936-031219

 Procedure No.: PS/00245/2020

RESOLUTION R/00447/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00245/2020, instructed by the Agency

Spanish Data Protection Authority to AVATA HISPANIA, S.L., given the complaint

presented by A.A.A., PLATA EVENTOS, S.L., and based on the following,

BACKGROUND

FIRST: On September 21, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against AVATA HISPANIA,

SL (hereinafter, the claimed party), through the Agreement that is transcribed:

<<

Procedure No.: PS/00245/2020

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: D.A.A.A. (hereinafter, the claimant) on 04/16/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against AVATA HISPANIA, S.L. with NIF B24456907 (hereinafter, the claimed).

The grounds on which the claim is based are:

That they are using personal data from their company, data especially

protected, once the contract that united them ended and in which the accused had

the figure of treatment manager.

That on 09/18/2015, he signed a franchise agreement with the defendant, in which the first was listed as data controller and the second as data processor.

That during the term of the contract between both parties, the person responsible for the treatment used an online platform maintained and managed by the person in charge of the treatment for the administrative control of the cases entrusted to him by his customers.

That it detected through an external audit, which it carried out in collaboration with a specialist consultancy, that the defendant's platform did not offer the levels of minimum security required for the processing of personal data, especially protected, which is why the complainant requested that the deficiencies detected. Following this request, the respondent canceled the claimant's access to the platform and email.

That on 01/25/2019, he requested the return of the data of his clients and their platform removal.

That on 01/29/2019 the defendant responded rejecting the request.

That on that same date he sends a burofax to the accused, breaking all commercial relations dated 01/31/2019 and requesting again the deletion of the files that were in his possession and for which the complainant was responsible. I also know requested the defendant not to contact his clients because the contract as a treatment manager had expired and he did not have authorization to it.

That on 02/06/2019 an email is sent requesting again the

return of the files of its clients and their subsequent elimination under the protection of

what is established in art.28.3 of the RGPD.

That on 02/08/2019 by email they request the accused to

return emails received and sent from your Avata account

Hispania.

That the accused, with the relationship of data processor already terminated, has

continued processing the data of the complainant's clients, even reaching

establish telephone contacts with their clients to offer them the services that the

complainant was lending them.

And, among other things, attach the following documentation:

 Copy of letter addressed to the defendant dated 01/25/2019 without signing

requesting the return and deletion of all the data entered in the

platform.

 Copy of letter addressed to the defendant signed and dated 01/28/2019 where

It consists among other aspects:

o Communication of the resolution of the franchise contract for the

exploitation of a commercial activity under the name “AVATA

HISPANIA” dated 09/18/2015 with the date of cessation of the activity of

exploitation of the “AVATA HISPANIA” brand on 01/31/2019.

o The request to the respondent for the suppression of all records of

its clients under art. 17.1 of the RGPD and art. 17 LOPD.

o That the accused refrain from contacting their

clients since it does not have the express consent of its clients to

such effect.

 Copy of the response of the accused dated 01/29/2019 and without signature where

include the following manifestations:

o That the rights related to data protection may be exercised

always at the request of the interested party, this is the final client and not SILVER

EVENTS, S.L. That therefore they should reject said request.

o That the treatment by AVATA HISPANIA of the data of the

end customers is based on an existing contract between it and PLATA

EVENTS, S.L.

o That the processing of these data is necessary for the execution of the

franchise agreement, as well as to safeguard the legitimate interest

that AVATA has about its own brand and good image as it is

expressly stated in the franchise agreement signed between the

parties and signed on 09/18/2015.

 Copy of letter addressed to the accused, signed and dated 02/06/2019 where

there is a request to the accused that all the data be returned

that are in their possession and once they are returned, delete them from their

systems.

 Copy of email dated 02/08/2019 addressed to emails

of the domains fundacionavata.org and avatahispania.com requesting that they provide

emails from the start of the activity.

 Affidavits from 2 clients of the complainant stating that

AVATA HISPANIA has contacted them by telephone with

dates 03/25/2019 and 03/22/2019 respectively, to inform you of the

possession of their data and the use they would make of them, in the first case, and

that PLATA EVENTOS, S.L. he no longer belonged to AVATA FOUNDATION or AVATA

HISPANIA, in the second case.

SECOND: Upon receipt of the claim, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 07/10/2019, AVATA sends this Agency the following information and

manifestations:

1.

It states that “As the AEPD affirms in its section dedicated to helping the

citizen and the data controller, this body in the section "And

what we can't help you with" declares that he is not competent in extremes

such as: "1.. discrepancies with the service provider on issues of

civil sphere such as those related to the validity of the contract, the interpretation

of the contractual clauses. compliance, lack of commitment

of permanence, the prescription of the contracted debt, the date on which

request to cancel the service, or effects of withdrawal". Well,

analyzing the claim presented to the contrary and the circumstances that

surround it, derived from the contractual relationship between the parties, not

we can only affirm that we are in this assumption, since SILVER

EVENTOS is instrumentalizing an environment in administrative channels such as the

presentation of a claim before the AEPD stating a breach of

the Applicable Regulations regarding the protection of personal data that are not

accredits, to try to attack the existing commercial dispute between the two

companies in court for breach of commercial obligations

regarding the franchise agreement by PLATA EVENTOS…”

2. States that “on January 30, 2019, a burofax from PLATA was received

EVENTS (Document III provided by the claimant in his claim) for the

which unilaterally rescinds the franchise agreement and is requested in the

last page of this document in point 3 that "We require that, in

under Art. 17.1 of Regulation (EU) 2016/679 and Art. 17 of LOPD proceed to

delete all the files of our clients”. Therefore, although the

articles on which it is based are those related to the rights of the interested parties and

not the data controller, my representative, acting in accordance with

right and based on good faith, attending to the requirement, understanding that

they clearly meant to refer to his duties as head of the

treatment derived from article 28 of the RGPD in its section 3 g) that stipulates:

"at the choice of the person in charge, will delete or return all personal data

once the provision of treatment services ends, and will delete the

existing copies unless data retention is required

personal under the law of the Union or of the Member States; ". In

In this sense, the Treatment Manager, PLATA EVENTOS, decided that

delete the data, a fact that was carried out and of which we contribute

certificate of compliance as DOCUMENT Nº5. “

A copy of the unsigned letter dated 01/29/2019 sent by AVATA is provided

HISPANIA to PLATA EVENTOS, S.L. where it is stated that:

a)

b)

"…that according to the exercise of the rights of deletion and portability

manifested by PLATA EVENTOS, S.L.U, the RGPD in its articles 17 and 20

and the LOPD-DDG in its articles 15 and 17, establish that the rights

relating to data protection may always be exercised at the request of the

interested, that is, the end customer and not PLATA EVENTOS, S.L.U. For the

Therefore, we must reject said request."

"…in accordance with current regulations on data protection,

we determine that the processing of this data is necessary for the

effective execution of the franchise contract, in which both companies

form part and that, therefore, this treatment is absolutely

necessary and legitimate to satisfy the contractual interests pursued

by both parties, as well as to safeguard the legitimate interest that

AVATA has about its own brand and good image as collected

expressly in the franchise agreement signed between the parties and

signed in Cáceres on September 18, 2015."

A copy of "Proof of deletion and blocking of data" is provided (art.28.3

RGPD)" by the claimed party, dated and signed on 07/05/2019 where it is

states that:

a)

"That based on the joint and several responsibilities of both entities, in

under the franchise agreement, AVATA, protected by civil regulations and

mercantile law of Spanish Law, Avata Hispania proceeded to suppress

the original personal data on January 31, 2018 and that

keeps a duly blocked copy of the personal data of the

interested parties until they prescribe the actions that could be derived. A

these effects, PLATA EVENTOS was informed by burofax of 31

of January 2019."

A copy of the burofax sent by the claimed party to PLATA EVENTOS, S.L.

on 01/31/2019 where it is stated:

"The blocking of the program-platform is justified and they have been

explained the (security) reasons with total clarity and based on the

strict compliance with data protection regulations, given

account of the alarm that your email has caused us."

1. That the files to which the complainant refers are client records

containing brief information on the accident and identification data of the

client, and that in no case is attached information regarding the cause or

process in progress of the interested party.

2. That it is not their responsibility to respond to the request for the return of the

information contained in mailboxes with domain

fundacionavata.org because it is not owned by the respondent but by the FOUNDATION

AVATA HELP THE ACCIDENT, independent legal entity.

3. That in relation to the communications with the interested parties, it states "the

they have been carried out after the termination of the contract

when, after insistently reiterating to PLATA EVENTOS the request

of AVATA of the fulfillment of the contractual tenor that united them, by which the

itself had the obligation to notify its clients that the claims were

would do outside the security and protection of the AVATA Network from that

moment. Given that the company was not sent proof of said

communications, based on legitimate interest and in compliance with the contract of

franchise, AVATA solely and exclusively contacted the

clients/interested parties to inform them that PLATA EVENTOS had left

of being part of the AVATA Network, as can be deduced from the own

affidavits provided…"

4. That they have adopted the following measures:

a.

"Review and update of the procedure for Return, Blocking and

Data retention. Specifically, in response to requests for

Returns sent by the Treatment Manager, will be

will check without further delay the identity data and the data

personal data that appear in your space in the system associated with your

customers. Once this step has been verified, the secure shipment of

personal data in structured format within a maximum period of 5

business days or, where appropriate, the deletion if applicable. "

b. A compliance control has also been established by

of the claimed Audit area to ensure compliance with

the deadlines established in the indicated Procedure.

c. Reinforcement in training for members of the Technical Service and

Customer Service (responsible for the return process) to

ensure knowledge (and monitoring) of the established processes.

d. A report on security measures has been requested

current platform perimeters.

5. That they reiterate their performance in accordance with the requirements of the applicable regulations

acting in accordance with the indications of the data controller and

evidencing the blocking and conservation of the data.

A copy of the email dated 01/28/2019 sent by ***EMAIL.1 and

sent to ***EMAIL.2 where it is stated that:

a) The controller (PLATA EVENTOS, S.L.) has detected that the

personnel of the treatment manager (AVATA HISPANIA, S.L.) is

processing personal data without authorization from the

responsible for the treatment and without the express consent of the clients of the

same.

b) That in the security audit carried out by a specialized company,

has detected that the platform owned by the data processor is not

complies with the necessary security measures for data processing

specially protected.

c) And they request that they return the data that has been entered in their

platform. They also request their removal.

A copy of the email dated 01/30/2019 sent by ***EMAIL.3 is provided

sent to ‘A.A.A.’ where it is stated that:

a) That it is essential that you sign the attached contract given that

The situation must be regularized in accordance with current regulations.

b) Attached to the email is a file with the name “CONTRATO

DATA PROCESSING AVATA-SILVER EVENTS.pdf”

On 07/22/2020, the respondent sends this Agency the following information:

1. Copy of “FRANCHISE AGREEMENT BETWEEN AVATA HISPANIA, S.L. Y

SILVER EVENTS, S.L.” dated and signed on 09/18/2015 where it is stated:

a. AVATA HISPANIA, S.L. as franchisor and PLATA EVENTOS, S.L.

as a franchisee.

b. The first statement includes:

"That the Franchisor's corporate purpose is the commercial distribution and

provision of services through channeling or communication between

the client, with whom he maintains the ownership of the legal relationship

contract, and the professional or professionals in each case necessary,

for the judicial and extrajudicial processing, fundamentally, of

compensation derived from traffic accidents, as well as

any other matters of a juridical-legal nature and the coordination of

the different specific services appropriate to each case.”

a. The ninth statement contains:

“That the Franchisor is willing to grant the Franchisee the

exploitation rights of the franchise by this CONTRACT

for the correct fulfillment of the object of the same, operating this

during the term of this CONTRACT at the expense and risk of the

Franchisee."

a. In the tenth manifestation it consists:

“That the Franchisee expresses its desire to enter into this CONTRACT of franchise, which assumes in all its extremes, and undertakes to maintain and respect the characteristics of the described business and its image in front of clients, other Franchisees and third parties unrelated to the Franchise. Both parties agree to sign this Franchise CONTRACT, accepting for this purpose the concept of franchise as a collaboration system, under CONTRACT, based on the mutual trust between the parties, who are legally parties independent, through which one of them, the Franchisor, yields to exchange for certain economic compensations, tacit or express the right to use and/or exploit the product, service, name, label, symbols, badges, logo and trademark already accredited, along with the knowledge necessary to develop the business, by Franchisee, who with his financial contribution, undertakes to follow the rules, formulas, systems, methodology and procedures of the Franchisor.”

b. In its third general provision:

“The Franchisee will punctually fulfill as many obligations of fiscal nature and data protection, imposes the current regulations on the natural or legal persons who carry out commercial activities, keeping with the diligence of a good merchant the books, registers and other tax and accounting documentation…”

c. In the first clause, "OBJECT OF THE CONTRACT", it states:

“The purpose of this CONTRACT is the concession by the

Franchisor to the Franchisee, of the right to provide the services,

market the products and to make use, with a limited license, of the

brand or brands, logo (-s), distinctive symbols, trade name and

Franchisor's label, solely and exclusively to achieve the

compliance with the purposes expressed in this CONTRACT,

without the Franchisee thereby acquiring ownership of the brand, or

trademarks, logo (-s), distinctive symbols and label (-s).

Likewise, the Franchisor transmits to the Franchisee the "Know how" and

experience necessary to carry out the object of this

CONTRACT."

d. In

the clause

"two.

THE FRANCHISEE:

ENTREPRENEUR

INDEPENDENT”, consists:

Yo. 2.1- The Franchisee and the Franchisor are legally parties

independent, who participate voluntarily and freely in the

execution of this Franchise CONTRACT.

…

2.3.- Both parties agree and agree that the Franchisor

provides the sales force as well as legal services,

making them available to the Franchise. However, all

the expenses that could be incurred in such a derivative of this

clause, will be borne by the Franchisee."

and. In clause 9.5., within "9. OBLIGATIONS OF THE

FRANCHISOR", consists:

"9.5. Provide a computer program developed to help the

Franchisee in the management of the files that are processed, which will be

used and installed on computer equipment approved by the

Franchisor, all costs being borne by the Franchisee."

F. In clause 10.10., within "10. OBLIGATIONS OF THE

FRANCHISEE", consists:

"Compliance with punctuality all its obligations in front of the

creditors, whatever their nature, and especially

those concerning their duties in labor matters, security

social, tax and data protection."

g. In clause 10.26., within "10. OBLIGATIONS OF THE

FRANCHISEE", consists:

"10.26.- Do not involve the Franchisor in any legal cause that

derived from actions for which he was responsible or

the Franchisee is jointly responsible.

The use of the label, logo, brand and symbols of the Franchisor does not

does not imply in any case, the acceptance of responsibility for the

Franchisor, since the Franchisee acts as an entrepreneur

Independent.

claim, compensation.

all demand,

judgment,

procedure, costs and expenses incurred by the Franchisee in the

development of its activity will be the sole and exclusive responsibility

of the Franchisee.

loss,

If the Franchisor is involved in any processes

for the actions of the Franchisee, his collaborators, auxiliaries,

agents and employees, the Franchisor may repeat against the

Franchisee, for all expenses as well as damages that

support derived from it."

h. In clause 10.38., within "10. OBLIGATIONS OF THE

FRANCHISEE", consists:

"10.38.- The Franchisee must allow the Franchisor access in

at all times to its management software."

Yo. In clause 18.3., within "18. CONTRACT RESOLUTION",

consists:

"By early resolution at the will of any of the parties,

mediating justified cause and the usual advance notice in the form that is

determined in that CONTRACT."

J. In clause 18.7e., within "18. CONTRACT RESOLUTION",

consists:

"The Franchisee will announce the fact of his termination as

Franchisee to anyone who could affect him, informing him of his

Disassociation from the Franchisor."

k. In clause 18.9., within "18. CONTRACT RESOLUTION",

consists:

"In case of resolution or termination of the franchise CONTRACT by

any cause, the Franchisee will cede to the Franchisor the position

legal entity that holds in all contracts for the provision of services

that you have formalized with the clientele related to files not

archived in order to be able to carry them out successfully, thus guaranteeing the

interests of the clients and the good credit of AVATA HISPANIA..."

2. Copy of email sent by ***EMAIL.3 to "A.A.A." on the 21st of

November 2018 in which the following email appears

warning:

"According to data protection regulations, we inform you that your

data are part of a file whose controller is AVATA HISPANIA

CIF B-24456907 and address in León, Avda. Ordoño II, nº 26-principal,

ZIP. 24001 and email address ***EMAIL.4. Your data

will be treated for the purpose of informing you and responding to your

applications electronically. You may exercise your rights to

access, rectification, deletion, treatment limitation, opposition and/or

portability by sending us a request with a copy of your DNI to AVATA

HISPANIA at the indicated address and mail…"

FOUNDATIONS OF LAW

Yo

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

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers

corrections listed below:

(…)

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

(…)"

In article 4 of the RGPD, Definitions, it states that: "For the purposes of this

Regulation shall be understood as:

(…)

8) "processor" or "processor": the natural or legal person,

public authority, service or other body that processes personal data on behalf of the

data controller";

And in article 28.3.g) of the RGPD, in charge of the treatment, it is stated that:

"3. The treatment by the person in charge will be governed by a contract or other legal act

in accordance with the Law of the Union or of the Member States, which binds the

in charge with respect to the person in charge and establish the object, duration, nature

and the purpose of the treatment, the type of personal data and categories of interested parties,

and the obligations and rights of the controller. Said contract or legal act

shall stipulate, in particular, that the person in charge:

(…)

g) at the choice of the person in charge, will delete or return all personal data

once the provision of treatment services ends, and will delete the

existing copies unless data retention is required

personal under the law of the Union or of the Member States;

(…)"

III

It should be noted that the violation of article 28.3.g) of the RGPD is

typified in article 83.4.a) of the aforementioned RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(…)”

On the other hand, the LOPDGDD in its article 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

paragraphs 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as the

that are contrary to this organic law.

And in its article 74, for the purposes of prescription, it qualifies as "Infringements

considered mild”:

“They are considered minor and the remaining infractions of

merely formal character of the articles mentioned in sections 4 and 5 of the

Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

(…)

j) Failure to comply with the obligation of the data processor

inform the person responsible for the treatment about the possible infringement by a

instruction received from this of the provisions of the Regulation (EU)

2016/679 or of this organic law, as required by article 28.3 of the

aforementioned regulation.

(…)”

IV

The documentation in the file offers clear indications that the

claimed violated article 28 of the RGPD, in charge of the treatment, by failing to comply with the obligations incumbent on him in relation to the person in charge of the treatment, as emerges from the emails sent to the claimant requesting the return of the records and subsequently cancel the data.

Article 28 of the RGPD expressly dedicated to this figure, among others indicates the fulfillment of those obligations that must be assumed, in such a way that limited only to the terms of the contract signed with the person in charge, but that are configured as own obligations, and therefore independent of those that can assume contractually.

Among these specific obligations that may be supervised by the data protection authorities, without prejudice to the control that may be carried out

in relation to compliance with the Regulation or the LOPDGDD by the responsible for the treatment, the obligations of the person in charge are:

- The signing of a contract or legal act with the person in charge. This contract must establish the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the person in charge. In particular, it will stipulate that the person in charge:

- will process personal data only following instructions documentation of the controller, including with regard to data transfers personal to a third country or an international organization;

- will guarantee that the persons authorized to process personal data

have undertaken to respect confidentiality or are subject to an obligation of

confidentiality of a statutory nature;

- take all necessary measures;

- will assist the person in charge, taking into account the nature of the treatment, through

of appropriate technical and organizational measures, whenever possible, so that

it can fulfill its obligation to respond to requests that are

object the exercise of the rights of the interested parties;

- will help the person in charge to guarantee the fulfillment of the obligations;

- at the choice of the person in charge, will delete or return all personal data

once the provision of treatment services ends, and will delete the copies

existing unless the conservation of personal data is required and

- will make available to the person in charge all the information necessary to

demonstrate compliance with the established obligations, as well as to allow and

contribute to the performance of audits, including inspections, by the

person in charge or another auditor authorized by said person in charge.

v

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, “Sanctions and corrective measures”, establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

e) The existence of a merger by absorption process after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

data.

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

In accordance with the transcribed precepts, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction of fine to

impose in the present case for the infringement typified in article 84.4.a) of the RGPD

for which the defendant is held responsible, in an initial assessment, it is estimated

concurrent the following factors:

The scope in a local environment of the treatment carried out by the entity

claimed.

The number of affected is limited to the claimant.

There is no evidence that the entity had acted maliciously, although

the performance reveals a serious lack of diligence.

The link between the activity of the offender and the performance of treatment of

Personal data.

The entity claimed is a large company.

Therefore, as stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE against AVATA HISPANIA, S.L. with

NIF B24456907, for the alleged infringement of article 28.3.g) of the RGPD, typified in

Article 83.4.a) of the aforementioned RGPD.

SECOND: APPOINT B.B.B. and as secretary to C.C.C.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and his documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection during the

investigation phase, as well as the report of previous Inspection actions.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be €5,000 (five thousand euros), notwithstanding the

resulting from the instruction.

FIFTH: NOTIFY this agreement to AVATA HISPANIA, S.L. with NIF

B24456907, granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

the present procedure. With the application of this reduction, the sanction would be

set at €4,000 (four thousand euros), resolving the procedure with the

imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction,

the sanction would be established at €4,000 (four thousand euros), and its payment will imply the

termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at 3,000 (three thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be

conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

indicated above (4,000 or 3,000 euros), you must make it effective through your

Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the

Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating

in the concept the reference number of the procedure that appears in the

heading of this document and the reason for the reduction of the amount to which

welcomes

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Director of the Spanish Data Protection Agency

Sea Spain Marti

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: On September 30, 2020, the claimant has proceeded to pay

SECOND

of the sanction in the amount of 3000 euros making use of the two reductions

provided for in the Start Agreement transcribed above, which implies the

acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to

the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Initiation Agreement.

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 as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his

responsibility, the procedure may be resolved with the imposition of the sanction

to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified

the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at

least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00245/2020, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to AVATA HISPANIA, S.L..

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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