

□ File No.: PS/00300/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated December 23,
2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed).

The reason on which the claim is based is that a treatment of the
personal data of the claimant without their consent.

The claimant purchased a product through eBay from the MCB-SHOP store,
making the payment via Paypal.

When he received the order at home, it came from Amazon, which is why
understands that the seller used the personal data of the claimed person to carry out the
purchase of the product that he had formalized with her on Amazon.

The claimant files his claim because he considers that the respondent made a
processing of your personal data without your consent.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), on February 22, 2021, said claim was transferred to
the party claimed, so that it proceeded to its analysis and inform this Agency in the
period of one month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response to this letter has been received.

THIRD: On June 11, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On September 27, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 6 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: After the period granted for the formulation of allegations to the

agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

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

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The claimant purchased a product through eBay from the MCB store-

SHOP, making the payment via Paypal, but the order arrived at your home from Amazon,

reason why it understands that the one claimed, both to place the order and to

proceed with the payment, processed your personal data, without your consent.

consent.

SECOND: Dated November 3, 2021, after two notification attempts

postal service, the requested party is notified of the agreement to start this procedure, by means of

edictal board, turning said agreement into a proposal for a resolution of

in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (LPACAP), to the

not make the claimed allegations within the indicated period.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD 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.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights, in its article 4.11 defines the consent of the

interested party as "any manifestation of free will, specific, informed and

unequivocal by which the interested party accepts, either by means of a declaration or a

clear affirmative action, the treatment of personal data that concerns you”.

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In this sense, article 6.1 of the RGPD establishes that “in accordance with the dis-
established in article 4.11 of Regulation (EU) 2016/679, consent is understood
affected person, any manifestation of free, specific, informed and inappropriate will.
equivocal by which he accepts, either through a statement or a clear action
affirmative, the treatment of personal data that concerns you”.

III

In accordance with the evidence available at the present time,
considers that the facts denounced, that is, using the personal data of the
claimed to make the purchase of a product on Amazon, without the
consent of the claimant for the processing of their personal data, nor any
another cause of legitimization of the treatment, supposes a violation of art. 6 of the GDPR.

IV

Article 72.1 b) 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
after three years the infractions that suppose a substantial violation of the
articles mentioned therein and, in particular, the following:

b) The processing of personal data without the concurrence of any of the conditions of
legality of the treatment in article 6 of Regulation (EU) 2016/679.”

v

Article 58.2 of the RGPD provides the following: "Each control authority will have

of all the following corrective powers indicated below:

b) send a warning to any person responsible or in charge of the treatment 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 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;

Thus, in response to what results from the investigation, it will be possible to order the claimed party that within the designated period proceeds to carry out the actions necessary so that the treatment of the personal data used conforms to the GDPR provisions.

SAW

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

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global total annual turnover of the previous financial year, opting for the of greater 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, considering as aggravating the intentional action of the claimed to use the data of the claimant

to make the purchase with AMAZON (article 83.2 b)

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 B.B.B., with NIF ***NIF.1, for an infraction of article 6 of the RGD, typified in article 83.5 of the RGD, a fine of 2,000 euros (two thousand euros)

SECOND: NOTIFY this resolution to B.B.B..

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 Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

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

voluntary 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.

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 month from counting 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

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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, may provisionally suspend the firm resolution in administrative proceedings if the 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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