

936-031219

□ Procedure No.: PS/00249/2020

RESOLUTION R/00437/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00249/2020, instructed by the Agency

Spanish Data Protection Officer to VENU SANZ CHEF, S.L., given the complaint

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On September 3, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against VENU SANZ

CHEF, S.L. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00249/2020

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated January 21, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against VENU SANZ CHEF, S.L. with NIF B54984752 (in

later, the claimed one).

The reasons on which the claim is based are that the claimant contracted the services

of the claimed to download weekly menus, discovering days later that

said company has used your personal data full name and surnames and photo

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profile, and information about your cholesterol tests and your Alzheimer's disease.

hypothyroidism to advertise their products, without their prior consent.

SECOND: In view of the reported facts, on March 3, 2020,

transferred from this claim to the one claimed by notific@, and upon expiration of the

period given for without accessing said document, it is reiterated by postal mail on 10

March 2020, being returned for "absent distribution", despite having been sent to

the postal address indicated in the privacy policy of the claimed

responsible for the treatment.

THIRD: On April 4, 2020, the resolution is notified by which the Director of the

Spanish Agency for Data Protection, agrees to admit this

claim.

FOUNDATIONS OF LAW

Yo

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 LOPDPGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow considering

lawful processing 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");

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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, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are 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 for no longer than is necessary for the purposes of data processing personal; personal data may be kept for longer periods provided that they are treated exclusively for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of technical and organizational measures measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provided for in section 1 and able to demonstrate it ("proactive responsibility")."

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Likewise, in article 32 of the LOPDGDD, the blocking of data is regulated, establishing the following:

"1. The data controller will be obliged to block the data when

proceed to its rectification or deletion.

2. The blocking of the data consists of the identification and reservation of the same, adopting technical and organizational measures to prevent their processing, including its visualization, except for making the data available to the judges and courts, the Public Prosecutor or the competent Public Administrations, in particular of the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the prescription period of the themselves. After this period, the data must be destroyed.

3. Blocked data may not be processed for any purpose other than of that indicated in the previous section.

4. When for the fulfillment of this obligation, the configuration of the information system does not allow blocking or requires an adaptation that implies a disproportionate effort, a secure copy of the information in such a way as to record digital evidence, or of another nature, that allows

prove the authenticity of the same, the date of the blocking and the non-tampering of the data during it.

5. The Spanish Agency for Data Protection and the regional authorities data protection, within the scope of their respective powers, may set exceptions to the blocking obligation established in this article, in the assumptions in which, considering the nature of the data or the fact that they refer to a particularly high number of those affected, their mere conservation, even blocked, could generate a high risk for the rights of those affected, as well as in those cases in which the conservation of the blocked data could imply a disproportionate cost for the data controller.”

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In the present case, the personal data of the claimant have been revealed, making them accessible to third parties without your consent.

Therefore, in accordance with the evidence available in the

At this time, and without prejudice to what results from the investigation, it is considered that from the reported facts, the violation of article 5.1 b) of the RGPD is inferred, which governs the purpose limitation principle, according to which personal data will be collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with said purposes, as well as the responsibility proactive of the data controller to demonstrate compliance.

IV

Article 72.1.a) of the LOPDGDD states that “according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

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

v

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

warning when the processing operations have violated the provisions of

this Regulation;

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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 a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

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

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

of greater 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

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

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

active (article 83.2 b)

☐ Basic personal identifiers (name, surname) are affected.

two, domicile), according to article 83.2 g), also including health data,

report on the claimant's cholesterol tests, and his Alzheimer's disease

hypothyroidism

Therefore, in accordance with the foregoing, by the Director of the

Spanish Data Protection Agency,

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HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against VENU SANZ CHEF, S.L.,

with NIF B54984752, for the alleged infringement of article 5.1 b) of the RGPD, typified

in article 83.5 a) of the RGPD, in relation to article 72.1 a) of the LOPDGDD.

SECOND: ORDER VENU SANZ CHEF, S.L., with NIF B54984752, in accordance

with the provisions of article 58.2 d) of the RGPD, so that the operations of

treatment comply with the provisions of the RGPD.

THIRD: APPOINT INSTRUCTOR.1 as instructor and, as secretary,

SECRETARY.1, indicating that any of them may be challenged, if applicable,
in accordance with the provisions of articles 23 and 24 of Law 40/2015, of October 1,
Legal Regime of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the
claim filed by the claimant and his documentation, the documents
obtained and generated by the General Subdirector for Data Inspection during the
investigation phase, as well as the report of previous Inspection actions.

FIFTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1
October, of the Common Administrative Procedure of the Public Administrations, the
sanction that could correspond would be 3,000 euros (three thousand euros) without prejudice
of what results from the instruction.

SIXTH: NOTIFY this agreement to VENU SANZ CHEF, S.L., with NIF
B54984752, granting him a hearing period of ten business days to formulate
the allegations and present the evidence it deems appropriate. In his writing of
allegations you must provide your NIF and the procedure number that appears in the
header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

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Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of

that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at 2,400 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 2,400 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The pay volunteer of the amount referred to in the preceding paragraph may be made at any time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be established at 1,800 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, (2,400 or 1,800 euros) must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in

the heading of this document and the reason for the reduction of the amount to which

welcomes

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Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On September 22, 2020, the claimant has proceeded to pay

SECOND

of the sanction in the amount of 1800 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction

to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00249/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to VENU SANZ CHEF, S.L..

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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