

□ Procedure No.: PS/00414/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter the complaining party) dated 06/18/2020 inter-filed a claim with the Spanish Agency for Data Protection. the claim is directed against ASM PRAT (hereinafter the party claimed). The reasons on which he bases the claim are the following: that the aforementioned company, in order to deliver packages to their recipients, is imposing as a necessary condition to carry out a photograph on the front and back of your ID. The company employee takes it with your mobile terminal at the time of delivery. Subsequently, the image obtained da is assigned to the company that sent the package. In addition, the company has refused offer information on said processing of personal data to the affected party, and also Little does it ask for 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), with reference number E/09136/2020, transfer of di-this claim to the claimant on 09/02/2020, so that it could proceed to its analysis and information. report to this Agency within a month, of the actions carried out in order to comply with the requirements set forth in the data protection regulations.

THIRD: On 11/04/2020, the Director of the AEPD agrees to the admission to limit of the claim.

FOURTH: In view of the facts denounced in the claim and the documents data provided by the claimant, the Subdirector General for Data Inspection pro-

yielded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

On 09/02/2020, this Agency received a letter from the GENERAL company LOGISTICS SYSTEMS SPAIN, S.A., stating the following:

- The claimed party makes shipments by itself or through subcontracted companies.

you give.

- The claim has a delivery method called Identservice (DNI + photo)

that has its origin in the requirement of the client Information Control and Verification

S.A. (hereinafter, ICP) to provide greater assurance that the packet has been

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delivered to the recipient.

- They indicate that their responsibility is that of the person in charge of the treatment, being the saber of this, the client who requested this type of verification in the delivery (ORANGE).

Therefore, the basis of legitimacy is not the consent of the sender, but the execution

execution of the contract with its client, being this one the one that informs of this treatment and re-

The consent of the recipient for the treatment is valid.

And attach the following documents:

- Document 1: Service contract with ICP in which the claimed entity appears

as the person in charge of treatment, being the person in charge of this treatment, ICP.

- Document 2: Addendum service contract with ICP (DNI + photo) in which the claim is made- appears as a representative.

- Descriptive poster of the three types of sender identification

Requested by this Agency, the contracts with the clients corresponding to the

Submissions sent to claimants, dated 10/28/2020, are received at this Agency

three writings, stating:

(...)

- Regarding the claimant's shipment, they admit that, although in the document of issue nº 463189162 figure "NO DNINOM" (standard validation, which does not allow the use camera, and in which it is only requested that the DNI be shown with in order to verify that the name and surnames and ID number agree with the that the courier has registered in the application) the courier chose another modality of validation in the application that allowed him to take the photograph of the DNI of the claim. maintain improperly. The shipment layout was as follows:

- Optimego, S.L.U. hires the transportation of the product purchased by the claimant with Granasur Express S.L.

- Granasur Express, S.L. introduces the package into the distribution network of the claim gives.

- The company collaborating with the claimed company, ASM PRAT, delivers the package to the destination. swimming by courier.

They therefore conclude that the courier, belonging to the collaborating company ASM PRAT, made an error when delivering the package, not adjusting to the rules of the re-called for the delivery of this type of package.

They add that as soon as they have been aware of the error they have eliminated from their systems

the photograph taken by the courier and have sent communication to this claimant

expressing their apologies, but they do not provide this document.

And attach the following documents:

- Treatment agreement of a personal nature between the respondent and ASM PRAT in

where ASM PRAT appears as data processor.

- Collaboration contract with Granasur Express, S.L.

Regarding the claim made by the claimant, it has been recorded, during

the actions of the transfer of the claim to the claimed one, that the taking of the fo-

photo of the DNI of this claimant was due to an error of the courier (of the entity

ASM PRAT collaborator of the one claimed as in charge of the treatment) by not adjusting

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comply with the standards of the claimed for the delivery of this type of package.

Regarding the level of security of the digitalization treatment of the DNI, according to the

training received from the respondent, it can be considered safe because the photos

DNI graphics are not stored in the courier terminal at any time

since they are captured by a specific application of the one claimed and are transmitted

to the systems of this as soon as it is digitized. Likewise, the previous data of the destination

name such as Name and Surname, ID number, etc. are removed from the terminal

courier as soon as delivery is made. Regarding access to information

a certain shipment, these are restricted to the sender of the product, the person in charge

of the delivery, and to the claim staff of the different areas involved.

FIFTH: On 09/17/2021, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infraction of article 6.1 of the RGD, typified in article 83.5.a) of the RGD, considering- do that the infraction that could correspond would be a fine of 5,000 euros.

SIXTH: Once the initiation agreement has been notified, the person claimed at the time of this resolution has not submitted a brief of arguments.

SEVENTH: On 11/15/2021, the AEAT was asked for information on the respondent responding- the next day that his NIF was not known and that there was no certainty of his address known postal address of said entity.

EIGHTH: On 11/25/2021 a testing period was opened, agreeing on the following: following: request D. B.B.B., with DNI ***NIF.1, to send, in his capacity as re- person presenting the claimant, the CIF/NIF number of the aforementioned company.

There has been no response to the test performed

FOUNDATIONS OF LAW

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In accordance with the investigative and corrective powers that article 58 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGD) grants each control authority, and according to the provisions of article 47 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), is competent to resolve these investigative actions by the Director of the Spanish Agency for Data Protection.

It should be noted that prior to the start of actions

sanctions, it is necessary to identify the person presumed responsible for the infraction administrative.

II

Article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of the Public Administrations, referred to the Agreement of initiation in procedures of a punitive nature, establishes the following:

"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 governing the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

(...)"

Since the identification of the alleged perpetrator is not recorded in the file, not include the NIF number, it was requested from the Tax Agency.

As stated in the records, the Tax Agency responded to the requirement of the Spanish Data Protection Agency on 11/16/2021 indicating that his NIF was not known and that there was no certainty of his postal address.

Also during the probationary period, the person listed as representative of the claimed party to provide the NIF of the entity without having obtained response to said request.

Therefore, although the claim presented could involve an infringement to the regulations on data protection, it is not possible to continue with the actions sanctioning by not having tax identification of the alleged perpetrator.

III

Therefore, as stated,

By the Director of the Spanish Data Protection Agency,

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HE REMEMBERS:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to Ms. AAA.

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

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.

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Director of the Spanish Data Protection Agency

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