article 37 of the aforementioned rule, or to these when there are none designated, the claim was transferred to the claimed entity within the framework of the file E/11288/2019, by means of a document signed on November 27, 2019 to to proceed with its analysis and respond to the complaining party and this Agency within a month.

The document was notified to the respondent electronically, being the date of acceptance of the notification on the same day, as evidenced by the certificate issued by the FNMT that is in the file.

After the period granted to the respondent without having responded to the request for information, in accordance with the provisions of article 65.2 of the Law Organic 3/2018, on Data Protection and Guarantee of Digital Rights (LOPDGDD), on 03/03/2020, the agreement for admission to processing of the this claim.

THIRD: On June 8, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate sanctioning proceedings against G.L.P. Instalaciones 86, S.L., by virtue of the powers established in art. 58.2 of the GDPR and in articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), by the infringement of article 6.1 of the RGPD, typified in article 83.5 a) of the RGPD and considered very serious in 72.1.b), for prescription purposes, setting a sanction

initial payment of 60,000 euros (sixty thousand euros).

FOURTH: The Agreement to Start the Sanctioning Procedure was notified to the entity claimed electronically being the date of availability June 9, 2020 and the automatic rejection date on the 20th day of the same month and year, as accredits the certificate issued by the FNMT that is in the file.

FIFTH : Formal notification of the start agreement, the claim at the time of the This resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

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

PROVEN FACTS

FIRST: It is recorded that the claimant, on June 28, 2019, called the number of commercial attention of the Naturgy entity to request a quote, they took their data and two companies contacted him and both presented themselves as Naturgy collaborators.

The file shows that the company chosen by the claimant was G.L.P. Facilities 86, S.L.

Having numerous problems with G.L.P. Instalaciones 86, S.L. for the installation, filed a claim with Naturgy, their response was that they did not they had sent and that he was not your authorized installer.

SECOND: On December 27, 2019, Naturgy states to this Agency

that the entity claimed is not a collaborating company of this company and therefore

Therefore, Naturgy did not communicate any customer data.

THIRD: On June 8, 2020, this sanctioning procedure was initiated by the

violation of article 6.1 of the RGPD (legality of the treatment), being notified on the 20th

of the same month and year. Not having made allegations, the respondent, to the agreement

Of start.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

The General Data Protection Regulation deals in article 5 with the

principles that must govern the processing of personal data and mentions among

them that of "legality, loyalty and transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the

assumptions in which the processing of third party data is considered lawful:

conditions:

"1. The treatment will only be lawful if it meets at least one of the following

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(…)"

The violation of article 6.1 of the RGPD is typified in article 83

of the RGPD that, under the heading "General conditions for the imposition of fines

administrative", says:

"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of 20,000,000 Eur 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:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72.1.b) qualifies this infraction, for the purposes

of prescription, as a very serious infraction.

The documentation in the file offers evidence that the

claimed violated article 6.1 of the RGPD, since it processed the personal data

of the claimant (name, surnames, NIF, telephone, correspondence address,

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address of the object of the contract, bank account, Email), without having legitimacy for the treatment of the claimant's data.

It should be remembered that article 5 of the RGPD, after alluding in its section 1 to the principles relating to the processing of personal data -among them, as has pointed out in the preceding Basis, that of "legality"-, it says in its section 2:

“The person responsible for the treatment will be responsible for compliance with the provided in section 1 and able to demonstrate it (<<proactive responsibility>>)”

Well, with respect to the facts that are the subject of this claim,

We must emphasize that the defendant, despite the repeated requests he received from the AEPD to explain the facts on which it deals, never responded or provided any evidence that would allow estimating that the treatment of the data of the claimant had been legitimate.

We refer in this regard to the request for information that the AEPD addressed the defendant in the framework of E/11288/2019. Request whose receipt by him It is proven (certificate issued by the FNMT) that it happened on November 27 of 2019.

However, no response was received and dated March 3 of this year It was agreed to admit the claim for processing.

Reminder that, circumscribed to the violation of article 6.1. of the RGPD, has purpose is to show that the defendant has had plenty of opportunities to provide evidence or documents proving that, contrary to the statements and documentary evidence provided by the claimant, the treatment of data that is subject to assessment in this case was adjusted to law.

The lack of diligence displayed by the entity in complying with the

obligations imposed by the personal data protection regulations

it is therefore evident. Diligent compliance with the principle of legality in the treatment

of third-party data requires that the data controller be in a position

to prove it (principle of proactive responsibility)

In short, there is evidence in the file that the defendant dealt with the

personal data of the claimant without legitimacy to do so. The behavior described

violates article 6.1. of the RGPD and is subsumable in the sanctioning type of the article

83.5.a, of the RGPD.

III

In order to determine the administrative fine to be imposed, the precautions

visions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

“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 as the number of stakeholders affected and the level of damage and

damages they 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 have

applied under articles 25 and 32;

e) any previous infraction 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 put

remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered 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

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement."

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. 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 treatments

of personal data.

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

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

e) The existence of a merger by absorption process after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

data.

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any interested party.”

In accordance with the precepts transcribed, in order to set the amount of the

sanction of a fine to be imposed on the person claimed as responsible for an infraction

typified in article 83.5.a) of the RGPD, they are considered concurrent in this

case, as aggravating factors, the following factors:

- The lack of cooperation with the AEPD in order to remedy the infraction and

mitigate its effects (article 83.2.f, of the RGPD)

- Basic personal identifiers are affected (name,

surnames, NIF, telephone, correspondence address, object address

of the contract, bank account, Email) (article 83.2 g).

In this case, the following factor is considered as a mitigating factor:

- Taking into account the annual turnover (article 83.2 k and 76.2 c)

LOPDGDD).

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 G.L.P. INSTALACIONES 86, S.L., with NIF B66161126, by

an infringement of article 6.1. of the RGPD typified in article 83.5.a) of the aforementioned

RGPD, a fine of €60,000 (sixty thousand euros).

SECOND: NOTIFY this resolution to G.L.P. INSTALLATIONS 86, S.L.

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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

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