

□ Procedure No.: PS/00079/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: COMMON PROPERTY OF ***CITY COUNCIL.1 ASSOCIATION (hereinafter, the claimant), dated November 19, 2020, filed a claim with the Spanish Data Protection Agency. The claim is directed against TOWN HALL OF *** TOWN HALL.1 with CIF P0608500E (hereinafter, the reclaimed). The grounds on which the claim is based are that they have filed a complaint to the DPD of the claimed and subsequently have verified that at the headquarters of the AEPD does not appear designated DPD any.

It has been verified that the respondent has not been notified of the appointment of the DPO to the AEPD.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection of Data proceeded to carry out the following actions:

On December 14, 2020, the preliminary claim was transferred to the defendant. seated for analysis and communication to the claimant of the decision adopted on the chest. Likewise, he was required so that within a month he sent to the Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent incidents from occurring.

similar quotes.

- Any other that you consider relevant.

The defendant has not responded to the request made by the AEPD.

THIRD: On February 15, 2021, in accordance with article 65 of the LO-

PDGDD, the Director of the Spanish Data Protection Agency agreed to admit

process the claim filed by the claimant against the respondent.

FOURTH: On April 14, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 37 of the RGPD, typified in Article 83.4 of the RGPD.

FIFTH: The initiation agreement was electronically notified to the respondent. This is how

ge article 14.2 of Law 39/2015 of Common Administrative Procedure of the

Public Administrations (LPACAP) according to which "In any case, they will be obliged

two to relate through electronic means with the Public Administrations

to carry out any procedure of an administrative procedure, at least,

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the following subjects: a) Legal persons".

The Certificate issued by the Electronic Notification Service is in the file.

tronics and Electronic Address Enabled of the FNMT-RCM, which records

of the sending of the initiation agreement, notification of the AEPD addressed to the claimed, through

of that means being the date of availability in the electronic headquarters of the organ-

nismo on April 15, 2021 and the date of acceptance on April 19, 2021.

SIXTH: In accordance with article 73.1 of the LPCAP, the term to formulate

allegations to the Home Agreement is ten days computed from the day following the of the notification.

Article 64.2. LPACAP, indicates that the defendant will be informed of the right to formulate allegations, the "right to be heard in the procedure and the deadlines for its exercise, as well as the indication that in case of not making allegations in the term established on the content of the initiation agreement, it may be considered proposed resolution proposal when it contains a precise pronouncement about the imputed responsibility". (The underlining is from the AEPD)

The agreement to initiate the sanctioning file that concerns us contained a precise statement on the responsibility of the claimed entity: in the aforementioned agreement specified what was infringing conduct, the sanctioning type in which it was subsumable, the circumstances of the responsibility described and the sanction that in the judgment of the AEPD proceeded to impose.

In consideration of the foregoing and in accordance with the provisions of article Article 64.2.f) of the LPACAP, the initiation agreement of PS/00079/2021 is considered Pro-Resolution: Once the initiation agreement has been notified, the one claimed at the time of the This resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts:

FACTS

I know

FIRST:

TOWN HALL OF

***CITY COUNCIL.1, due to the lack of a data protection delegate, despite being

bound by current regulations to their appointment.

claim against the

He received

SECOND: The list of data protection delegates communicated to the

AEPD is not communicated.

THIRD: The CITY COUNCIL OF ***CITY COUNCIL.1 has not appointed a Delegate

Data Protection (DPD).

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

Public Administrations act as data controllers.

of a personal nature and, on occasion, exercise the functions of traffickers.

therefore, following the principle of proactive responsibility, it is up to them

meet the obligations that the RGPD details, among which is included that of appointing a data protection officer, make their contact details and communications public.

carlos to the AEPD (article 37 RGPD)

Sections 1 and 7 of article 37 GDPR refer to these obligations and states.

“The person in charge and the person in charge of the treatment will designate a delegate of protection, respectively:

data protection provided that:

a) the treatment is carried out by a public authority or body, except those courts acting in the exercise of their judicial function;

“The person in charge or the person in charge of treatment will publish the contact details of the data protection delegate and will communicate them to the control authority.”

On the appointment of the data protection delegate, sections 3 and 5 of the

Article 37 of the RGPD indicate that “When the person in charge or the person in charge of the treatment

be a public authority or body, a single delegate may be appointed

of data protection for several of these authorities or organizations, taking into account

account its organizational structure and size. “The data protection delegate can

may be part of the staff of the person in charge or of the person in charge of the treatment or

perform their functions within the framework of a service contract.

For its part, the LOPDGDD dedicates article 34 to the “Appointment of a delegate-

do of protection of data”, precept that provides:

“1. Those responsible and in charge of the treatment must designate a delegate data protection in the cases provided for in article 37.1 of the Regulation ment (EU) 2016/679 and (...)”

“3. Those responsible and in charge of the treatment will communicate within the period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional laws on data protection, appointments, appointments and dismissals

of the data protection delegates both in the cases in which they are
train obliged to their designation as in the case in which it is voluntary”.

The infringement of the obligation imposed on the claimed party by article 37.1 RGPD

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It is typified in article 83.4. GDPR, which states:

“Infractions of the following provisions will be sanctioned, in accordance
with section 2, with administrative fines of a maximum of EUR 10,000,000 or, alternatively,
being from a company, of an amount equivalent to a maximum of 2% of the volume
overall annual total turnover of the previous financial year, opting for the
greater amount:

a)
the obligations of the person in charge and the person in charge pursuant to articles (...)
25 to 39,...

The LOPDGDD indicates in article 73, “Infringements considered serious”:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679
are 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
Followers: (...)

v) Failure to comply with the obligation to appoint a data protection delegate
data when their appointment is required in accordance with article 37 of the Regulations
ment (EU) 2016/679 and article 34 of this organic law.”

III

Regarding the sanction or sanctions that could be imposed on the person claimed in the present sanctioning procedure, the following have been taken into consideration provisions:

On the one hand, article 58.2 of the RGPD that establishes that "Each authority of control will have all the following corrective powers indicated below-tion:

(...)

b) send a warning to any data controller or data processor when treatment operations have violated the provisions of this Regulation-mint;

(...)

d) order the controller or processor that the processing operations treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of each particular case;

(...)"

On the other hand, article 83.7 RGPD, which indicates that "Without prejudice to the powers corrective actions of the control authorities under article 58, paragraph 2, each Member State may establish rules on whether and to what extent it is possible, impose administrative fines on authorities and public bodies established in said Member state".

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In accordance with this authorization granted by the RGPD, the LOPDGDD has provided in article 77, "Regime applicable to certain categories of liability saberes or in charge of treatment", the following:

"1. The regime established in this article will be applicable to the treatment of those who are responsible or in charge:

(...)

c) The General Administration of the State, the Administrations of the Communities Autonomous Communities and the entities that make up the Local Administration.

(...)

2. When the persons in charge or persons in charge listed in section 1 had any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will issue resolutions sanctioning them with a warning. The resolution will also establish as the measures that should be adopted to stop the behavior or correct the effects cough of the infraction that had been committed. The resolution will be notified to the responsible responsible or in charge of the treatment, to the body on which it reports hierarchically, in its case, and to those affected who had the status of interested party, as the case may be.

3. Without prejudice to the provisions of the preceding section, the protection authority tion of data will also propose the initiation of disciplinary actions when there are sufficient indications for it. In this case, the procedure and the sanctions to apply will be those established in the legislation on the disciplinary or sanctioning system. dor that results from application.

Likewise, when the infractions are attributable to authorities and managers, and

the existence of technical reports or recommendations for the treatment is accredited

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the corresponding Official State or Autonomous Gazette.

gives.

4. The resolutions must be communicated to the data protection authority

that fall in relation to the measures and actions referred to in the paragraphs

previous two.

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

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

dictated under this article.”

The City Council of *** TOWN HALL.1 is obliged to appoint a DPD

since the treatment is carried out by a public authority or body. The modality

of their hiring, appointment and employment relationship is very broad, you can choose what

most suitable for your specific situation.

The RGPD entered into force on May 25, 2016, although it was not applicable

until two years later. This period of time was necessary to adapt the treatments

ments to the new regulations. But the City Council mentioned, after more than two

years after that adaptation period, a DPD has not yet been appointed.

Consequently, the City Council of ***AYUNTAMIENTO.1 has failed to comply with the

obligation established in article 37 of the RGPD and sanctioned in article 83.4.a)

of the same.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

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graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF ***CITY COUNCIL.1 with CIF

P0608500E, for an infringement of Article 37 of the RGPD, typified in Article 83.4

of the RGPD, a sanction of warning.

SECOND: REQUEST the TOWN HALL OF *** TOWN HALL.1 with CIF

P0608500E:

1. The appointment of a Data Protection Officer.

You must inform this Agency within a month from the notification
cation of this Resolution.

THIRD

*** TOWN HALL.1.

: NOTIFY this resolution to the CITY COUNCIL OF

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

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Sea Spain Marti

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