

□ Procedure No.: PS/00201/2019

938-090320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FIRST: On January 4, 2019, it is registered at the Agency

Spanish Data Protection Claim made by Ms. A.A.A., (in

hereinafter, the claimant), against the Commonwealth of the Region of Pamplona, (in

hereinafter MCP or the Commonwealth), stating that:

“Six months ago the Commonwealth of Pamplona put into operation a

new garbage collection system that implies the need to use cards

nominate by address to be able to use the organic and rest containers.

Now, nearing completion of testing this new system, the Commonwealth

of Pamplona sends us a letter notifying us that in the next

weeks we will be sent "information with the opening data registered in your

home".

Evidently, the Commonwealth of Pamplona had not informed us

users that data was going to be collected, what specific data is collected, or

the treatment and use that will be made of them, thus ignoring the right to

user information”

The claimant attaches a copy of two briefs addressed in May and December

2018 by the President of the Commonwealth to the neighbors in relation to the

start-up of a pilot test to implement a new opening system

with card for the organic matter (brown) and rest (grey) containers in order to

to improve the results obtained in the selective collection of organic matter.

In the letter sent in May 2018, they are indicated as novelties of the new system:

“- The key to open the brown container is replaced by a card magnetic;

- This card will open the brown container and, from now on, the rest container.

- Each household will receive two cards associated with the home address that will allow the data of its use to be recorded.”

In the letter sent in December 2018, the President of the Commonwealth informed that "In the coming weeks we will send you information with the data of openings registered at your address or establishment, and with those points of improvement in which you can advance in the event that proper use is not made of The containers".

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights www.aepd.es

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(hereinafter, LOPDGDD), dated February 19, 2019, the General Subdirectorate of Data Inspection transferred said claim to the MCP for its analysis and communication to the claimant of the decision adopted in this regard. Likewise, it required that within a month he send certain information to the AEPD, among which was to report on the causes that had motivated the facts that gave rise to the claim and report on the measures adopted

to prevent similar incidents from occurring.

On March 8, 2019, a written entry is registered in the AEPD of the

MCP noting that it has proceeded to transfer the claim to the company "Services

de la Comarca de Pamplona, S.A.", (hereinafter, SCPSA), to proceed to give

response to the request made in accordance with the following:

-

That the MCP is the Public Administration that owns the services of

water supply and sanitation, waste management and urban transport,

The management of the services corresponds to SCPSA, a public capital company

exclusive of that, in accordance with the provisions of article 1 of the Regulation of

Relations between the Commonwealth and SCPSA, approved by the General Assembly of

that.

Article 2.3 of said Regulation attributes to SCPSA the material provision of

business activity, among whose functions is the ownership of the

legal relationship with users of urban waste management services

entrusted.

Articles 3 and 4 of the Ordinance regulating Waste Management in the

Commonwealth of the Pamplona Region (BON No. 245 of 12/23/2013) reaffirm the

condition of SCPSA as holder of relations with users of the service of

waste management.

Article 1 of the Regulatory Ordinance of Patrimonial Benefits of

Non-tax Public Character for the Provision of Management Services of the

Urban Waste 2019 (BON nº 249 of 12/28/2018) determines that the SCPSA provides

and manages the aforementioned services. Articles 3, 4.1 and 5.1 of this Ordinance collect

the financing regime of the service, based on its nature as reception

mandatory, and derived directly from the ownership or use of the property, for which

use the data from the Registry of Territorial Wealth of Navarra and the file of users registered on 09/21/2009 in the AEPD by said company, being the cadastral value the tax base of the public and non-tax patrimonial provision.

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That the MCP has not put into operation the new system of garbage collection that implies the need to use name cards for home; who has not requested any information from any citizen about the cards nominative to be able to use the organic and rest containers, lacking any information about the use of said cards.

THIRD: On March 20, 2019, it is registered at the AEPD letter from the SCPSA Data Protection Delegate stating that the claim is not justified as there has been no data processing of a personal nature, which is why no specific measures have been adopted against the claim. as has also been reported to the claimant.

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The Commonwealth holds the competence and responsibility for the services of collection and treatment of urban waste, whose comprehensive service manages through its management company SCPSA, by virtue of the provisions of the Ordinance Regulation of Urban Waste Management published in the Official Gazette of Navarra No. 17, dated February 7, 2007.

The Navarre Waste Plan 2017-2017 obliges the administrations competent public authorities and managers of urban waste to adopt the measures

necessary to achieve the recycling targets set out therein,

establishing a separation at source of organic matter of 50% in 2020 and of 70% in 2027.

In compliance with the MCP/SCPSA Annual Management Plan 2017, the

The "pilot project for the design of a system of containers for organic matter

organic and the rest that allows the identification of users and the measurement of

amount of waste deposited, with the aim of substantially increasing the

separation at source." Among the actions put in place to achieve the

increased separation at source of organic matter (also MO, in

ahead), there is the pilot test consisting of establishing a system for opening

closed OM containers, with opening by means of a card linked to the

homes that allows the collection of data to analyze the impact and monitoring of

its use. To carry out this follow-up, the unit of measurement has been taken

postal address, so personal data has not been taken into account for the

Service management,

It was decided to carry out this pilot project in two different areas of the region

with a duration of one semester. The cards have engraved on the outside the

postal address to which the card is linked. The delivery of the cards

made prior communication to the different postal addresses of the existence and

pilot program goals. Two cards were distributed for the opening of

containers for each postal address (home or local), and the total figures at the beginning

of the project were 8,266 cards.

The same postal address appears on each of the two cards in order to

be able to log usage activity for that address. The information obtained is

kept in independent databases in order to obtain and exploit the

statistical information regarding their use. While the use of

cards has not been limited to the owners (individual or legal entity) or users of the postal address and its use has not been prohibited from being transferred to third parties, the information collected through the cards does not allow establishing a direct and unequivocal with any identified or identifiable natural person, which is why the information obtained is not subject to the data protection regime personal data as the definition of personal data of the RGD is not met.

They point out that to obtain the postal addresses, the postal addresses of the cadastral units of the area of the Commonwealth of the Region of Pamplona that appears in the Registry of Territorial Wealth of Navarra and that are subject to invoicing of the waste rate, according to the ordinance of prices for this service.

They provide capture printing of the front and back of one of said Cards of "Selective waste collection" meaning that it does not contain any data personal, only the mailing address to which the card was delivered.

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As for the application where the card data is stored, of which provide capture of a record of the same, it is argued that it only contains data related to the postal address, without storing other information that may relate said postal address with an identified or identifiable natural person. Each card has your unique identifier number and the data obtained are only referenced to that number. The card application and its related data are are stored in the CPD (Data Processing Center) of the

Commonwealth.

They point out that during the development of the aforementioned pilot project, carried out an indirect control of the use of the containers by the citizens and their changes in habits compared to the previous situation. As part of said action, it was considered of interest to send to the postal addresses of the cards the usage statistics of the cards delivered to the respective postal addresses in order to compare the results with the global data. Previously, In December 2018, an informative letter was sent announcing that the proceed with said shipment, which is what the claimant refers to, although in the same only aggregate statistical data on the use of the cards delivered in their respective postal addresses for the purpose of being able to contrast them with the data global of the rest of the users of the program. At no time have they been indicated or used data that allows such information to be related to natural persons identified or identifiable.

FOURTH: In view of the documentation provided by the SCPSA, it is observed:

From the capture printout of the provided card, it is verified:

That on the front of the same appears denominated as "Collection recycling of waste"/"Hondakinen gaikako biketa", including, among other information relating to the type of waste, the Commonwealth logo, a postal address with street number and floor below which there is an identification number.

On the other hand, on the back of the card there is the following legend: "This The card is owned by the Commonwealth of the Pamplona Region and its use is subject to the conditions determined by it", which is also written in Basque, under which is the logo of the claimed linked to the "Mancomunidad Comarca de Pamplona"/"Iruñerriko Mankomunitatea", also including data on contact information for the Commonwealth Citizen Service.

Of the communications sent in May, June, July and December 2018 to the addresses of the neighbors affected by the aforementioned pilot project, a copy of which is has attached to the letter of the SCPSA registered in this Agency dated March 20 of 2019, it is observed that they are headed by the logo of the claimed and signed by the President of the MCP, without making any reference to the SCPSA.

Thus, for example, in the header of the letter sent in June 2018 the following sentence: "As we recently announced in the letter sent by this Commonwealth, on May 28 we started the informative actions with reason for the pilot test of the new container system."

Likewise, the heading of the letter sent in July 2018 included:

"As we recently announced to you in a previous letter sent by this

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Commonwealth, on June 18 began in ***LOCALIDAD.1 the pilot test of the new container system with magnetic card opening."

FIFTH: In accordance with article 65 of the LOPDGDD and for the purposes provided

In its article 64.2, dated June 12, 2019, the Director of the AEPD agreed admit the claim filed by the claimant for processing

SIXTH: On November 14, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure of warning to the

claimed, in accordance with the provisions of article 58.2.b) of the RGPD, for the alleged infringement of article 14 of the RGPD, typified in article 83.5.b) of the RGPD.

Said agreement stated: "That, if the existence of infringement, for the purposes provided in article 58.2 of the RGPD the corrective measure that could be imposed on the ASSOCIATION OF THE REGION OF PAMPLONA, with NIF (...), in the resolution, would consist of ORDERING, under the provisions of the article 58.2.d) of the RGPD, the adoption of the necessary measures to facilitate the magnetic container opening cards, used for selective collection of residues the information relative to the extremes indicated in article 14 of the RGPD when they include data of identified persons or, as in this case, include data of identifiable people, for which you must take into account the provided in article 6 of the RGPD in relation to the legality of the treatment. Bliss The measure must be adopted, where appropriate, within a period of one month computed from the day following the notification of the sanctioning resolution, and must also provide within the same period the means of proof accrediting their compliance."

The aforementioned agreement to start the procedure was notified to the Commonwealth by electronic means dated November 15, 2019.

SEVENTH

: Dated November 28, 2019, entry is registered in this Agency brief of the Commonwealth's arguments to the aforementioned initial agreement in which it indicates the measures it has decided to adopt to comply with the obligations indicated in article 14 of the RGPD, and that are indicated in the Legal Basis VI of this resolution.

EIGHTH: On December 19, 2019, a resolution proposal was formulated in the sense that by the Director of the Spanish Data Protection Agency: -Is imposed on the claimed, in accordance with the provisions of article 58.2.b) of the RGPD, a sanction of warning for an infringement of article 14 of the

RGPD, typified in article 83.5.b) of the RGPD.

- The defendant is ordered in the resolution that may fall, under the protection of what is established in article 58.2.d) of the RGPD, which accredits the sending to the interested parties affected by the pilot test of the informative communications that were indicated in the Legal Basis V of the proposed resolution formulated, as well as that, if the opening system of containers studied, had foreseen the adoption of the necessary measures to that in the magnetic cards for opening containers that are going to be used

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for the selective collection of waste, information regarding the extremes indicated in article 14 of the RGPD when they include data of people identified or identifiable.

- Communicate the resolution to the Ombudsman.

The aforementioned proposed resolution was notified to the MCP on 19 December 2019.

NINTH: On February 17, 2020, entry is registered in this Agency

letter of allegations of the MCP to the aforementioned proposal in which it communicates the measures that it has decided to adopt through the SCPSA, and that are cited in the Legal basis VII of this resolution.

PROVEN FACTS

First: On January 4, 2019, it is registered at the Agency

Spanish Data Protection Claim filed by the claimant against the

Commonwealth of the Pamplona Region (MCP), since it had not informed the interested parties about the processing of personal data used in the framework of the pilot test carried out to implement a new card opening system magnetic for containers of organic matter and rest.

Second: The MCP is the public administration that owns the services of water supply and sanitation, waste management and urban transport, which provided through "Services of the Region of Pamplona, S.A.", (SCPSA), a company merchant with exclusive capital of the MCP.

Third: In compliance with the 2017 Annual Management Plan, the MCP launched in two areas of the region, between June and December 2018, a pilot project based on the implementation of a material container opening system organic and the rest by means of magnetic cards linked to the postal address of the homes and establishments that would allow the identification of users, the measurement of the amount of waste deposited and monitoring of the use of such containers through the activity of using the cards.

Fourth: For each postal address (address or premises) the MCP provided two business cards container opening. On each of the cards was:

On the front, the card is linked to the "Selective Collection of waste"/"Hondakinen gaikako biketa", including, among other information, the logo of the MCP, the postal address with street number and floor to which the card and the unique identification number of the card.

On the reverse, the legend appears:

"This card is the property of the Commonwealth of the Region of Pamplona and its use is subject to the conditions determined by it", also written in Basque, the MCP logo associated with the "Mancomunidad Comarca de Pamplona"/"Iruñerriko Mankomunitatea", and

the information contact details of the Citizen Attention Service of the Commonwealth.

Fifth: The postal addresses used in the aforementioned opening cards are obtained from the cadastral units of the scope of the MCP that appear in the Registry

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of the Territorial Wealth of Navarre and that are subject to invoicing of the rate of residues, according to the ordinance of prices of that service.

Sixth: The application in which the information related to the use of the opening cards record the postal addresses of the homes of the dwellings and establishments to which they are linked and their identification number unique.

Seventh: It is stated in the sanctioning procedure that in the months of May, June, July and December 2018, the President of the MCP sent and signed as such, both communications addressed to the neighbors affected by the implementation of the pilot test. In these communications, the President of the MCP reported on the reasons and the scope of the new system, the operation of the cards delivered and the percentage result and separation of organic matter obtained with the information available at the date of the shipment in question in relation to the objective programmed in the Navarra Waste Plan.

All of these communications display the MCP logo linked to the

“Association Comarca de Pamplona”/“Iruñerriko Mankomunitatea”, and they do not

no reference to the management company SCPSA or its participation in the

development of the pilot test reported on.

Thus, for example, in the header of the letter sent in June 2018 the following sentence: "As we recently announced in the letter sent by this Commonwealth, on May 28 we started the informative actions with reason for the pilot test of the new container system."

Likewise, the heading of the letter sent in July 2018 included:

"As we recently announced to you in a previous letter sent by this Commonwealth, on June 18 began in ***LOCALIDAD.1 the pilot test of the new container system with magnetic card opening."

Eighth: In the communication sent by the President of the MCP in December 2018 it indicated, among other extremes:

"With the information available at this time, it can be confirmed that the new opening system is offering encouraging results: in the case of ***LOCATION.1 63% of the Matter is being properly deposited Organic generated, which represents an important advance with respect to 18% with the the pilot experience began.

In the coming weeks we will send you information with the details of openings registered at your address or establishment, and with those points of improvement in which you can advance in the event that proper use is not made of The containers."

Ninth: The communications sent by the MCP outlined in the proven facts above and the "Selective waste collection cards" linked to the addresses that were delivered to the neighbors of the areas in which it was launched the aforementioned pilot test did not include the information indicated in article 14 of the GDPR.

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FOUNDATIONS OF LAW

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By virtue of the powers that articles 55.1 and 2, 57.1 and 58.2.b) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data, (hereinafter RGPD), recognize each control authority, and as established in arts. 47, 48.1, 77.1.c) and 2 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Articles 1 and 2.1 of the RGPD provide the following:

"Article 1. Object

1. This Regulation establishes the rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to data protection personal.

3. The free movement of personal data in the Union may not be restricted or prohibited for reasons related to the protection of persons regarding the processing of personal data.

Article 2. Material scope of application

1. This Regulation applies to the treatment in whole or in part automated processing of personal data, as well as the non-automated processing of data personal content or intended to be included in a file.”

For these purposes, it is recalled that article 4 of the RGPD, under the rubric “Definitions”, provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity

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physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out about personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;”

Thus, in accordance with these definitions, it constitutes data processing of identifiable natural persons the inclusion of the postal address object of usage tracking along with a unique identifier number in each of the two magnetic cards delivered by postal address used (address or local) in the framework of the aforementioned pilot project, developed by the Commonwealth in two areas of the Region of Pamplona, in order to collect data at source on the use by citizens of the new waste containers for raw materials organic and rest installed to facilitate the achievement of recycling objectives marked in the Navarra Waste Plan.

So through the postal addresses included in the cards natural persons are identifiable, if any, required to pay the non-tax public patrimonial benefits,- condition attributed to rates for the provision of urban waste management services-, which by any title

homes, premises, establishments or centers for whose benefit or benefit that service is provided or arranged. service of a general and compulsory nature, and may even be identifiable natural persons who own the real estate and are obliged to make said payment when the beneficiaries of the service are not known.

live, occupy or enjoy

III

In this proceeding, the Commonwealth is accused of violating the

duty to inform provided for in article 14 of the RGPD, a precept that establishes:

“Article 14. Information that must be provided when the personal data is not
have been obtained from the interested party

1. When the personal data has not been obtained from the interested party, the

The data controller will provide you with the following information:

a) the identity and contact details of the person in charge and, where appropriate, of their
representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined, as well as the
legal basis of the treatment;

d) the categories of personal data in question;

e) the recipients or categories of recipients of the personal data,
in your case;

f) Where appropriate, the intention of the controller to transfer personal data to a
consignee in a third country or international organization and the existence or absence
of an adequacy decision by the Commission, or, in the case of transfers
indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

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reference to adequate or appropriate safeguards and means of obtaining a
copy of them or the fact that they have been lent.

2. In addition to the information mentioned in section 1, the person responsible for the
treatment will provide the interested party with the following information necessary to guarantee

Fair and transparent data processing with respect to the interested party:

a) the period during which the personal data will be kept or, when that

not possible, the criteria used to determine this period;

b) when the treatment is based on article 6, paragraph 1, letter f), the

Legitimate interests of the controller or a third party;

c) the existence of the right to request from the data controller access

to the personal data related to the interested party, and its rectification or deletion, or the

limitation of its treatment, and to oppose the treatment, as well as the right to

data portability;

d) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent before its withdrawal;

e) the right to file a claim with a supervisory authority;

f) the source from which the personal data comes and, if applicable, if they come from

from publicly accessible sources;

g) the existence of automated decisions, including the preparation of

profiles, referred to in article 22, sections 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

anticipated consequences of said treatment for the interested party.

3. The data controller will provide the information indicated in the

sections 1 and 2:

a) within a reasonable period of time, once the personal data has been obtained, and

within one month at the latest, taking into account the specific circumstances in which

that said data is processed;

b) if the personal data is to be used for communication with the

concerned, at the latest at the time of the first communication to said

interested, or

c) if it is planned to communicate them to another recipient, at the latest at the time

in which the personal data is communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the

personal data for a purpose other than that for which it was collected,

will provide the interested party, before said further treatment, information about that

other purpose and any other pertinent information indicated in section 2.

5. The provisions of sections 1 to 4 shall not apply when and in the

extent to which:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes a

disproportionate effort, in particular for processing for archival purposes in

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public interest, scientific or historical research purposes or statistical purposes, to

Subject to the conditions and guarantees indicated in article 89, section 1, or in the

insofar as the obligation referred to in paragraph 1 of this article may

disable or seriously impede the achievement of the objectives of such treatment. In

In such cases, the person in charge will adopt adequate measures to protect the rights,

liberties and legitimate interests of the interested party, including making public the

information;

c) the obtaining or communication is expressly established by the

Law of the Union or of the Member States that applies to the person responsible for the treatment and that establishes adequate measures to protect the legitimate interests of the interested party, or

d) when the personal data must remain confidential

on the basis of an obligation of professional secrecy regulated by the Law of the Union or of the Member States, including an obligation of secrecy of a nature statutory.”

Said precept must be related to the provisions of article 12 of the same Regulation, which in section 1 establishes the following:

“Article 12. Transparency of information, communication and modalities of exercise of the rights of the interested party.

1. The person responsible for the treatment will take the appropriate measures to facilitate the interested all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by

When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.”

For its part, article 11 of the LOPDGDD, under the heading “Transparency and information to the affected party”, in its section 3 determines that:

“3. When the personal data had not been obtained from the affected party, the responsible may comply with the duty of information established in article 14 of Regulation (EU) 2016/679, providing the aforementioned basic information in the previous section, indicating an electronic address or other means that allows easy and immediate access to the rest of the information.

In these cases, the basic information will also include:

- a) The categories of data subject to treatment.
- b) The sources from which the data came.”

According to section 2 of the aforementioned article 11 of the LOPDGDD, the basic information referred to in section 3 of the same article must, at the minus, contain:

"two. (...)

- a) The identity of the data controller and his representative, in his case.
- b) The purpose of the treatment.

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- c) The possibility of exercising the rights established in articles 15 to 22 of Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.

IV

Starting from the fact that in the previous Basis of Law II it has been

justified that, on the dates in which the aforementioned pilot test was developed, the MCP carried

carry out a treatment of personal data consisting of including in the cards magnetic fields to be tracked the postal addresses of natural persons who were easily identifiable, it is estimated that the MCP is responsible for such treatment according to the content of the Magnetic Cards delivered to the neighbors of the postal addresses included in the same and that, in turn, endorses the information provided by the President of the MCP to said neighbors and neighbors in the communications that he addressed to them between May and December 2018 on the occasion of the implementation and development of the pilot project associated with the new container system (Proven Facts Fourth, Seventh and Eighth), documentation, in which, on the other hand, there is no mention of the SCPSA.

Based on the foregoing, it is also proven in the procedure that during the implementation of the aforementioned pilot test, the MCP did not provide the interested persons affected by said treatment the information regarding the extremes indicated in article 14 of the RGPD that must be provided to them when personal data have not been obtained from them, as has happened in this case in which the information of the postal addresses treated in the test

The pilot came from the cadastral units of the MCP that appear in the Register of the Territorial Wealth of Navarra, and which are subject to invoicing of the waste rate, according to the price ordinance of that service (Proven Fact Fifth).

In this way, the MCP failed to comply with the duty of information that was required by not providing in the communications addressed to the interested parties or in the cards distributed to them for the opening of containers the information relative to the extremes indicated in article 14 of the aforementioned RGPD.

Duty that could have been fulfilled by providing in said documents the information

basic indicated in sections 2 and 3 of article 11 of the LOPDGDD and indicating an electronic address or other means that would allow access in a simple and immediately to the rest of the information.

Consequently, the MCP, in its capacity as data controller carried out with the personal data used in the pilot test developed to implement a new card opening system for material containers organic and the rest, has not shown the diligence that was required to facilitate interested parties affected by this treatment the information outlined in the article 14 of the RGD, thus violating their right to be informed of the aspects outlined in said precept, since the personal data used

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had not been obtained from the interested parties affected by the treatment studied.

v

By virtue of the provisions of article 58.2 of the RGD, the Spanish Agency of Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Sections b), d) and i) of article 58.2 of the RGD, "Powers", provide the

Next:

“2 Each supervisory authority shall have all of the following powers corrections 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;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

For the purposes of determining the sanction that could be associated with the conduct described, the following precepts must be taken into account:

Article 83 of the RGPD, under the heading “General conditions for the imposition of administrative fines”, establishes in section 5.b) that:

"5. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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:

(...)

b) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 72.1.h) of the LOPDGDD, under the heading "Infringements considered very serious", provides:

"1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

(...)

h) The omission of the duty to inform the affected party about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the Regulation

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(EU) 2016/679 and 12 of this organic law.”

In parallel, article 83.7 of the RGPD establishes that:

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 organizations

public authorities established in that Member State.

In this sense, sections 1.c), 2, 4 and 5 of article 77 of the LOPDGDD, under

the heading “Regime applicable to certain categories of responsible or

data processors”, establish the following:

“1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

(...)

c) The General Administration of the State, 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

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.”

"4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions to be

refer to 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.”

In accordance with the foregoing, the treatment carried out by the MCP during the

development of the pilot test constitutes an infringement of the provisions of article 14 of the

RGPD, typified in article 83.5.b) of the aforementioned legal text and qualified as very

serious for prescription purposes in article 72.1.h) of the LOPDGDD, and may be

sanctioned with a warning, in accordance with the provisions of article 58.2.b) of the

RGPD in its relationship with the provisions of article 77.1.c) and 2 of the LOPDGDD.

SAW

In this case, the MCP in its brief of allegations to the initial agreement

communicated that it had “resolved to adopt the necessary measures to comply with

to the obligations indicated in article 14 of the General Protection Regulation

of Data and therefore will inform, through its Management Company, Services of the

Region of Pamplona, S.A. to all interested parties on the ends indicated in

the aforementioned article 14 of the RGPD.”, adding that “Given the impossibility that this information appears on the card already distributed in the pilot test, the information is

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will be carried out by means of communication to the interested parties.”, also noting that will provide this Agency with "the means of proof accrediting the aforementioned communications, once they are made.”

In view of which, the Instructor of the procedure considered it convenient propose to the Director of the AEPD the application of the provisions of article 58.2.d) of the RGPD, proposing to order the MCP not only the accreditation of the shipment of the aforementioned communications to the interested parties affected by the pilot test with the information related to the requirements contemplated in article 14 of the RGPD, but also carrying out the necessary actions to adapt the treatments similar to the one studied in accordance with the provisions of the GDPR, which has resulted violated. So that in the event that the container opening system by magnetic card that includes personal data that has not been obtained from the interested parties becomes implanted throughout the Commonwealth certifies the establishment of the necessary mechanisms to comply with the duty of inform collected in the aforementioned article 14 of the RGPD.

7th

After notification of the proposed resolution, the MCP alleged having decided to adopt, through the SCPSA, the measures that are point out, and whose communication was carried out, "before carrying out the communications and

to implement the measures planned in the future”:

a)

Informative communication to be sent to interested persons

affected by the pilot test.

In the attached copy, dated February 2020, headed with the

MCP logo and signed by its President, appears, among others, the following

information:

“In June 2018,

(Pamplona) and ***LOCATION.2

(Baerrioplano) were the two areas in which the pilot experience began in de

implementation of the new waste collection system, which incorporates the opening of

the organic matter (Brown) and rest (grey) containers by means of a card

magnetic identified with the postal address on the outside.

***LOCATION.1

In relation to the data recorded by these cards and their treatment

later, the Spanish Data Protection Agency has indicated the need to

Provide users with the information that we reproduce below:

<<Each of the cards delivered incorporates a device that allows

record the number of openings of the different containers, data that will be

associated with the postal address indicated on the outside of the card.

As they are data, sometimes relating to an identified natural person or

identifiable, the information obtained regarding the opening of containers will be

treated in accordance with the personal data protection regulations.

All data collected as a result of the use of these

cards will be treated under the responsibility of Services of the Comarca de

Pamplona S.A. (SCPSA), to analyze the use of containers in the

fractions of organic matter and rest, and specifically to know their degree of use in order to achieve the regulatory objectives of application, as well as for the carrying out information activities, promotion of the service and its results.

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Likewise, we inform you that you can exercise your rights of access, rectification, deletion and the rest of the rights that assist you, by contacting the Responsible for the Treatment through the email protecciondatos@mcp.es.

you can check

Additional Information

[>>>www.mcp.es/fichadatosresiduos](http://www.mcp.es/fichadatosresiduos)

about privacy in

The objective of complying with European legislation on waste and of achieving an environmentally sustainable region committed to the fight against change

Climate change is a collective effort that requires the contribution of each neighbor and each neighbor. (...)"

b)

To comply with the duty to inform contained in article 14 of the RGPD in the implementation throughout the Commonwealth of the new system for opening containers by card, have foreseen the introduction of the following information basic on data protection in the opening cards, with indication of a electronic address that allows easy and immediate access to the rest of the information:

Responsible: Services de la Comarca de Pamplona, S.A.

You can exercise your rights at protecciondatos@mcp.es

Additional information at www.mcp.es/fichadatosresiduos.

It is argued that due to the limited space available to include in the aforementioned card all the basic information provided for in the applicable regulations, has been willing to provide a minimum information that can be expanded through the electronic address indicated, which will contain the additional information on protection of data, whose content is indicated in the file of Waste Cards.

c)

Waste card file, hosted at the url to which the letter refers information www.mcp.es/fichadatosresiduos, (hereinafter, the card).

In the copy attached with the additional information in question, it is stated

The following sections are completed:

Who is responsible for the processing of your data?, where it is identified as such to SCPSA, whose postal address and email are provided. Also

The Data Protection Delegate is identified, providing his address and email electronic.

For what purpose do we treat your data?, in which it is stated that "The data of opening of the containers for each of the cards will be treated to analyze the use of containers in the fractions of organic matter and rest and in concrete to know its degree of use in order to achieve the regulatory objectives of application, as well as for carrying out activities to promote the service and Your results.

For how long do we keep your data?

What is the legitimacy for the treatment of your data?

To which recipients will your data be communicated?

What are your rights when you provide us with your data?, where the rights of access, rectification, deletion, limitation of treatment, opposition and portability. It is added that "If you consider that the data has not been correctly

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treated, you can inform us through the email address

email protecciondatos@mcp.es and later go to the authority of control: Spanish Data Protection Agency."

"How did we obtain your data?

Of the data on the use of the card by the interested party.

From the registry of Territorial Wealth approved by Foral Law 12/2006, of 21 november.

The types of data that are processed are:

IDs. Name and surnames, associated postal address.

Of transactions. Data on the use of cards linked to the address

Postcard."

In view of the content of said documents, the following can be observed:

- Regarding the informative communication to be sent to interested persons

affected by the pilot test, the following statement "In relation to

with the data recorded by these cards and their subsequent treatment, the Agency

Spanish Data Protection has pointed out the need to provide users and

users the information that we reproduce below:", whenever it is

uncertain that the AEPD has required the textual provision of the information given

by reproduced in the quoted text, which is proved by the simple reading

of the acts involved in the procedure.

- Regarding the additional information on data protection accessible to

through the url www.mcp.es/fichadatosresiduos that would appear included in the cards,

the following irregularities are detected in relation to the information that must be

be provided in accordance with the provisions of article 14 of the RGPD:

Not stating that the personal data subject to treatment have been

obtained from the interested parties, however, in the section on the time of

conservation of the same, it is noted that "The personal data provided is

will keep (...)"

Regarding the categories of personal data or types of data that are processed

the treatment of name and surnames linked to the postal address that

appears on the cards, when in the documentation contained in the procedure

It only consists of the treatment of the postal address as personal data object of

treatment on these cards.

In relation to the information referred to that "If you consider that the data does not

have been correctly treated, you can inform us through the

email address protecciondatos@mcp.es and then go to

before the control authority: Spanish Agency for Data Protection.", it is observed

that article 14.2.e) is limited to indicating the duty to inform about "the right to

file a claim with a control authority" without introducing any type of

condition prior to the exercise of that right.

viii

Confirmed the existence of the infringement of the duty to inform provided for in the

Article 14 of the RGPD by the MCP during the development of the project

analyzed, and in view of the irregularities observed in the documentation

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reviewed, it is considered appropriate to apply the provisions of article 58.2.d) of the RGPD, ordering the MCP to eliminate from the informative communication to be sent to the people stakeholders affected by the pilot test the statement contained therein referred to the Spanish Data Protection Agency.

Likewise, it is considered appropriate to order the MCP to carry out the necessary actions so that the processing of personal data included in the magnetic container opening cards to be implanted throughout the Commonwealth carries with it that, on the part of the person in charge of the treatment, adapt the information to be included in the layered information system that has been alleged was going to be used by the person in charge of the treatment to the requirements contemplated in the aforementioned precept, which will require the correction of the informative irregularities made manifest in the previous Foundation of Right in relation to additional information. (Waste Card File)

Such measures must be adopted within ONE MONTH, computed from the day following the day on which the resolution of the procedure is notified, must be accredited by the claimed compliance within the same period by means of the provision of documentation or any other means of proof valid in law that allows to verify its adoption and implementation in an irrefutable manner.

Therefore, in accordance with the applicable legislation and valued the circumstances concurrent in the infraction whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO IMPOSE the PAMPLONA REGION ASSOCIATION, with NIF P3112070B, in accordance with the provisions of article 58.2.b) of the RGPD, a sanction of warning for an infringement of Article 14 of the RGPD, typified in the article 83.5.b) of the RGPD.

SECOND: TO ORDER the COMMUNITY OF THE REGION OF PAMPLONA, with NIF P3112070B, under the provisions of article 58.2.d) of the RGPD, the adoption of the measures indicated in Legal Basis VIII for the purposes of adapt the information to be offered to the provisions of article 14 of the RGPD.

THIRD: NOTIFY this resolution to the COMMONWEALTH OF THE REGION OF PAMPLONA.

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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

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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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