

□ Procedure No.: PS/00411/2019

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On May 28, 2019, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),  
through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the  
reclaimed).

SECOND: In accordance with the provisions of article 65 of Organic Law 3/2018, of  
December 5, Protection of Personal Data and guarantee of rights  
(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the  
Data Protection Delegate that you may have appointed, requiring you to  
to send the requested information and documentation to this Agency. East  
request for information was made within the framework of the file with code of  
reference E/05812/2019.

THIRD: Once the period of one month that was given to the claimed person for  
inform the Spanish Agency for Data Protection, as indicated in the  
second background, without the respondent providing the pertinent response, the  
The claim was admitted for processing on September 18, 2019.

FOURTH: In relation to the investigation actions referenced with the  
code E/08849/2019, a new request for information was sent to the respondent,  
alluding to the claim outlined in the first antecedent, so that, within the term of  
ten working days, submit to this Agency the information and documentation that

it was pointed out in it. The request, which was made in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (hereinafter, LPACAP), was collected by the responsible on October 16, 2019, as stated in the certificate of Mail that works in the file.

FIFTH: On November 29, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged infringement of Article 58.1 of the RGPD, typified in Article 83.5 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD).

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SIXTH: The aforementioned initial agreement was collected by the person in charge dated date December 10, 2019 as stated in the Post Office certificate that works in The file.

After the period of ten business days granted in the initial agreement for the presentation of arguments, the respondent has not presented arguments.

SEVENTH: On February 19, 2020, a proposal for resolution, proposing that the Director of the Spanish Agency for the Protection of Data is imposed on B.B.B., with NIF \*\*\*NIF.1, for an infraction of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

Likewise, the procedure was revealed so that within a period of ten days could allege whatever he considered in his defense and present the documents and

information that it considers pertinent, in accordance with article 89.2 of the

LPACAP.

EIGHTH: The motion for a resolution, which was registered as output on the 19th of February 2020 with registration number 015797/2020, was collected by the person in charge on March 12, 2020, as stated in the Post Office certificate that works in The file.

After the period of ten business days granted in the resolution proposal for the presentation of arguments, the respondent has not presented arguments.

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 information requirements indicated in the second background and fourth, they were notified in accordance with the provisions of article 42 of the LPACAP.

SECOND: The respondent has not responded to the information requirements carried out by the Agency within the periods granted for it, namely:

1st. The request made within the framework of the file with reference code E/05812/2019, in which the deadline to respond was one month.

2nd. The request made within the framework of the investigative actions referenced with code E/08849/2019, in which the deadline to respond was ten business days.

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THIRD: The notification of the agreement to initiate this procedure

sanctioning party was collected by the person in charge on December 10, 2019. No

arguments were presented to the initiation agreement.

FOURTH: The notification of the proposed resolution was made through

Correos, being collected by the person in charge on March 12, 2020.

They presented arguments to the proposed resolution.

## FOUNDATIONS OF LAW

Yo

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, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

The defendant is imputed the commission of an infraction for not having tried to

the Spanish Data Protection Agency the information it requested. With the

indicated conduct of the defendant, the power of investigation that article 58.1 of the

RGPD confers on the control authorities, in this case, the AEPD, has been seen

hampered.

Therefore, the proven facts are deemed to constitute an infraction,

attributable to the claimed, for violation of article 58.1 of the RGPD, which provides that

Each control authority will have, among its investigative powers:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the

representative of the person in charge or the person in charge, who facilitate any

information required for the performance of its functions; b) carry out

investigations in the form of data protection audits; c) carry out

a review of the certifications issued under article 42, paragraph

7; d) notify the person in charge or the person in charge of the treatment of the alleged

violations of this Regulation; e) obtain from the controller and the in charge of the treatment access to all personal data and to all the information necessary for the exercise of its functions; f) gain access to all premises of the controller and processor, including any equipment and means of data processing, in accordance with the Procedural law of the Union or of the Member States.”

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: “failure to provide access in breach of article 58, section 1”.

III

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In the same article it is established that this infraction can be sanctioned with a maximum fine of twenty million euros (€20,000,000) or, in the case of a company, of an amount equivalent to four percent (4%) as a maximum of the global total annual turnover of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority 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.”

#### IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

#### v

Finally, it is appropriate to graduate the sanction to be imposed according to the criteria established in article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

In the initial evaluation it is appreciated that no aggravating, and the following facts have been considered as mitigating factors:

- Art. 83.2 a) RGPD: the nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the operation of treatment in question, as well as the number of interested parties affected and the level of damages suffered. It has been taken into account that the claimed is an individual.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the 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 a violation of Article 58.1

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

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

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

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.

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