

□ File No.: PS/00316/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: COURT OF FIRST INSTANCE AND INSTRUCTION NUMBER 1 OF
VILLAFRANCA DE LOS BARROS (hereinafter, the claimant) dated 07/03/2020
submits a letter to the Spanish Agency for Data Protection in case it considers
violated the regulations. The claim is directed against CITY COUNCIL OF
VILLAFRANCA DE LOS BARROS with NIF P0614900I (hereinafter, the claimed).

The reasons on which the claim is based are that the Court initiated preliminary proceedings,
on ***DATE.1 in abbreviated procedure XXX/XXXX, made up of testimony from
performances of samples extracted by agents of the Civil Guard on
documentation found on public roads in bags and paper containers with
signs of origin of the claimed.

The events occurred on 06/01/2019, when the Civil Guard received a notice from a neighbor
to find in a container on Calle Serena in the municipality, documentation of the
corporation. In the account of the events it is indicated that a citizen in the aforementioned street
had directly observed that on the morning of 05/31/2019, a truck from the
City Council approached the paper container of the aforementioned street and two workers have
filled the same with papers. "The contents of said container are examined,
observed a large amount of documentation belonging to the City Council of
Villafranca de los Barros dated between 2013 and 2019, in which you could
Appreciate reports of work life of local residents, their phone numbers
and personnel hiring reports, some belonging to the year 2019, etc. ".

The container is sealed and moved to its own facilities.

In addition, when the Civil Guard withdraws, the Local Police found in another address, three more containers with documentation and later another container is located more, although this time the paper is shredded and in plastic bags transparent.

In the act of 2/06 of the Civil Guard, a statement is taken from the person in charge of infrastructures of the City Council, which stated that the operators who poured into the containers, the documents and him, they were not aware of what they were throwing away, they just got rid of them like they had done other times. The one in charge manifest that he in turn obeyed orders from the acting Councilors of the City Council of Urban Planning and Culture.

A photographic report is attached with images of the documents and the containers.

The Civil Guard guards the 4 paper containers and 23 rubbish bags with documentation, marking the four containers with the first letters of the alphabet, the rest from E to Z are large black garbage bags. size.

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On 10/4/2019, by the Civil Guard, a sampling of the content of the container A, finding:

-applications for the special municipal employment plan for family units without income for the year 2018, with personal data of the applicants-provide photo to 3-

documents annexed to the previous applications, attach documents of a nature

personal as work life reports, photocopy of the DNI.

-Provisional list of the selected candidates for managerial positions

and teacher of insertion workshops of the call 2005 photo A 5.

In container B:

-Requests for a special employment commission by individuals with entry registration

of the year 2017 -18 with a photocopy of the DNI.

In container C:

Various applications with registration entry in June 2018, photo C2

Container D:

Application for a special employment commission with entry registration for the year 2017 with

photocopies of the DNI, photo D2 and D3.

In bag E:

Documentation with handwritten data collection sheets of the project

“breaking molds”

The contents of the rest of the bags are still reported, most with data from

personal character, especially referring to applications of various types, curriculum,

resolution of sanctioning procedure for urban infraction.

Together with the claim, a box sealed by the Civil Guard is presented to the AEPD

that open, contains sealed paper bags. They all indicate the date of

sealed, those that reflect content found in bags from the letter E to W, the

08/30/2019 and those containing the samples of what was found in the containers: from the

A to D, on 09/02/2019.

The opening of some begins, and at first glance it can be seen that not all of them contain

documents with personal data, some are copies of regulations of

official bulletins or technical manuals of substances used in gardening, contracts

from the town hall, town hall reports etc.

A brief content is indicated without prejudice to its possible expansion in tests.

-bag letter W

initiations Proposals for resolutions and resolutions of procedures

penalties for urban infractions from 2011 to 2014, containing the data

of those sanctioned, approximately 40 files.

Applications with data of the applicant, DNI, in urban matters, approximately 3

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-Q-bag:

Curriculum with photo, dated 05/02/2013.

Copy of certificates from 2017, about 12, containing the data of suppliers of

products or services such as chemicals, spare parts with "third party" data

containing complete bank account numbers, their names and surnames and

phone contacts.

It also accompanies the references that appeared in the press on 06/04/2019 in the

newspaper of Extremadura.

SECOND: In accordance with article 64.2 and 65.5 of the Organic Law 3/2018, of

5/12, of Protection of Personal Data and guarantee of digital rights (in what

successive LOPDGDD), dated 08/06/2020, the Director of the AEPD agreed to admit

process the claim.

THIRD: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirector General for Inspection of

Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD.

On 10/21/2020, it requires the claimed information related to the facts.

On 11/4/2020, the CITY COUNCIL OF VILAFRANCA DE LOS BARROS sends this Agency the following information and statements:

1) "You do not know what happened, because after the elections of 05/26/2019 a new local corporation, taking possession of the new Mayor on 06/16/2019", proceeding to initiate the contracting of services for the controlled removal of documentation. manifest that can only echo the statements of the then first lieutenant mayor, quoted by the newspaper El Mundo, on ***DATE.1 who explained that the documents came from the cleaning of offices in a habitual open practice and without any type of intention that is carried out at the end of each legislature before the presumable change of government that is going to take place on June 15. "Everything is It was done in broad daylight at 12:00 a.m. on a Friday by three workers and has specified that several scattered containers were chosen geographically by different points of the locality due to the important volume of documents so they deposited it there where they found containers of half-empty paper and cardboard. In the link of the news, that information appears, with the headline the "PSOE City Hall that threw sensitive documentation in the trash qualifies as habitual practice at the end of a legislature" with a photo of the mayor above, and in smaller letters "they find in the trash sensitive documentation of a PSOE City Hall on the verge of losing it after 36 years of Government".

-“Presumes that the documentation that has seen the light in the containers”, is the
at the disposal of the Councilors who integrate the collegiate bodies of Government,
it is delivered to them, included in the agenda of the sessions.

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-Agreed to immediately hire a withdrawal service

controlled waste of paper and documentation from all offices and services

municipalities with the entity "Aprosuba Special Employment Center", while the
the administrative contract file.

-Mentions that they have a regulatory ordinance for electronic administration

of the City Council since 01/30/2018 in which, among other aspects, the

access procedure for members of the corporation to municipal information,

suppressing the practice of delivering paper copies, having information

detailed for your request and delivery.

Provides:

a)-Invoices for destruction of documents from 07/19 and 31/2019, and 10/31/2019. In two

destruction certificates figure: “total destruction of the documentation, according to the

DIN 66399 standard with level 3 security in accordance with the RGPD. Likewise

You warrant that you have not examined, delivered, used, or reproduced such media

data, being the documentation collected on 10/15/2019” and the date on which it was

pickup.

b)- Decree signed on 12/2/2019 approving the service contract file,

secure destruction of documents of the City Council, for four years, in accordance with the

content established in the specifications of particular technical specifications, the particular administrative clauses and a technical report and the adjudication produced.

c)- It is contemplated in the list of specific administrative clauses: "30.4

Protection of Personal Data", the reference to the regulations that are no longer

LOPD of 12/13/1999 is in force, indicating:

- Obligation to keep professional secrecy of the winning company and its staff

regarding the personal data of which he may have become aware

due to the performance of the contract.

- The successful bidder must train and inform its staff of the obligations that in

Data Protection are obliged to comply in the development of their tasks, in

especially those derived from the duty of secrecy.

- The successful bidder and his staff during the performance of the services provided

As a consequence of the fulfillment of the contract, they will be subject to the fulfillment of

the security documents of the municipal dependencies in which it develops

the job.

- If the contract awarded involves the processing of personal data,

You must fully respect the LOPD and its development regulations.

d) The technical report contains aspects such as delivery notes and

collection, the certificates accrediting the destruction.

e) Copy of the resolution awarding the contract and receipt of acceptance of

execution of the same, signed by the contractor on 02/11/2020.

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f) Regarding the measures implemented prior to the incident, it provides contracts custom service collection, destruction and recycling of documents in format paper, of annual duration, from 2007 and 2008.

-In response to the training received by its employees regarding the protection of data provides email dated 02/26/2020, sent by

***PUESTO.1@villafrancadelosbarros.es and sent to ***PUESTO.2@dip-badajoz.es where it states "I hereby request my registration in the conference: "Project Support for regulatory compliance in Security and Data Protection".

-Provides a copy of the document signed on 02/12/2020, where the adhesion of the City Council of Villafranca de los Barros to the collaboration agreement with the Excm. Badajoz Provincial Council for the Data Protection Delegate service.

FOURTH: On 06/28/2021, the Director of the AEPD agreed to initiate sanctioning procedure of warning to the CITY COUNCIL OF VILLAFRANCA DE LOS BARROS, for the alleged infringement of article 5.1.f) of the RGPD, of in accordance with article 83.5. b) of the RGPD.

No claims were received.

FIFTH: On 01/11/2021 a testing period begins, agreeing:

Consider reproduced for evidentiary purposes the claim, its documentation, the documents obtained and generated during the admission phase of the application claim.

In order to review some information and data security measures, connected with the infraction, it was requested:

1) Document that regulates or organizes the documents that are part of of the file and which ones and when appropriate delivery of a copy to political leaders of the City Council (referring to those that contain personal data). Obligations and

Duties in the delivery and handling of documentation.

2) If instructions have been given to this personnel and mode of compliance, on the use and processing of personal data.

3) Types of paper documents that they manage or that can be printed and measures to mitigate or reduce the risks of going outside the circle of responsible.

4) If policy makers access computer applications, what permissions they have and if the accesses and the content they access are recorded.

5) Types of paper documents that they manage and reasons why they have not been replaced by digital.

6) If policy makers access computer applications, what permissions they have and if the accesses and the content they access are recorded.

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None of the questions raised were answered.

SIXTH: On 02/14/2022, a resolution proposal is issued with the literal:

“That the Director of the Spanish Data Protection Agency sanction

with warning to VILLAFRANCA DE LOS BARROS CITY COUNCIL, with

NIF P0614900I, for a violation of article 32 of the RGPD, in accordance with the

article 83.4 a) of the RGPD, and for prescription purposes, of article 73. f) of the

LOPDGDD.

That eventually the contract of treatment carried out by the

awardee of the service, in charge of the treatment, to complete the references

indicated in article 28 of the RGPD.”

No claims were received.

SEVENTH: Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The Civil Guard and the Local Police of Villafranca de los Barros found the night of 06/01/2019 documentation belonging to the claimed, divided into four paper containers located at different points of the public thoroughfare of Villafranca de the muds.

According to what appears in the police proceedings, they went, notified by a person who declared that they had seen on the morning of 05/31/2019, City Hall trucks unloading documents in paper containers. The Court of First Instance and Instruction 1 of the locality instructed preliminary proceedings for the matter on ***DATE.1, sending written to the AEPD 07/03/2020, reporting the facts.

SECOND: The Court is accompanied by a photographic report with images of the documents and the 4 paper containers and 23 large garbage bags.

Some of the bags contained the chopped paper, a sign of having been destroyed previously on a machine.

Among what was found, according to the Civil Guard, are documents with data on personal character such as: applications for the special municipal employment plan for family units without income for the year 2018, photocopies of DNI, life reports labor, personnel selection files, curriculum, resolution of procedure sanctioning for urban infraction, files filled in by hand on projects training for the work plan "breaking molds"

A box with a sample of the documentation was sent to the AEPD with the claim.

found, being able to verify that although not all of its content contains data from

personal character, it is verified, briefly, that there are:

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-Proposals for resolutions and resolutions of sanctioning procedures for urban infractions from 2011 to 2014, containing the data of those sanctioned, approximately 40 files.

-Applications with data of the applicant, DNI, in urban matters.

-Curriculums with photo of 05/02/2013.

-Copy of certificates from 2017, about 12, containing supplier data of products or services such as chemicals, spare parts with data from "third parties" containing complete bank account numbers, their names and surnames and phone contacts

THIRD: Transfer of the claim to the respondent, City Council of

Villafranca de los Barros, indicated on 11/4/2020, that after the elections of 05/26/2019, a new Local Corporation was formed, and the Mayor took office on 06/16/2019, and stated that it is possibly, among other documentation found, that managed by the Councilors in their Government functions.

FOURTH: As of the date on which the events occur, it is not confirmed whether there was a contract of provision of document destruction services by the claimed party, and if it exists, that gathers the elements that for the handling of documents with data are requires in its data processing, which is established in article 28 of the RGPD.

If it is found that after the discovery of the documentation, that there are copies of document destruction invoices from various dates, including 07/19 and 07/31, and

10/31/2019, in which the same company indicates: "collection and destruction of kg of paper, "point destruction in ship" and "collection dates", derived from the hiring carried out by the Mayor elected in the elections of 05/26/2019, who took office on 06/16/2019, but without providing a contract with the forecasts of the article 28 of the RGPD.

FIFTH: It is hereby accredited that on 12/2/2019, the claimant signed and initiated the Document destruction service contract file approval by four years and provides the award of the same on 01/30/2020, signing the 02/02/2020 execution acceptance diligence. In its clause, it is not verifies that the requirements are contained for the processing of data on request of treatment, supposes to take charge of the destruction of documents, and the access to said data, in accordance with the provisions of article 28 of the RGPD.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

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Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

Article 32 of the RGPD establishes the general rule for the establishment of security measures under several factors. Thus, he points out:

"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;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes 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.

For the purposes of the RGPD, it is responsible for the treatment according to article 4.7:

“the natural or legal person, public authority, service or other body that, alone or together with others, determine the purposes and means of the treatment; If Union law or of the Member States determines the purposes and means of the treatment, the data controller or the specific criteria for their appointment may established by the Law of the Union or of the Member States”

Article 4.2 of the GDPR also defines:

“processing”: any operation or set of operations performed on data personal information or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use,

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communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;”

In this case, several containers for paper located on public roads, with documents containing personal data of the person claimed were found and recovered by the Civil Guard and Local Police.

Defining and establishing control and security measures is a fundamental task that must be carried out according to the particularities of the treatment activities and in depending on the risks involved. In this case, it is proven that the lack of technical and organizational measures that for the treatment phase of the destruction of data on paper has had the claimed, which in a case like the one analyzed by destruction of paper documents with data, must comply with some

minimum that guarantee the effectiveness of carrying out the same, in the case of a large volume, with data that was extracted from the facilities of the claimed and dumped into paper containers. Just as the Civil Guard and the Police recovered them Local, could have been obtained by third parties, although it is not proven that this happened.

The mere presentation of invoices for the destruction of company documents Aprosaba, dated after the occurrence of the events, does not prove either that complete technical and organizational measures had been put in place in accordance with the regulations in force that enable the security safeguard guarantees of the data, specifically in the field of document destruction security. Yes represent the beginning of a process, which progresses when the contract is awarded and the contract is signed. on 02/02/2020.

Regarding the same, it is not verified that all the requirements that for the data processing by order of treatment, means taking charge of the destruction of documents, and access to such data, in accordance with the provided for in article 28 of the RGPD.

The RGPD, in addition, requires not only designing the technical and organizational means necessary it is also necessary its correct implementation and its use in a appropriate, so that he will also answer for the lack of diligence in his use, understood as a reasonable diligence taking into account the circumstances of the case, including the evaluation of the impact of an incident on the data of personal nature, regardless of whether the processing is carried out automated as if they are performed manually, or if the incidents are accidental, both human and associated with natural events.

Incident management is a process that, with a greater or lesser degree of maturity, already It must be part of the culture of controllers and processors. Is

incident management should be updated, if it is not already, and incorporate the procedures to respond to the obligations arising from the RGPD.

The effects of this implementation of measures and their effectiveness or not, as well as their follow-up, have an impact as shown by the LOPDGDD, in its article 73, which difference for criminalization purposes, between the "failure to adopt those measures technical and organizational measures that are appropriate to guarantee a level of security adequate to the risk of the treatment (art. 73 sections d, e and f) and "the lack of due diligence in the use of the technical and organizational measures implemented (art. 73. g).

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Faced with the risk of not being adequately and conveniently destroyed the documents on paper containing data, the lack of these measures is observed. They must also be subject to monitoring in its compliance and effectiveness, as well as when they vary the circumstances of the treatment, attending and contemplating in its case, any incident that may occur due to the data, the format or support of its treatment.

A correct guide for the assurance of measures related to destruction is contract with a company in the industry that has and applies the code of good practices on secure destruction of confidential material.

In the present case, it is proven that the violation of article 32 of the GDPR noted.

III

Article 83.4 a) of the RGPD, indicates: "Infringements of the following provisions

will be sanctioned, in accordance with section 2, with administrative fines of 10,000

EUR 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;"

Regarding the prescription, article 73 of the LOPGDD, indicates:

"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:

...

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679."

Article 83.7 of the RGPD indicates:

IV

"Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: "1.

The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

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c) The General Administration of the State, the Administrations of the Communities

Autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions

of the autonomous communities the actions carried out and the resolutions issued

under this article.

6. When the competent authority is the Spanish Agency for the Protection of

Data, it will publish on its website with due separation the resolutions

referred to the entities of section 1 of this article, with express indication of the

identity of the person in charge or in charge of the treatment that would have committed the

infringement."

Regarding the contract of the claimed party with the successful bidder for the destruction service of documents, intended as a measure for compliance with article 32 of the RGPD,

There are obligations provided for in article 28 of the RGPD, when indicating:

- "1. When a treatment is going to be carried out on behalf of a person in charge of the treatment-process, it will only choose a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment conforms to the requirements of this Regulation and ensures the protection of the rights of the interested party.
2. The person in charge of treatment will not resort to another person in charge without prior authorization in writing, specific or general, of the person in charge. In the latter case, the manager will inform the person in charge of any planned change in the incorporation or substitution of other processors, thus giving the controller the opportunity to oppose di-many changes.
3. The treatment by the person in charge will be governed by a contract or other legal act with under the law of the Union or of the Member States, binding the person in charge with respect to the person in charge and establish the object, duration, nature and purpose treatment, the type of personal data and categories of interested parties, and the obligations

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cations and rights of the person in charge. Said contract or legal act shall stipulate, in part, ticular, that the person in charge:

a) will process personal data only following documented instructions of the

responsible, including with respect to transfers of personal data to a third party.

a country or an international organization, unless required to do so under the

Law of the Union or of the Member States that applies to the person in charge; in that

In this case, the person in charge will inform the person in charge of this legal requirement prior to the treatment.

lien, unless such law prohibits it for important reasons of public interest;

b) will guarantee that the persons authorized to process personal data have

committed to respecting confidentiality or are subject to an obligation of confidentiality.

diligence of a legal nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another en-

loaded with treatment;

e) will assist the person in charge, taking into account the nature of the treatment, through

of appropriate technical and organizational measures, whenever possible, so that

it can fulfill its obligation to respond to requests that are

I object to the exercise of the rights of the interested parties established in chapter III;

f) will help the person in charge to guarantee compliance with the obligations established

in articles 32 to 36, taking into account the nature of the processing and the

training available to the manager;

g) at the choice of the person in charge, will delete or return all personal data once

Once the provision of treatment services ends, and will delete the existing copies

unless the retention of personal data is required under the

Law of the Union or of the Member States;

h) will make available to the person in charge all the information necessary to demonstrate

compliance with the obligations established in this article, as well as

to enable and assist in the performance of audits, including inspections, by parties

of the person in charge or of another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform immediately to the controller if, in his opinion, an instruction violates this Regulation or other provisions on data protection of the Union or of the member states.

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4. When a person in charge of the treatment resorts to another person in charge to carry out certain treatment activities on behalf of the person in charge, will be imposed on this other manager, by contract or other legal act established in accordance with the Law of the Union or of the Member States, the same protection obligations of data than those stipulated in the contract or other legal act between the responsible person and the person in charge referred to in section 3, in particular the provision of guarantees sufficient measures to apply appropriate technical and organizational measures to so that the treatment is in accordance with the provisions of this Regulation.

If that other processor breaches its data protection obligations, the processor will remain fully responsible to the data controller for regarding the fulfillment of the obligations of the other person in charge.

5. The treatment manager's adherence to a code of conduct approved by the nor to an approved certification mechanism under article 42 may be used as an element to demonstrate the existence of sufficient guarantees referred to in sections 1 and 4 of this article.

[...]"

9. The contract or other legal act referred to in sections 3 and 4 shall be stated by es-

writing, including in electronic format.

10. Notwithstanding the provisions of articles 82, 83 and 84, if a trafficker-treatment infringes this Regulation by determining the purposes and means of the treatment to, will be considered responsible for the treatment with respect to such treatment.”

Article 58.2.d) of the RGPD, adds as a corrective power of the control authority compatible with the warning, “order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this regulation, where appropriate, in a certain way and within a specified period specified”.

It was noted that the contract awarded would have to complete elements that were arise from the obligation provided for in article 28 of the RGPD, in addition to the literalness of the correct current regulations, aspects, without claiming to be comprehensive, such as:

- The specification of the subcontracting by the person in charge of the treatment, article 28.2 GDPR.
- The stipulations expressly contemplated in article 28.3 RGPD.

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION VILAFRANCA CITY COUNCIL with a warning
DE LOS BARROS, with NIF P0614900I, for an infringement of article 32 of the RGPD,
in accordance with article 83.4 a) of the RGPD, and for the purposes of prescription, of the
Article 73. f) of the LOPDGDD.

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SECOND: ORDER VILAFRANCA DE LOS BARROS CITY COUNCIL

in accordance with the provisions of article 58.2 d) of the RGPD, so that within the term of two months, certify, notifying this Agency, having completed the clauses and references in the order contract for document destruction treatment, in accordance with what is stated in the resolution and in the last ground of law. The text of the resolution establishes what the infractions have been committed and the facts that have given rise to the violation of the regulations of data protection, from which it is clearly inferred what are the measures to adopt, notwithstanding that the type of procedures, mechanisms or instruments concrete to implement them corresponds to the sanctioned party, since it is the data controller who fully knows your organization and has to decide, based on proactive responsibility and risk approach, how to comply with the RGPD and the LOPDGDD.

THIRD: NOTIFY this resolution to the CITY COUNCIL OF VILAFRANCA OF THE BARROS.

FOURTH:

in accordance with the provisions of article 77.5 of the LOPDGDD.

COMMUNICATE this resolution to the Ombudsman,

FIFTH: 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 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 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.

C/ Jorge Juan, 6

28001 – Madrid

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Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es