

□ Procedure No.: PS/00113/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure instituted by the Spanish Agency for the Protection of Data to the entity, SOLRAM T Y R S.L., with CIF.: B67216515, (hereinafter, "the entity ity claimed"), by virtue of the claim filed by D. AAA, (hereinafter, "the claimant"), and based on the following:

### BACKGROUND

FIRST: On 01/03/20, they have entered this Agency, an international claim put by the claimant), in which, among others, it indicates:

"You were notified on September 23 not to use or save my data with commercial purposes. On January 02, 2020, it was used again for advertising by "WhatsApp". He is told again and the next day he sends "WhatsApp" again commercially.

I request that my data be deleted and a sanction for not complying with the law and making me wasting my time. I have proof of everything said. The number from which

\*\*\*PHONE.1 And they contacted me on my number:

made the contact is:

\*\*\*PHONE.2".

Along with the written claim, the screenshots were provided where they appear various messages exchanged with the entity (person), claimed:

1.- Dated 09/23/19:

Message forwarded by "A.A.A." to the claimant with the following text:

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"Good afternoon, friends, take advantage of that day, everything will be at 50%":

In response to the previous message, the complainant sent the message:

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“Good afternoon, please do not send any advertising message again

as I have not authorized my number to be used for this purpose”

In reply to the previous message “A.A.A.” reply with:

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"OK thank you"

2.- Dated 01/02/20:

“A.A.A.” sends a new message to the claimant:

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“SOLHER we wish you a prosperous year and we thank you for your preference.

rence. @solher.es”.

In response to the previous message, the claimant answers:

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“On September 23, 2019, you were notified to delete our

data exercising RGPD right. We will proceed tomorrow to

file a complaint for non-compliance with said regulations.

In reply to the previous message “A.A.A.” write:

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"It's just a happy year, but if it hurts you... even right now it's-

It will be blocked”.

In response to the previous message there is the message:

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"It is a breach of the GDPR."

After the previous message "A.A.A.", send a new message with the text:

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"We invite you to the SOLHER sales WILL BE THIS SATURDAY, JANUARY 4, and

SUNDAY 5 FROM 12 AM TO 6 PM Follow us on our social networks

@solher.es @SOLHER.ec"

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes provided in the Article 37 of the aforementioned rule, or to these when they were not designated, was transferred side of the claim to the claimed person so that he proceeded to its analysis and die ra response to the complaining party and this Agency within a month. Thus, with faith On 12/09/20 and 01/13/21, two requests for information are sent to the person not claimed.

The notification is made electronically through notific@. According to this system of notification, there was an automatic rejection in the notification after the elapsed ten calendar days from its availability.

THIRD: In view of the reported facts and the evidence observed in the website, the Director of the Spanish Data Protection Agency, dated 03/17/21, agreed to initiate a sanctioning procedure against the entity claimed, by virtue of the powers established for violation of article 17 of the RGPD, regarding the lack exercise due diligence when removing the personal data of the claimant from its databases of data, with an initial fine of 3,000 euros.

SIXTH: Notification of the initiation agreement to the entity claimed on 03/28/21, no received in this Agency, no type of allegations to the initiation of file, in the

period granted for this purpose.

## PROVEN FACTS

1.- As stated in the claim, the claimant requested that it not be used or will save your data for commercial purposes. However, the request is ignored. city and continue to send you advertising messages. All this corroborated by the documentation statement filed with the claim.

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2.- In view of the facts set forth in the claim and the documents provided by the claimant, this Agency sent various information requests to the claimed entity that were never answered. There was also no response to initiation of the sanctioning file, by the entity, within the term granted for the purpose.

## FOUNDATIONS OF LAW

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Is competent to resolve this Sanctioning Procedure, the Director of the Agency Spanish Data Protection Agency, by virtue of the powers that article 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding to the Protection of Natural Persons with regard to Data Processing Personal and the Free Circulation of these Data (RGPD) recognizes each Authority of Control and, as established in arts. 47, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD).

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

Common of the Public Administrations, of October 2, 2015, onwards

LPACAP provides that:

“The initiation agreement must contain at least: (...)

f) Indication of the right to make allegations and to be heard in the procedure and

of the deadlines for its exercise, as well as an indication that, in case of not carrying out

allegations within the stipulated period on the content of the initiation agreement, it may

may be considered a resolution proposal when it contains a pronouncement

accurate about the imputed responsibility.”

In the present case, such requirements have been observed, since in the agreement of

At the beginning, it was warned of the provisions of article 64.2.f) of the LPACAP, it was specified

the presumed infraction committed together with its corresponding typification, is determined

the amount of the sanction according to the graduation criteria taken into account

based on the evidence obtained to that date, also informing of the

planned reductions on the amount fixed by virtue of the provisions of article

85 of the LPACAP.

In consideration of the foregoing and in accordance with the provisions of article

64.2.f) of the LPACAP, the initiation agreement is considered a Resolution Proposal,

since it contained a precise pronouncement about the imputed responsibility

tada and, after its notification in the form described in the antecedent of the fourth fact, the

claimed has not made allegations to the same within the period granted for such purposes.

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In the present case, the processing of personal data is denounced, after

ber requested the deletion of the same, from the databases of the claimed entity.

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Article 12 of the RGPD, on the exercise of the rights of the interested party, establishes the

Next:

1.- The person responsible for the treatment will take the appropriate measures to facilitate the

reviewed all information indicated in articles 13 and 14, as well as any communication

cation pursuant to articles 15 to 22 and 34 relating to treatment, concisely

clear, transparent, intelligible and easily accessible, with clear and simple language, in particular

cular any information directed specifically at a child. The information will be

requested in writing or by other means, including, if applicable, by electronic means.

When requested by the interested party, the information may be provided verbally, always

that the identity of the interested party be proven by other means.

2. The person responsible for the treatment will facilitate the interested party in the exercise of their rights in

under articles 15 to 22. In the cases referred to in article 11, paragraph 2,

The person in charge will not refuse to act at the request of the interested party in order to exercise their

rights under articles 15 to 22, unless you can show that you are not in

conditions to identify the interested party.

3. The data controller shall provide the interested party with information regarding their ac-

situations on the basis of a request under Articles 15 to 22, and, in any

In any case, within one month from receipt of the request. Said term

may be extended for another two months if necessary, taking into account the complexity

ity and number of requests. The person in charge will inform the interested party of any

of said extensions within a period of one month from receipt of the request, indicating

when the reasons for the delay. When the interested party submits the request by electronic, the information will be provided by electronic means whenever possible, to unless the interested party requests that it be provided in another way.

For its part, Article 17.1. of the RGPD, on the right of suppression ("the right to oblivion"), states that:

1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the deleting the deletion of personal data that concerns you, which will be obliged to delete personal data without undue delay when any of the following circumstances: a) the personal data is no longer necessary in relation to for the purposes for which they were collected or otherwise processed; 4.5.2016 L 119/43 Official Journal of the European Union EN b) the interested party withdraws the consent in which the treatment is based in accordance with article 6, paragraph 1, letter a), or article Article 9, paragraph 2, letter a), and this is not based on another legal basis; c) interest sado opposes the treatment in accordance with article 21, paragraph 1, and do not prevail other legitimate reasons for the treatment, or the interested party opposes the treatment according to article 21, paragraph 2; (...)"

The exposed facts suppose the violation of article 17.1 of the RGPD with respect to the Article 12 of the same Regulation, since the entity did not act diligently, by not remove the claimant's personal data from its databases.

For its part, article 72.1.k) of the LOPDGDD considers it very serious, for the purposes of prescription, "The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of the Regulation".

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This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction procedure, in order to set the amount of the penalty to be imposed on the price

In this case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The duration of the violation, taking into account the scope or purpose of the treatment operation in question, as well as the damages caused to the interested, (section a).

The facts object of the claim are attributable to a lack of diligence on the part of the respondent, (paragraph b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with res-

Regarding the infraction committed by violating the provisions of article 17 of the RGPD, allows setting a penalty of 3,000 euros, (three thousand euros).

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency data protection law,

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RESOLVE

FIRST: IMPOSE, on the entity, SOLRAM T Y R S.L., with CIF.: B67216515, a

penalty of 3,000 euros (three thousand euros), for violation of article 17 of the RGPD, res-

Regarding the lack of diligence in deleting the personal data of the claimant



of your databases.

SECOND: NOTIFY this resolution to the entity, SOLRAM T Y R S.L. and to claimant on the outcome of the claim.

Warn the sanctioned party that the sanction imposed must be made effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-Public Administrations (LPACAP), within the voluntary payment period indicated in article 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, me-upon deposit in the restricted account number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank, S.A. or otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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In accordance with the provisions of article 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is will make public, once it has been notified to the interested parties. The publication is made will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the established in articles 112 and 123 of the LPACAP, the interested parties may interpose have, optionally, an appeal for reconsideration before the Director of the Spanish Agency of Data Protection within a period of one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Contentious-administrative Chamber of the National High Court, in accordance with the provisions placed in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. Of being In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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