

□ File No.: PS/00469/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated May 25, 2021
filed a claim with the Spanish Data Protection Agency.

The claim is directed against INCOPROSOL, S.L. with NIF B92603380 (hereinafter,
the claimed party).

The reason on which the claimant bases the claim is on the fact that on 24
May 2021 had a telephone conversation with an employee of the entity
claimed and that, through an email sent by a representative of the entity,
learned that their conversation was recorded, a fact of which he was not
reported.

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), on June 14, 2021, said claim was transferred to the
claimed party, to proceed with its analysis and inform this Agency in the
period of one month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response to this letter has been received, despite the fact that it is recorded as having been received.
request by the entity claimed, on June 25, 2021.

THIRD: On September 20, 2021, the Director of the Spanish Agency
of Data Protection agreed to admit for processing the claim presented by the party
claimant.

FOURTH: On November 15, 2021, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the

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initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On May 24, 2021, the claimant had a telephone conversation with an employee of the claimed entity, which was recorded without requesting the prior consent of the claimant.

SECOND: On November 28, 2021, the claimant is notified of the agreement of the beginning of this procedure, turning said agreement into a proposal for resolution in accordance with articles 64.2.f) and 85 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP), by not making the claimed allegations within the indicated period.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

The RGPD in its article 5, "Principles related to the treatment" says that "The data personal will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization");

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d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational ("integrity and confidentiality").

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

The infraction for which the defendant is held responsible is provided for in article 83.5

of the RGPD that establishes:

"The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 euros 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:

a)
consent under articles 5,6,7 and 9.”

The basic principles for the treatment, including the conditions for the
In turn, the LOPDGDD in its article 72.1.a) qualifies as a very serious infraction,
purposes of prescription, “a) The processing of personal data violating the
principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

III

It is considered that the claimed party has violated article 5.1 c) of the RGPD, since it has
recorded the voice of the claimant, without previously informing him or requesting his
consent.

The entity claimed has not responded to the request presented by this Agency,
despite having proof of receipt.

Therefore, the entity complained against has not provided evidence against what is stated by
the claimant, such as a copy of the recording of the conversation, such as
document that allows verifying that what is indicated by the claimant is not true.

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Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles

for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

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By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

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

The reported party is reminded that recording the voice of customers without prior notice and without your consent, violates the right to privacy of third parties, being able to case of non-cooperation with this body, be considered an attitude hindering, as an element to assess in order to a sanction of nature economic, which is communicated to the appropriate legal effects.

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

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE INCOPROSOL, S.L., with NIF B92603380, for an infringement of article 5.1.c) of the RGD, typified in article 83.5 of the RGD, a fine of €5,000 (five thousand euros).

SECOND: NOTIFY this resolution to INCOPROSOL, S.L.

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

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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

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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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