

936-031219

□ Procedure No.: PS/00286/2020

RESOLUTION R/00445/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00286/2020, instructed by the Agency
Spanish Data Protection Agency to BRONSON BAR, S.L., given the complaint
presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On September 24, 2020, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against BRONSON BAR,
SL (hereinafter, the claimed party), through the Agreement that is transcribed:

<<

Procedure No.: PS/00286/2020

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of
Data and based on the following

FACTS

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 01/29/2020 filed
claim before the Spanish Data Protection Agency. The claim is
directed against BRONSON BAR, S.L. with NIF B99428740 (hereinafter, the claimed).

The reasons on which the claim is based are, in short, that the entity claimed has
used the back of your contract to take inventory; later the aforementioned
document has been exposed in the restaurant where the affected worked. Next to the
claim provides a whatsapp conversation and a photograph of the document
exposed.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/17

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 03/15/2020, the claim submitted was transferred to the claimant for analysis

and communication to the claimant of the decision adopted in this regard. Likewise, it

required so that within a month it would send to the Agency determined

information:

- The decision adopted regarding this claim.
- In the event of exercising the rights regulated in articles 15 to 22 of the RGPD, accreditation of the response provided to the claimant.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents, dates of implementation and controls carried out to check its effectiveness.
- Any other that you consider relevant.

The Agency does not record a response to the transfer of the claim.

THIRD: On 09/01/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGDPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/17

Article 58 of the RGDPD, Powers, states:

II

"two. Each supervisory authority will have all of the following powers
corrections listed below:

(...)

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

Instead of the measures mentioned in this section, according to the
circumstances of each particular case;

(...)"

In the first place, article 5 of the RGDPD establishes the principles that must be
govern the processing of personal data and mentions among them that of "integrity and
confidentiality".

The cited article states that:

"1. The personal data will be:

(...)

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

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

(...)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/17

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

III

The documentation in the file offers clear indications that the claimed, violated article 5 of the RGD, principles related to treatment, in relation to article 5 of the LOPGD, duty of confidentiality, when using the claimant's contract exposing it in the restaurant where the affected worked, being the personal data accessible to third parties.

This duty of confidentiality, previously the duty of secrecy, must be understood that its purpose is to prevent leaks of data not consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not only to the person in charge and in charge of the treatment but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

5/17

of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

“Infringements considered very serious:

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after 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.

(...)"

Second, it should be noted that the security of personal data

It is regulated in articles 32, 33 and 34 of the RGPD.

v

Article 32 of the RGPD "Security of treatment", establishes that:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a) pseudonymization and encryption of personal data;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/17

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to

taking into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

The violation of article 32 of the RGPD is typified in the article 83.4.a) of the aforementioned RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/17

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(...)"

For its part, the LOPDGDD in its article 71, Violations, states that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679 are 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:

(...)

g) The violation, as a consequence of the lack of due diligence, of the technical and organizational measures that have been implemented in accordance to what is required by article 32.1 of Regulation (EU) 2016/679".

(...)"

The facts revealed imply the violation of the measures technical and organizational by enabling the display of the claimant's contract where contain your personal data with the consequent lack of diligence by the responsible.

SAW

The GDPR defines personal data security breaches as

"all those violations of security that cause the destruction, loss or

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/17

accidental or unlawful alteration of personal data transmitted, stored or processed otherwise, or unauthorized communication or access to such data”.

From the documentation in the file, there are clear indications of that the claimed party has violated article 32 of the RGPD, when an incident of security allowing access to your personal data, display of the contract of claimant's work, allowing third parties access to them.

It should be noted that the RGPD in the aforementioned provision does not establish a list of the security measures that are applicable according to the data that is object of treatment, but it establishes that the person in charge and the person in charge of the treatment will apply technical and organizational measures that are appropriate to the risk that the treatment entails, taking into account the state of the art, the costs of application, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and proportionate to the detected risk, pointing out that the determination of the measures technical and organizational information must be carried out taking into account: pseudonymization and encryption, the ability to ensure the confidentiality, integrity, availability and resiliency, the ability to restore availability and access to data after a incident, verification process (not audit), evaluation and assessment of the effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security, particularly taking into account the risks presented by the processing of data, such as consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data and that could cause damages physical, material or immaterial.

In this same sense, recital 83 of the RGPD states that:

“(83) In order to maintain security and prevent the treatment from violating the provided in this Regulation, the person in charge or the person in charge must evaluate the risks inherent to the treatment and apply measures to mitigate them, such as www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

9/17

encryption. These measures must guarantee an adequate level of security, including confidentiality, taking into account the state of the art and the cost of its application regarding the risks and the nature of the personal data that must be protect yourself. When assessing the risk in relation to data security, take into account the risks arising from the processing of personal data, such as the accidental or unlawful destruction, loss or alteration of personal data transmitted, stored or otherwise processed, or the communication or access is not authorized to said data, susceptible in particular to cause damages physical, material or immaterial.

In the present case, as evidenced by the facts and within the framework of the investigation file E/02303/2020 the AEPD transfer to the claimed on 03/15/2020, the claim submitted for analysis requesting the contribution of information related to the claimed incidence, without it having been received in this body any response.

The responsibility of the claimed party is determined by the bankruptcy of security revealed by the claimant, since it is responsible for taking decisions aimed at effectively implementing technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk to ensure the confidentiality of the data, restoring its availability and preventing access to them in the event of a physical or technical incident. However, from the The documentation provided shows that the entity has not only breached this obligation, but also the adoption of measures in this regard is unknown, despite of having notified him of the claim filed.

In accordance with the foregoing, it is estimated that the respondent would be allegedly responsible for the infringement of the RGPD: the violation of article 32, infraction typified in its article 83.4.a).

IV

In order to establish the administrative fine to be imposed, observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which point out:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/17

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42, and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/17

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

data.

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case for the infringement typified in article 83.5.a) of the RGPD for which the defendant is held responsible, in an initial assessment, it is estimated concurrent the following factors:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/17

The scope in a local environment of the treatment carried out by the entity claimed.

The number of affected is limited to a single person, the claimant.

The measures adopted by the respondent to prevent him from being produce similar incidents, since before the informative requirement of the Agency has not responded to it, which in turn affects the absence of cooperation with the supervisory authority in order to remedy the infringement and mitigate its possible adverse effects.

There is no evidence that the entity had acted maliciously, although the performance reveals a serious lack of diligence.

The claimed entity is a small business.

Secondly, for the purpose of setting the amount of the penalty to be imposed in the present case for the infringement typified in article 83.4.a) of the RGPD of the that the defendant is responsible, in an initial assessment, they are estimated concurrent the following factors:

The scope in a local environment of the treatment carried out by the entity claimed.

The number of affected is limited to a single person, the claimant.

The technical and organizational measures adopted by the the claimed to avoid similar incidents, since before the information request from the Agency has not responded to it, which in turn affects the lack of cooperation with the control authority in order to put remedy to the infraction and mitigate the possible adverse effects of the same.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/17

There is no evidence that the entity had acted maliciously, although the performance reveals a serious lack of diligence.

The claimed entity is a small business.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE against BRONSON BAR, S.L. with NIF B99428740, for the alleged infringement of article 5.1.f) of the RGPD, typified in the article 83.5. a) of the RGPD.

SECOND: START A SANCTION PROCEDURE against BRONSON BAR, S.L. with NIF B99428740, for the alleged infringement of article 32.1 of the RGPD, typified in the article 83.4. a) of the RGPD.

THIRD: APPOINT B.B.B. and, as secretary, to C.C.C.,

indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirector for Data Inspection during the investigations phase.

FIFTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond for both infractions would be 2,000 euros (two www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

14/17

thousand euros), €1,000 for infringement of article 5.1.f) of the RGPD and €1,000 for infringement of article 32.1 of the RGPD, without prejudice to what results from the instruction.

SIXTH: NOTIFY this agreement to BRONSON BAR, S.L. with NIF

B99428740, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document.

Likewise, in accordance with articles 64.2.f) and 85 of the LPACAP, you are informed that, if it does not make allegations in time to this initial agreement, it may be considered a motion for a resolution.

You are also informed that, in accordance with the provisions of article 85.1

LPACAP, may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement which will entail a reduction of 20% of the total sanction to be imposed in the present procedure, equivalent in this case to 400 euros. With the application of this reduction, the sanction would be established at 1,600 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, in accordance with the provisions of article 85.2 LPACAP, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 400 euros.

With the application of this reduction, the sanction would be established at 1,600 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 1,200 euros.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/17

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (1,600 euros or 1,200 euros), in accordance with the provisions of the Article 85.2 referred to, we indicate that you must make it effective by entering the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

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

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

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

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Director of the Spanish Data Protection Agency

Sea Spain Marti

>>

: On September 29, 2020, the claimant has proceeded to pay

SECOND

of the sanction in the amount of 1,200 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

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

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

16/17

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

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

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

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

"Termination in sanctioning procedures" provides the following:

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

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

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction. The reduction percentage provided for in this section may be increased regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00286/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to BRONSON BAR, S.L.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es