

□ Procedure No.: PS/00462/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 10/16/2019, it was registered with the Spanish Protection Agency  
Data (AEPD), sent by the Municipal Office of Consumer Information  
(OMIC) of the City Council of \*\*\*LOCALIDAD.1, the claim presented by Doña  
A.A.A. (hereinafter, the claimant) against UNITED ANIF, S.L., with CIF B87319364  
(hereinafter, the claimed).

The claim dealt with the processing of the claimant's data, which,  
presumably, he would have made the claim violating the principle of legality that  
must preside over the processing of personal data.

The claimant stated that on 08/30/2019 she sent a remittance of money to a relative  
from the establishment "Locutorio \*\*\*LOCUTORIO.1", of which, he affirmed, the owner is  
claimed, authorized agent to operate with the company MoneyGram International  
S.P.R.L. Subsequently, the claimant received the same day, at 8:18 p.m., in her  
electronic address \*\*\*EMAIL.1, an email from "Moneygram Payment Systems, Inc"  
confirming the shipment made and the receipt of the consignment by the recipient.  
He indicated that the email received contained this information: A reference number,  
\*\*\*REFERENCE.1; the name of the person receiving the shipment, B.B.B.; the amount  
sent, €494.5; the date the money was collected, "\*\*\*\*DATE.1" and the amount  
to receive, "\*\*\*\*QUANTITY.1".

The claimant also stated that, despite not having subsequently carried out  
no other shipment, received on 09/02/2019 at your email address two

messages from "Moneygram Payment Systems, Inc" informing you of two new remittances allegedly made on that date by her through

MoneyGram. The messages were sent at 7:04 p.m. and 7:52 p.m. and

They contained, respectively, this information:

The first contained the reference number \*\*\*REFERENCE.2; as recipient, C.C.C.; the amount to be sent was €494.5; the date the money was collected "\*\*\*DATE.2" and the amount to receive "\*\*\*CANTIDAD.2". In the second there was the reference number \*\*\*REFERENCE.3; as recipient, D.D.D.; the amount of shipping was €394.5; the date the money was picked up by the recipient "\*\*\*DATE.3" and the amount to receive "\*\*\*CANTIDAD.3".

The claimant stated that she had requested MoneyGram to cancel and cancel the money transfer operations carried out fraudulently on

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09/02/2019 "before receipt of cash at destination"; who acted in accordance with the procedure for submitting, processing and resolving complaints and claims and that MoneyGram informed him that "statements sent from an office are not can visualize", for which he concluded that he was the claimed -holder of the "Locutorio \*\*\*CALL SHOP.1" - who sent money remittances from said call shop using the personal data that she had provided for another purpose a few days before.

SECOND: In view of the claim made, the AEPD, within the framework of the file E/11015/2019, by letter dated 11/22/2019, notified

electronically, transferred the claim to the respondent and requested information

on the measures adopted to put an end to the reported irregular situation.

The certificate issued by the FNMT in the file proves that the document

addressed to the respondent was made available to him in the electronic office on 11/22/2019 and

that on 12/03/2019 the notification was automatically rejected.

In accordance with the provisions of article 65.5 of Organic Law 3/2018, of 5

December, Data Protection and Guarantee of Digital Rights

(LOPDGDD), on 12/04/2020 the agreement for admission to processing of the

this claim. The aforementioned admission agreement for processing was notified to the

claimant through postal mail that is received on 12/09/2020.

THIRD: On 02/02/2021 the Director of the AEPD agreed to initiate

sanctioning procedure to the one claimed for the presumed infraction of article 6.1.b)

of Regulation (EU) 2016/679, of April 27, of the European Parliament and of the Council,

protection of natural persons with regard to data processing

data and the free movement of these data and by which the Directive is repealed

95/46/EC (GDPR); infringement typified in article 83.5 of the RGPD.

FOURTH: On 01/05/2021, a

document sent by the OMIC, signed electronically on 12/23/2020, through which

informs us that the claimant has received the agreement from the AEPD by which

admits your claim for processing, has requested them via email dated

12/10/2020, correct the claim made before this Agency because "in the

time of the events the ownership of the establishment" located on Calle

\*\*\*ADDRESS.1 of \*\*\*LOCATION.1 did not correspond to the person claimed, but to E.E.E.

with NIE \*\*\*NIE.1.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to the authorities of control and as established in articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

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II

The Spanish Constitution (C.E.) guarantees in its article 9.3, among others, the principles of legal certainty and responsibility. In turn, article 24.2 of the C.E. recognizes

everyone the right to the presumption of innocence, which encompasses both the imputation of the facts as the requirement of responsibility of the offending subject.

According to settled jurisprudence, there is no doubt of the application to the Law Administrative penalty, with certain nuances, of the principles that inspire the order penal, as both are manifestations of the State's punitive system, and

Among them, the element or principle of culpability takes on special virtuality. The presumption of innocence has to do with proof of authorship of the facts and

It is also related to the guilt attributable to the person who, in his case, carries them out (STC 76/1990, of April 26, F.J. 8, B), since any sanctioning resolution, whether criminal or administrative requires at the same time certainty of the imputed facts, obtained through evidence of charge, and certainty of the judgment of guilt on those same facts.

In this sense, and limited to the scope of the sanctioning administrative procedure, it is cite the STS, Third Chamber, of 06/24/1998 (Rec. 1776/1994), Legal Basis 2, stating that "Personal responsibility becomes the basis on which

establishes the punitive system since no one can be convicted or punished except by acts that, either by way of intent or guilt, can be directly imputed to him." (The underlining is ours)

Article 28 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP), under the heading "Responsibility" provides in section 1 that "Only those that constitute an administrative infraction may be sanctioned individuals and legal entities, [...], who are responsible for them by way of fraud or guilt."

III

Law 39/2015, of October 1, on the common administrative procedure of the Public Administrations (LPACAP) regulates in article 64 the content of the agreement initiation of the sanctioning administrative procedure and indicates that it must contain, at least, the "a) Identification of the person or persons allegedly responsible."

Well, the agreement to initiate this sanctioning procedure, PS/00462/2020, identified as allegedly responsible for the facts that are examined in it the entity UNITED ANIF, S.L., with CIF B87319364.

In determining the identity of the offending subject, the information that the claimant provided in her complaint about the owner of the establishment "Locutorio \*\*\*LOCUTORIO.1" in which the treatment of your personal data allegedly contrary to the regulations of Personal data protection. It is added to the above that this Agency is addressed the respondent in writing dated 11/22/2019 in which he transferred the complaint and requested information on the measures adopted to put an end to the irregular situation denounced. This is stated in the certificate issued by the FNMT,

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that is in the administrative file, which indicates that on 11/22/2019 the notification was made available to that entity and that on 12/03/2019 the automatic rejection of the notification.

However, after the signing by the Director of the AEPD of the agreement of beginning of sanctioning file PS/00462/2020, there is news of the reception in this Agency of a letter sent by the OMIC in which it informs that the claimed has communicated that UNITED ANIF, S.L., was not responsible for the establishment

“ Locutory \*\*\* LOCUTORY.1

” when the processing of your personal data occurred.

personal nature object of the claim.

The OMIC states in the document that, on the date on which the events occurred, the

The owner of the establishment is a natural person, E.E.E., with NIE \*\*\*NIE.1.

Therefore, article 89 of the LPACAP is applicable, pursuant to which

“will resolve the completion of the procedure, with filing of the proceedings, without

the formulation of the resolution proposal is necessary, when in the instruction

of the procedure it becomes clear that any of the following concurs

circumstances:

[...]

d) When it does not exist or it has not been possible to identify the person or persons

liable or appear exempt from liability. [...]”. (The underline is

our)

Thus, in accordance with the aforementioned regulations, the file of the

sanction file PS/00462/2020, opened to the entity UNITED ANIF, S.L., for

not be attributable to this entity the facts object of the claim that

determined the opening of the sanctioning procedure that concerns us.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE to FILE the sanctioning procedure PS/00462/2020,

open to UNITED ANIF, S.L., with CIF B87319364, as it is accredited in the

record that that entity is not responsible for the allegedly contrary conduct

to the RGPD that motivated the opening of the sanctioning procedure.

SECOND: NOTIFY this resolution to the claimed party.

THIRD: 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 article 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

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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

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