

□ Procedure No.: PS/00417/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A., and B.B.B. (hereinafter, the claimants) dated May 21 and December 4,
November 2019 respectively filed a claim with the Spanish Agency
Data Protection.

Your claims are directed against GLOVOAPP23, S.L. with NIF B66362906 (in
later, the claimed one).

The reasons on which they base their claim are that they have not appointed a Delegate of
Data Protection (hereinafter DPD) to which to direct the claims.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection of
Data proceeded to carry out the following actions:

On July 2, 2019, the first claim was transferred to the claimed the claim
submitted for analysis and communication to the claimant of the decision adopted
regard.

The respondent responds to the transfer of the claim stating that there are no
Among the assumptions of art. 37 RGPD nor that of 34 LOPGDD, with which they do not have
obligation to appoint a DPD.

THIRD: On January 13, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD.

FOURTH: Notified on January 22, 2020 of the aforementioned initiation agreement, the claimed
On January 31, 2020, he presented a brief of allegations in which, in summary, he stated

that your personal data processing activity is exempt from the obligations established in articles 37 RGPD and 34 LOPGDD, and, therefore, exempt from the obligation to appoint a Data Protection Officer.

However, it alleges that at no time has it denied the existence of a body that dedicated, in the context of the organization, to the performance of functions that are of a Data Protection Delegate, since on June 8, 2018, it constituted the Data Protection Committee, in order to cover the technical areas of the company and on the same date, a Data Protection Subcommittee was also appointed, in order to compliance with the authorization of the Board of Directors to establish said committee.

It concludes by stating that the Data Protection Committee carries out the functions own of a Data Protection Delegate described in article 39 of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

FIFTH: On February 25, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/06131/2019, as well as the documents provided for the claimed.

SIXTH: On February 26, 2020, a resolution proposal is formulated, proposing that the claimed entity be sanctioned for an infraction of article 37 of the RGPD, typified in article 83.4 of the RGPD.

SEVENTH: On March 13, 2020, the respondent submits a brief of allegations to said proposal, stating that on May 23, 2019, the formal appointment of C.C.C. as Data Protection Delegate of the claimed party, but not

it has been until February 2020 when it has been decided to make the appointment official in front of third parties through their registration in the DPD Registry of the AEPD, since the Committee of Data Protection, the Subcommittee and the Legal Department have been carrying out these functions effectively and with full guarantee of the rights and freedoms of the interested.

PROVEN FACTS

FIRST: The respondent has not appointed a Data Protection Officer.

SECOND: The respondent alleges that his personal data processing activity is exempt from the obligations established in articles 37 RGPD and 34 LOPGDD, but which, however, has a Data Protection Committee, which has carry out the functions of a Data Protection Delegate described in the article 39 of the RGPD.

THIRD: It has been verified that the claimed, after starting on January 13, 2020 the present sanctioning procedure, communicated on January 31, 2020 to the Agency Spanish Data Protection Officer, the appointment of its Data Protection Delegate Data.

FOUNDATIONS OF LAW

Yo

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

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

Article 37 of the GDPR establishes the following:

II

"1. The person in charge and the person in charge of the treatment will designate a delegate of data protection provided that:

b) the principal activities of the controller or processor consist of

processing operations that, due to their nature, scope and/or purposes, require regular and systematic observation of data subjects on a large scale,”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/5

In this sense, the LOPDGDD determines in its article 34.1 and 3: “Appointment of a data protection officer

1. “Those responsible and in charge of processing must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation (EU) 2016/679

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, the appointments, appointments and dismissals of the data protection delegates both in the cases in which they are obliged to his appointment as in the case in which it is voluntary.”

III

It is considered that the lack of designation of DPO, when making the claimed a processing of personal data on a large scale, gives rise to the violation of article 37.1b) of the RGPD in relation to article 34 of the LOPDGDD.

In this sense, the respondent states that in his organization he has the Data Protection Committee, which performs the functions of a Delegate of Data Protection described in article 39 of the RGPD.

However, at the time the sanctioning procedure was initiated, upon accessing to the website of the claimed party by following the link, <https://glovoapp.com/en/legal/privacy>,

no mention was made of the Delegate for Data Protection of the claimed party, as shown guarantor of compliance with the data protection regulations of organizations.

However, it has been verified that the respondent communicated on January 31, 2020 to the Spanish Agency for Data Protection, the appointment of its Delegate of Data Protection, communication that was signed and notified by this Agency to the claimed on February 18, 2020.

IV

Article 83.7 of the RGPD establishes that: "Without prejudice to the corrective powers of the supervisory authorities under Article 58(2), each Member State may establish rules on whether and to what extent fines can be imposed administrative authorities and public bodies established in that State member"

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;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

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;

v

Article 73 of the LOPDDG indicates: "Infringements considered serious

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:"

v) Failure to comply with the obligation to appoint a data protection delegate data when their appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law."

The art. 83.4 of the RGPD establishes that "violations of the provisions following will be sanctioned, in accordance with section 2, with administrative fines of 10 EUR 000,000 maximum or, in the case of a company, an amount equivalent to 2% maximum of the overall annual total turnover of the financial year above, opting for the highest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a 39, 42 and 43"

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, the number of interested parties affected is an aggravating circumstance.

states, since the respondent performs a processing of personal data on a large scale.

by the number of clients it has (article 83.2 a)

☐ Basic personal identifiers are affected (article 83.2 g)

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE GLOVOAPP23, S.L., with NIF B66362906, for an infringement of the article 37 of the RGPD, typified in article 83.4 of the RGPD, a fine of €25,000 (twenty five thousand euros).

SECOND: NOTIFY this resolution to GLOVOAPP23, S.L.

THIRD: Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Real

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

5/5

Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17

December, 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 Spanish Agency of Data Protection at Banco CAIXABANK, S.A. Otherwise, it will its collection in 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

voluntary 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 payment term will be

until the 5th of the second following month or immediately after.

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 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 one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

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 Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es