

□ Procedure No.: PS/00298/2019

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., B.B.B., C.C.C. (hereinafter, the claimants) dated April 22,

2019 they filed a claim with the Spanish Data Protection Agency. The

claim is directed against GRUPO VALSOR Y LOSAN, S.L. with NIF B99163743 (in

later, the claimed one).

The reasons on which they base the claim are that in a purchase relationship of a

property, the claimed entity -real estate manager- provided in the contact emails of

various interested buyers, third party data.

Specifically, when initiating the procedures for the purchase of a home, A.A.A. received the

contract for the purchase of the property with the personal data of the married couple

BBB and C.C.C.

These facts were communicated by A.A.A. to B.B.B. and C.C.C. Presenting these to your

time your claim.

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 May 30, 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.

The respondent did not answer the request for information within a month from receipt of said notice.

THIRD: On November 29, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with 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 (hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in the article 83.5 of the RGPD.

FOURTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate www.aepd.es

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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

FIRST: The claimed entity -real estate manager- provided in the contact emails of various interested buyers, the data of third parties, when initiating the procedures for the home purchase, referred A.A.A. the purchase contract of the property with the data

personals of the marriage composed by B.B.B. and C.C.C.

SECOND: Transfer of this claim is notified to the claimed entity, to

proceed to its analysis, however, the respondent has not responded to said request for information.

FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and in the art. 47 and 48.1 of LOPDGDD.

II

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

For its part, article 5 of the RGDPD 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");

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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 of the application of the appropriate technical and organizational measures imposed by the this Regulation in order to protect the rights and freedoms of the data subject ("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

The facts denounced, that is, disseminating information by email of the claimants supposes 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 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;

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;

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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 (name, surnames, domicile), according to 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 GRUPO VALSOR Y LOSAN, S.L., with NIF B99163743, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a fine of €2,500.00 (TWO THOUSAND FIVE HUNDRED euros).

SECOND: NOTIFY this resolution to GRUPO VALSOR Y LOSAN, 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.

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

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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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