

□ File No.: EXP202207942

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Given the lack of communication to this Agency of the protection delegate
of data (DPD) by the CITY COUNCIL OF ALGETE with NIF P2800900I (in
forward, the City Council), the General Sub-directorate of Promotion and Authorizations of
This Agency sent you two notifications recalling the obligation to designate a
DPD and communicate it to the control authority, in accordance with article 37 of the
Regulation (EU) 2016/679 (GDPR), and granting a period of ten days for
made the mandatory communication, without receiving a response to any of the
the two notifications. In the same letter, it was warned that non-compliance
could give rise to the exercise of the investigative and sanctioning powers of
this Agency.

SECOND: On June 24, 2022, for the purposes provided in article 47 of
Organic Law 3/2018, of December 5, on the Protection of Personal Data and
guarantee of digital rights (hereinafter LOPDGDD), the General Subdirectorate
of Promotion and Authorizations transferred the documentation in that
Subdirectorate to the General Subdirectorate of Data Inspection. Specifically, it
Attach the following documentation:

- First notification sent by SIR on February 17, 2022 with registration number
of departure O00007128s2200010977 and confirmation of receipt on the 18th of
February.
- Second notification sent by SIR on April 26, 2022 with registration number

of departure REGAGE22s00014929642 and confirmation of receipt on April 27.

THIRD: In view of the facts stated, on July 18, 2022,

query, with negative result, the list of data protection delegates

communicated to the AEPD using the NIF of the

City hall.

FOURTH: On July 20, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereafter, LPACAP), for the alleged infringement of Article 37 of the GDPR, typified in

Article 83.5 of the GDPR Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter GDPR).

FIFTH: The aforementioned initiation agreement was collected by the person in charge on the 21st of

July 2022, as stated in the Notific@ certificate that is in the file.

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SIXTH: Dated August 10, 2022 and entry registration number

REGAGE22e00034849313, the City Council presents a written statement in which

states, in summary, that they are trying to solve the lack of DPD since the 28th of

September 2021. For this, it was decided to tender a service contract that is

pending a mandatory report from May 9, 2022 and that they will communicate the

Designation of the contracted external DPO, once the contract is awarded.

SEVENTH: On September 9, 2022, a proposed resolution was formulated

proposing that the Director of the Spanish Data Protection Agency imposed on the City Council, for an infringement of Article 37 of the GDPR, typified in the Article 83.5 of the GDPR, a warning sanction, as well as ordering the City Council accredit to this body, within a month, the appointment from D.P.D.

Likewise, the procedure was revealed so that within ten days could allege whatever he considered in his defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP.

EIGHTH: On October 5, 2022, the City Council presents a written allegations in which it informs this Agency of the actions carried out from the allegations to the initiation agreement presented on August 10, 2022, stating that the contract could be formalized in the second week of November.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The notifications indicated in the first and second records were collected by the City Council, without receiving any response.

SECOND: The list of delegates of protection of data communicated to the AEPD using as search criteria the NIF of the City Hall.

THIRD: Notification of the agreement to start this procedure disciplinary action was carried out in accordance with the provisions of article 43 of the LPACAP.

FOURTH: The City Council has presented the allegations to the agreement to start this disciplinary procedure included in the sixth antecedent.

FIFTH: After notification of the proposed resolution, the City Council has

presented the allegations that are included in the eighth precedent.

FUNDAMENTALS OF LAW

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Competence

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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 and 48.1 of the Law

Organic 3/2018, of December 5, 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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

Arguments to the procedure

With regard to the allegations presented by the City Council, collected in

the sixth and eighth antecedents, the following should be noted.

The notifications made by the General Subdirectorate of Promotion and

Authorizations from this Agency, recalling the obligation to designate a DPO and

communicate it to the control authority, in accordance with article 37 of the GDPR, and in the that a period of ten days was granted to make the mandatory communication, they were not answered. Finally, it was agreed to start the disciplinary procedure on July 20, 2022.

Likewise, apart from the aforementioned reminders, it should be noted that the obligation of the appointment of the DPD by the City Council arose from the effective application of the GDPR that occurred on May 25, 2018, as stipulated in its article 99, marking the end of a two-year adaptation period after its entry effective May 25, 2016.

Therefore, it cannot be taken into consideration that the procedures for the appointment of the DPO in 2021, prior to the notifications made by this Agency, since the City Council should have foreseen its appointment from the effective application of the GDPR. In the same way, that the appointment could be carried out during the investigation of this procedure or later, not affects the existence of proven facts constituting an infringement.

Finally, as at the date of issuance of this resolution, no

Once the DPD has been appointed, the order provided for in the resolution proposal requiring the City Council to accredit said appointment within the stipulated period.

II

breached obligation

In accordance with the available evidence, it is considered that at City Council corresponds to it, following the principle of proactive responsibility, meet the obligations detailed in the GDPR, including the appointment of

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a data protection officer, make their contact details public and communicate it to the AEPD.

Therefore, the facts described in the "Proven facts" section are considered constituting an infraction, attributable to the City Council, for violation of article 37 of the GDPR, which provides the following in its sections 1 and 7 respectively:

"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;

(...)

7. The person in charge or the person in charge of treatment will publish the data of contact

of the data protection delegate and will communicate them to the control authority."

Regarding the appointment of the data protection officer, sections 3 and 5 of the Article 37 of the GDPR state that:

"3. When the controller or processor is an authority or public body, a single data protection officer may be appointed to several of these authorities or bodies, taking into account their structure organization and size.

(...)

5. The data protection officer may be part of the staff of the controller or processor or perform their duties within the framework of a service contract.

For its part, the LOPDGDD dedicates article 34 to the “Appointment of a delegate of data protection”, precept that provides:

"1. Those responsible and in charge of the treatment must designate a data protection officer 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 Data Protection Agency or, where appropriate, to the regional data protection authorities, designations, appointments and dismissals of the data protection delegates both in the cases in which find themselves bound to their designation as in the case in which it is voluntary”.

Classification and classification of the offense

IV.

Article 83.5 b) of the GDPR considers that the infringement of "the obligations of the responsible and of the person in charge according to articles 8, 11, 25 to 39, 42 and 43", it is punishable, in accordance with section 4 of the aforementioned article 83 of the aforementioned Regulation, "with administrative fines of a maximum of 10,000,000 EUR or, in the case of a company, an amount equivalent to a maximum of 2% of the

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total annual global business volume of the previous financial year, opting for the one with the highest value”.

The LOPDGDD in its article 71, Violations, states that:

"Infringements are the acts and conducts referred to in the

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law”.

For the purposes of the limitation period for infringements, the alleged infringement prescribes after two years and is classified as serious, in accordance with article 73 of the LOPDGDD that stipulates the following:

"Based on what is established in 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 designate 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

sanction imputed

Article 83 "General conditions for the imposition of administrative fines" of the GDPR, in its section 7, establishes the following:

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 bodies public establishments established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applied to the treatments for which they are responsible or in charge:

(...)

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

(...)

2. When the managers or managers listed in section 1 commit any of the offenses referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue resolution sanctioning them with a warning. The resolution will establish likewise, the measures that should be adopted to cease the conduct or to correct it. the effects of the offense committed.

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The resolution will be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the condition of interested party, if applicable.

3. Without prejudice to what is established in the previous section, the authority of data protection will also propose the initiation of disciplinary actions when there is sufficient evidence to do so. In this case, the procedure and the The sanctions to be applied will be those established in the legislation on the disciplinary regime. or sanction that results from application.

Likewise, when the infractions are attributable to authorities and executives, and the existence of technical reports or recommendations for treatment is accredited that had not been duly attended to, in the resolution in which the sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or regional Gazette that corresponds.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions to which they refer 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.”

SAW

adoption of measures

This Agency agrees to impose on the controller the adoption of appropriate measures to adjust its performance to the regulations mentioned in this act, in accordance with the established in the aforementioned article 58.2 d) of the GDPR, according to which each authority of control may “order the person in charge or person in charge of the treatment that the processing operations comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period...”.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with applicable law,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF ALGETE, with NIF P2800900I, for a infringement of Article 37 of the GDPR, typified in Article 83.5 of the GDPR, a warning sanction.

SECOND: REQUEST the CITY COUNCIL OF ALGETE, with NIF P2800900I, to

that within a month they accredit before this body the appointment of DPD, of

in accordance with the provisions of article 37 of the GDPR.

THIRD: NOTIFY this resolution to the CITY COUNCIL OF ALGETE.

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ROOM:

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

COMMUNICATE this resolution to the Ombudsman, in

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

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