

□ File No.: EXP202200436

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 November 23
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against MARIELI GABRIELA, S.L. with NIF B87330726 (in
hereafter, the party claimed). The grounds on which the claim is based are
following:

The claimant states that they were charged to her bank account, without her
consent the amounts corresponding to: 03/11/2021: XX,XX and YY,YY; the
11/17/2021: XX,XX and 11/23/2021: YY,YY.

It adds that the charges made correspond to a service contracted by the
claimed with the company General Society of Authors and Publishers (SGAE).

He indicates that he does not currently have an employment relationship with the respondent, but his
data could have been provided by this since she was employed by her six years ago
months.

Along with the claim is provided:

The receipts charged to the claimant's current account, on the following days: 3, 17 and 23
November 2021. In the previous ones, SGAE appears as the payer, as the
Marieli Gabriela, S.L. and as payer the claimant.

Likewise, it provides the payroll received from the claimed corresponding to the month of
January 2021.

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), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of making available, understanding rejected in accordance with the provisions of art. 43.2 of the LPACAP on February 4, 2022, as stated in the certificate in the file.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

Subsequently, the transfer, which was carried out in accordance with the rules established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) by certified mail, was returned as refused; reiterating again the transfer by electronic means and notified on February 22, 2022.

No response has been received to this transfer letter.

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), when submitted to the Spanish Agency for Data Protection

a claim, it must evaluate its admissibility for processing, and must notify the

the claimant party the decision on the admission or inadmissibility for processing, within the period of three months from when the claim was received by this Agency. Yes, elapsed this term, if said notification does not occur, it will be understood that the processing of the claim in accordance with the provisions of Title VIII of the Law.

In this case, taking into account the foregoing and that the claim is presented in this Agency, on November 23, 2021, it is reported that his claim has been admitted for processing on February 23, 2022 after three months since it entered the AEPD.

FOURTH: On May 30, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: Notification of the aforementioned start-up agreement, through the postal service on the 9th of June 2022, being unknown and from the BOE on the 13th of the same month year, in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received by the respondent.

In accordance with art. 42.1 of Law 39/2015, of October 1, on Procedure Common Administrative of the Public Administrations, the notification was put to provision of the interested party so that he could access the content of the same voluntarily.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations 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 beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It has been confirmed that they were charged to the bank account of the claimant without his consent the amounts corresponding to: 03/11/2021: XX,XX and YY,YY; on 11/17/2021: XX,XX and on 11/23/2021: YY,YY, that the charges made correspond to a service contracted by the claimant with the company Sociedad General of Authors and Publishers (SGAE).

SECOND: In the uploaded receipts, SGAE appears as the payer, as the owner claimed and the claimant as payer.

THIRD: The party complained against has not replied to this Agency, given the reiteration request for information requested on February 14, 2022 and it is recorded that said notification on February 22, 2022 as stated in the acknowledgment of receipt that works in the proceedings.

FOURTH: Notification of the Start Agreement, through the postal service on June 9 of 2022, and of the BOE on the 13th of the same month year. No allegation received by the claimed party.

In accordance with art. 42.1 of Law 39/2015, of October 1, on Procedure Common Administrative of the Public Administrations, the notification was put to provision of the interested party so that he could access the content of the same voluntarily.

FOUNDATIONS OF LAW

Yo

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, 48.1, 64.2 and 68.1 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 initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

The defendant is accused of committing an infraction for violation of article 6

of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which that the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not override the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested is a child. The provisions of letter f) of the first paragraph shall not be application to the treatment carried out by public authorities in the exercise of their functions".

The infringement is typified in article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

The basic principles for the treatment, including the conditions for the

a)
consent under articles 5,6,7 and 9.”
The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following:

C/ Jorge Juan, 6
28001 – Madrid
www.aepd.es
sedeagpd.gob.es

5/8

(...)

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

III

The documentation in the file shows that the claimed party, violated article 6.1 of the RGPD, since it processed the data claims of the claimant without having any legitimacy to do so.

The party complained against processed the claimant's data without legitimacy, since it was linked the receipts of a third party to the claimant's bank account, in relation to some services that you did not contract.

It is accredited that a third party issuer of the three direct debits charged the bank account of the claimant the amount of the same, being the holder of them the claimed party.

It should be noted that the respondent has not replied to this Agency, before the reiteration of request for information requested on February 14, 2022 and there is received said notification on February 22, 2022 as stated in the acknowledgment of receipt what works in the file.

Also, notified of the Start Agreement, through the postal service on June 9 of 2022, and of the BOE on the 13th of the same month year. No allegation received by the claimed party.

In accordance with art. 42.1 of Law 39/2015, of October 1, on Procedure Common Administrative of the Public Administrations, the notification was put to provision of the interested party so that he could access the content of the same voluntarily.

However, and this is essential, the defendant does not prove the legitimacy for the treatment of the claimant's data.

IV

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed on the claimed party, as responsible for an infraction typified in article 83.5.a) of the RGPD, in an initial assessment, the following factors:

- The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered (art. 83.2 a). In this case, the respondent party processed the data of the claimant without legitimacy, since the claimed being the owner of some services of a third-party issuer, domiciled the same in the claimant's account without her authorization.

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 MARIELI GABRIELA, S.L., with NIF B87330726, for a infringement of article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD, a fine of 3,000 euros (three thousand euros).

SECOND: NOTIFY this resolution to MARIELI GABRIELA, S.L., with NIF B87330726.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

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 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es