

Procedure No.: PS/00214/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00214/2019, instructed by the Spanish Agency for

Data Protection to the FULL SERVICE COMPANY EURO DINER, S.L.

(EURODINER.ES) (hereinafter the defendant), having regard to the complaint filed by the

GENERAL SUBDIRECTORATE OF COORDINATION, QUALITY AND COOPERATION OF

CONSUMPTION of the MINISTRY OF HEALTH, CONSUMPTION AND SOCIAL WELFARE (as

successively the claimant), and based on the following

### BACKGROUND

FIRST: On 11/14/2018, the claimant filed a written claim before

the Spanish Agency for Data Protection. The letter is directed against the defendant,

with NIF B73192825. The reasons on which he bases his writing are in synthesis: that in the

course of a sweep carried out by the Internet Consumption Observatory

had verified that the website: <https://eurodiner.es>, which also contains

form for data collection, does not comply with current regulations on

of data protection.

Provides screenshots of the web page, where the policy of

privacy as well as form.

SECOND: In view of the facts denounced and the documents provided by

the claimant of which this Agency has become aware, the Subdirectorate

General Data Inspection proceeded to carry out actions for the

clarification of the facts.

On 02/05/2019, reiterated on 02/18/2019, the claimant was transferred the

claim submitted for analysis and communication to the complainant of the

decision made in this regard. Similarly, he was required so that within a

month send the Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- 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.
- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

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On 05/23/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

The respondent has not responded to any of the requirements formulated by the Spanish Agency for Data Protection.

THIRD: On 07/05/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure  
Common Administrative Law of Public Administrations, which in section f)  
establishes that in the event of not making allegations within the period established on the  
content of the initiation agreement, it may be considered a proposal for  
resolution when it contains a precise statement about the responsibility  
imputed, reason why a Resolution is issued.

FIFTH: Of the actions carried out in this proceeding, they have been  
accredited the following:

#### PROVEN FACTS

FIRST: On 11/14/2018 it has entry in the Spanish Agency for the Protection of  
Written data from the claimant stating that in the course of a sweep  
carried out by the Internet Consumption Observatory, it is found that the site  
web: <https://eurodiner.es>, which also contains a form for data collection,  
does not comply with current regulations on data protection.

SECOND: There is a query to the Central Mercantile Registry of the Eurodiner entity that  
habitually acts in the negotiation or formalization of typical operations of the  
activity of a credit institution, in the name and on behalf of the latter, with the  
Credit Institution Agent.

THIRD: A copy of the privacy policy included on the page has been provided.  
web <https://eurodiner.es>, containing a simple attached form to fill in  
of data collection, without appearing or there being any reference to the information that has been  
to be provided to the interested parties in accordance with the provisions of the RGPD.

#### FOUNDATIONS OF LAW

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

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

## II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what results of instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attributes such competence, indicating the possibility that the alleged perpetrator can voluntarily acknowledge its responsibility, with the effects provided for in the

article 85.

e) Provisional measures that have been agreed by the body

competent to initiate the sanctioning procedure, without prejudice to those

may adopt during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the

procedure and the deadlines for its exercise, as well as an indication that, in the event

not to carry out

allegations within the stipulated period on the content of the agreement

of initiation, it may be considered a resolution proposal when it contains a

precise statement about the imputed responsibility.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase

later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

Article 13 of the RGPD establishes the information that must be provided to the

interested at the time of collecting your data, establishing the following:

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"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

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 and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union EN

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

legitimate interests of the person in charge or of a third party;

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

third country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when not

possible, the criteria used to determine this period;

b) 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, or to oppose the treatment, as well as the right to

data portability;

c) 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 prior to its withdrawal;

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

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

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4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

The facts revealed are specified in the absence of adaptation

of the privacy policy of the website <https://eurodiner.es> to current regulations

regarding the protection of personal data, specifically, there is no

any information in the sense indicated in article 13 of the RGPD.

The website <https://eurodiner.es> also contains a simple form for

the collection of user data in which no reference is made to the

compliance with the provisions of article 13 of the aforementioned RGPD, in the

sense of determining the identity of the controller, the purposes for which

the data will be allocated, the rights that the interested party can exercise before the

responsible etc

#### IV

Article 83.5. b) of the RGPD, considers that the infringement of “the rights of

those interested in accordance with articles 12 to 22”, is punishable, in accordance with the

“with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation,

administrative fees of €20,000,000 maximum or, in the case of a company, a

amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates for prescription purposes: "Infringements

considered very serious:

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



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

(...)"

However, article 58.2 of the REPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

(...)"

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The RGPD, without prejudice to the provisions of its article 83, contemplates in its

article 58.2 b) the possibility of going to the warning to correct the treatments

personal data that do not meet your expectations.

In the case at hand, it has been proven that the defendant did not

has adapted the information offered on its website to the provisions of the RGPD,

Therefore, the aforementioned conduct constitutes an infringement of the provisions of article 13

of the GDPR.

It should be noted that the respondent did not respond to the request for information

formulated by the Inspection Service.

v

At this point, it is necessary to inform that not meeting the requirements

of the Agency may constitute a very serious infringement in accordance with the indicated in article 72 of the LOPDGDD, which establishes: “1. Depending on what established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

(...)

ñ) Failure to facilitate access by data protection authority personnel competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the competent data protection authority.

(...)”

At the same time, notification of the start agreement and after the term granted to formulate allegations, I do not present any writing.

In the present case, it has been proven that the respondent does not have adapted the information offered on its website to the provisions of the RGPD, therefore that the aforementioned conduct entails an infringement of the provisions of article 13 of the GDPR.

It is necessary to point out that if the incidence is not corrected by adapting the information offered on its website, privacy policy and legal notice to indicated in the RGPD or reiterate the conduct revealed in the claim and that is the cause of this procedure, as well as not informing following this AEPD of the measures adopted could give rise to the exercise of possible actions before the person in charge of the treatment so that they are applied effectively the appropriate measures to guarantee and not compromise the

confidentiality of personal data and the right to privacy of

people.

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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 EURO FULL SERVICES COMPANY on the entity

DINER, S.L. (EURODINER.ES), with NIF B73192825, for an infringement of article 13

of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the SERVICE COMPANY

PLENOS EURO DINER, S.L. (EURODINER.ES) and require you to inform the

AEPD of the measures adopted to prevent that in the future a

new infringement of article 13 of the RGPD trying to facilitate the interested party the

information contained therein at the time of collecting your data,

adapting your website.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 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-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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