

□ Procedure No.: PS/00116/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated June 4, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against Avalos Consultores, S.L., with NIF B98832637 (in
later, the claimed one).

The claimant states that the respondent with whom she had contracted the services
de Asesoría Fiscal has transmitted your data to the agency Torrent Asesores Nga, S.L,
without your consent.

Date on which the claimed events took place: prior to March 31
of 2020.

Along with the claim, the following documentation is provided:

- Invoice for the year 2017, where the agency with which you contracted the services of
tax advice.
- Invoice of March 31, 2020, formalized by the other agency.
- Email dated June 1, 2020, sent to the two agencies, claiming
for this fact and pointing out that they have never communicated the transfer of
documentation to a third company, nor has it been authorized.

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 powers of
investigation granted to the control authorities in article 57.1 of the Regulation
(EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD).

Thus, on November 27, 2020, a letter is addressed to the claimant admitting his claim pending.

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed one.

In addition, the following extremes are noted:

1. It is recorded that in the proceedings with reference E/05051/82021, the transfer of the claim to the entity claimed on July 21, 2020, through the service of electronic notifications, being returned due to the expiration of the delivery period.
2. It is verified, based on the documentation provided by the claimant, that the Personal data provided in 2017 by the claimant to the respondent are listed on the invoice issued by the third company.

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3. A request for information is made on the causes that have motivated the claim submitted by the claimant to the respondent on February 1 and February 2021, in the actions with reference E/09749/2020, through the service of electronic notifications and the postal service. being both returned notifications. The first one, because the delivery deadline has expired and the second returned to origin as surplus. Not having been withdrawn at the office of emails.

4. A request is made for information on the causes that have motivated the claim submitted by the claimant to the Torrent agency.

5. It is recorded that on July 21, 2020, and on February 1 and 16, 2021, transfer was given

from the complaint to the one claimed in the proceedings with reference E/09749/2020, to through the electronic notification service and the postal service.

Being both notifications returned. The first one, due to the expiration of the delivery time and the second returned to origin due to surplus. Not having been withdrawn at the post office.

THIRD: On April 14, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 6 of the RGPD, typified in article 83.5 of the RGPD and considered very serious in 72.1.a), for prescription purposes, setting a sanction initial payment of 4,000 euros (four thousand euros).

FOURTH: Having been notified electronically, the start agreement. Being the date of availability on April 14, 2021 and the date of rejection automatic on the 25th of the same month and year.

: Formal notification of the start agreement, the claim at the time of the

FIFTH

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

FIRST: It is stated that the respondent transferred the claimant's data to a third party.

SECOND: It is verified, based on the documentation provided by the claimant, that the personal data provided in 2017 by the claimant to the respondent appear on the invoice issued by the third company.

THIRD: It is known that the respondent did not reply to this Agency, after the requirements made on February 1 and 16, 2021.

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FOURTH: On April 14, 2021, this sanctioning procedure was initiated by the violation of article 6 of the RGPD, being notified on April 25, 2021. No having made allegations, the claimed one, to the initial agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

II

The defendant is accused of committing an infraction for violation of the Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which 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 data

personal for one or more specific purposes;

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

(...)"

III

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

"2 Each supervisory authority shall have all of the following powers
corrections listed below:

(...)

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

(...)

"d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

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

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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 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:

a) The basic principles for the treatment, including the conditions for the 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 the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particular the following:

(...)

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

IV

The documentation in the file offers evidence that the party claimed, violated article 6.1 of the RGPD, since the actions practiced, it follows that the respondent processed the data without legitimacy to do so the claimant, that is, I communicate the data of the claimant to a third party.

In this sense, it should be noted that the entity complained against did not answer this Agency, as stated in the notifications carried out both through the postal service, such as by electronic notifications on July 21, 2020, and

on February 1 and 16, 2021, nor did it make allegations to the agreement to start the present sanctioning procedure.

v

In accordance with the precepts indicated for the purposes of setting the amount of the sanction to be imposed in this case, it is considered appropriate to graduate the sanction to impose in accordance with the following criteria established in article 83.2 of the GDPR:

As aggravating criteria:

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The lack of cooperation with the AEPD in order to remedy the infraction and mitigate its effects (article 83.2 f) of the RGPD).

- Basic personal identifiers are affected (name, surnames, domicile), according to article 83.2 g of the RGPD.

This is why it is considered appropriate to adjust the sanction to be imposed on the claimed and fix it in the amount of €4,000 for the infraction of article 6 of the GDPR.

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 AVALOS CONSULTORES, S.L., with NIF B98832637, for a infringement of Article 6 of the RGPD, typified in Article 83.5.a) of the RGPD, a

fine of 4,000 euros (four thousand euros).

SECOND: NOTIFY this resolution to AVALOS CONSULTORES, S.L., with
NIF B98832637.

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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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 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 period of

month 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

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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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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