

Procedure No.: PS/00406/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 27, 2019  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against ELECTRIC RENTING GROUP, S.L. with NIF B99524720  
(hereinafter, the claimed).

The reasons on which the claim is based are that the claimant has sent an email  
promotional email with no blind copy, sent to dozens of recipients.

SECOND: In accordance with the mechanism prior to the admission for processing of the  
claims that are formulated before the Spanish Agency for Data Protection, foreseen  
in article 65.4 of Organic Law 3/2018, of December 5, on Data Protection  
Personal and guarantee of digital rights, which consists of transferring the  
same to the Data Protection Delegates designated by those responsible or  
in charge of the treatment, or to these when they have not been designated, and with the purpose  
indicated in the aforementioned article, on July 16, 2019, notification of transfer of this  
claim to the claimed entity, so that it proceeds to its analysis and is given a term of  
response of a month, not having received a response to it.

THIRD: On November 29, 2019, the Director of the Spanish Agency  
of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the  
alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the  
GDPR.

FOURTH: Notification of the aforementioned agreement to initiate this procedure

sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,

WHO

This resolution is issued taking into account the following:

FACTS

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claim is directed against ELECTRIC RENTING GROUP, S.L. with NIF B99524720

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## FOUNDATIONS OF LAW

Yo

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

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

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the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

III

This claim states that the respondent has sent the claimant

an email, addressed to a multitude of recipients, without blind copying.

This Agency communicates such facts to the respondent, so that he informs

the causes of the incident and adopt the appropriate measures for its correction, not

having received a response to it, nor have any allegations been filed by

part of the defendant, after notifying him of the opening of this sanctioning procedure.

Thus, it is considered that the facts denounced, that is, sending a

promotional email without blind copy, sent to dozens of recipients,

implies the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

#### IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

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Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

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i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case

particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

goes (article 83.2 b)

☐ Basic personal identifiers are affected (article 83.2 g)

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 ELECTRIC RENTING GROUP, S.L., with NIF B99524720, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a fine of 2,500 euros (two thousand five hundred euros).

SECOND: NOTIFY this resolution to ELECTRIC RENTING GROUP, 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 Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during 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.

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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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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