

□ Procedure No.: PS/00434/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00434/2019, instructed by the Spanish Agency for Data Protection, to the entity CONSULTING OF SECURITY AND INVESTIGATION MIRA DP MADRID, S.L. with CIF: B84406925, (hereinafter, "the claimed entity"), for alleged violation of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons in what respect to the Processing of Personal Data and the Free Circulation of these Data (RGPD), and based on the following,

BACKGROUND

FIRST: dated 09/29/18, D. A.A.A. (hereinafter, "the claimant"), presented written before the Spanish Agency for Data Protection, in which, among others, denounced ciaba:

"I file a complaint for the collection (from unknown sources and not accessible) public) and non-consensual treatment of my personal data in a database whose managers are the legal entity reported, as well as as the natural person, who holds the position of sole administrator in this last. The complaint is also extended to the fact of the reception of publicity, never requested, resulting from the attached document.

It means that the address included in the database has not been recorded never in a file accessible to the public, in addition to the fact that it is not my address neither personal nor professional and the surname is not collected correctly.

I do not maintain and have never maintained in the past a relationship of any kind with those reported (professional or personal), who have allowed themselves to obtain

store and process my data and, what is more, not knowing the source from which they could having obtained a domicile that does not appear in any file accessible to the public co".

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the investigative powers tion granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). So with dates 11/20/18 and 12/05/18, an information request is addressed to the claimant entity called, to the address marked on the sender of the business letter sent to the recipient. crying (**ADDRESS.1).

According to a certificate from the State Post Office, the notification sent to the company claim, dated 11/20/18, through the SICER service, to the address: indicate-da, has been returned to origin by "unknown".

According to a certificate from the Electronic Notifications Service and Electronic Address Enabled, the request sent to the entity, dated 12/05/18, and made available application through the Notific@ service, was rejected, dated 12/12/18.

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THIRD: dated 03/07/19, a new information request is addressed to the entity claimed (SECURITY AND INVESTIGATION CONSULTING MIRA DP MA-DRID, SL), to the address marked on the Grupo Mira website.

According to a certificate from the State Post Office, the notification sent to the company

claim, dated 03/07/19, through the SICER service, to the address: ***DI-
RECTION.2, has been notified to the recipient on 03/11/19, the data being
receiver's cough: D^a. B.B.B.. ***NIF.1.

FOURTH: On 12/02/19, the Director of the Spanish Agency for the Protection of
Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of
of the powers established in art. 58.2 of the RGPD and in articles 47, 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 (LOPDGDD), for alleged infringement of article 6
of the RGPD and considered very serious in 72.1.b) of the LOPDGDD for the purposes of pres-
encryption, setting an initial penalty of 5,000 euros, (five thousand euros), without prejudice to the
that resulted in the course of the instruction of the procedure.

SIXTH: On 12/27/19, the initiation of the file was notified to the claimant entity.
demanded, who has not filed before this Agency, any brief or allegation, within the
the period granted for this purpose.

PROVEN FACTS

1.- The claimant denounces that he has received commercial correspondence without
allowed your personal data to be processed by the entity claimed for said
finish. After several attempts to notify the information request to the agency,
entity claimed, it has not sent any type of information to this Agency.

FOUNDATIONS OF LAW

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II

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of
control, and as established in art. 47 of Organic Law 3/2018, of December 5,
bre, Protection of Personal Data and guarantee of digital rights (in the su-
cessive LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to resolve this procedure.

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "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.".

In the present case, it is reported that business correspondence is received without that you have allowed your personal data to be processed by the entity for said finish.

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III

Thus, the known facts could constitute an infraction, imputed table to the claimed, for violation of article 6, of the RGPD, by not complying with any of the conditions established therein.

For its part, section b) of article 72.1 of the LOPDGDD considers as "very serious", for prescription purposes, the: "processing of personal data without consent any of the conditions of legality of the processing of personal data established cited in article 6 of the RGPD".

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the greater amount, in accordance with article 83.5.a) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction procedure, in order to set the amount of the penalty to be imposed on the price

In this case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established in article 83.2 of the RGPD:

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The categories of personal data affected by the infringement,

The data processed in this case, are of a markedly personal nature and therefore person identifiers, (section g).

The way in which the supervisory authority became aware of the infringement, become aware of the infringement through a claim, (section h).

- Any other aggravating factor. In the present case, by not having attended the requirements of this Agency, (section k).

As mitigating criteria:

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The nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question as well such as the number of affected parties and the level of damages they have suffered (paragraph a).

In accordance with the precepts indicated, and without prejudice to what results from the instruction procedure, in order to set the amount of the penalty to be imposed on the price

In this case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 76.2 of the LOPDGDD. as criteria

extenuating:

- The continuing nature of the offence. Having only done once the treatment of personal data when sending the advertising mail, (section a).

The profits obtained as a result of the commission of the infraction. To the there are no benefits for the commission of the infraction, (paragraph c).

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The balance of the circumstances contemplated in article 83.2 of the RGPD, with res- Regarding the infraction committed by violating what is established in article 6, it allows setting a fine of 5,000 euros (five thousand euros).

In view of the aforementioned precepts and others of general application, the Director of the Agency Spanish Data Protection.

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RESOLVE

FIRST: IMPOSE ON THE SECURITY AND INVESTIGATION CONSULTING entity CION MIRA DP MADRID, S.L. with CIF: B84406925 a penalty of 5,000 euros (five thousand euros), for infraction of article 6) of the RGPD, typified as "very serious" in the Article 72.1.b) of the LOPDGDD.

SECOND: NOTIFY this resolution to the entity CONSULTING DE SEGURIDAD E INVESTIGACION MIRA DP MADRID, S.L and the claimant regarding the result of the claim.

Warn the sanctioned party that the sanction imposed must be made effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-
Public Administrations (LPACAP), within the voluntary payment period indicated in article
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, me-
upon deposit in the restricted account number ES00 0000 0000 0000 0000 0000, opened
on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank,
S.A. or 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
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 82 of Law 62/2003, of December 30,
bre, of fiscal, administrative and social order measures, this Resolution is
will make public, once it has been notified to the interested parties. The publication is made
will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency
Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the
established in articles 112 and 123 of the LPACAP, the interested parties may interpose
have, optionally, an appeal for reconsideration before the Director of the Spanish Agency
of Data Protection within a period of one month from the day following the notification
fication of this resolution, or, directly contentious-administrative appeal before the
Contentious-administrative Chamber of the National High Court, in accordance with the provisions
placed in article 25 and in section 5 of the fourth additional provision of the Law
29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the
two months from the day following the notification of this act, according to

the provisions of article 46.1 of the aforementioned legal text.

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-electronicaweb/>], 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

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

resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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