

□ File No.: PS/00240/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 9, 2019, they entered this Agency

Spanish Data Protection two briefs presented by A.A.A. and, dated 20

October 2019, a brief filed by B.B.B. (hereinafter, the parties

claimants), through which they make a claim against AD735 DATA MEDIA

ADVERTISING S.L. with CIF B87781795 (hereinafter, the claimed party).

SECOND: In view of the foregoing, there are indications of a possible

breach of the provisions of Regulation (EU) 2016/679 (General Regulation

of Data Protection, hereinafter RGPD), which has motivated the opening of the

procedures E/11264/2019 and E/11385/2019.

In accordance with the provisions of article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD hereinafter), the claims were transferred to the person in charge or to the

Data Protection Delegate that you may have appointed, requiring you to

to send the requested information and documentation to this Agency. These

information requirements, which were reliably notified, were not

answered on time. Finally, the claims with

dates February 11 and 21, 2020.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of the RGPD, and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

FOURTH: Within the framework of investigation actions E/02801/2020, the

claimed a request for information, relating to the claims outlined in

the first section, so that, within a period of fifteen working days, it could present

this Agency the information and documentation indicated therein. The requirement

was registered out on July 6, 2020 with number 051067/2020.

The request for information, which was carried out in accordance with the rules established

in Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP), was not collected by the person in charge

within the period of availability, as stated in the Notific@ certificate

what works in the file

, understood to be rejected in accordance with article

43.2.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

FIFTH: The notification was validly made by electronic means, assuming

carried out the procedure, in accordance with the provisions of article 41.5 of the LPACAP, which

stipulates the following: "When the interested party or his representative rejects the notification

of an administrative action, it will be recorded in the file, specifying the

circumstances of the notification attempt and the means, considering the procedure completed and

following procedure."

However, for informational purposes, a copy of said document was sent on two occasions.

request by post. The first one was returned to origin due to an error at the address on September 22, 2020, the second being notified on 16 October 2020 according to the information received from the postal operator. In the notification, he was reminded of his obligation to interact electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, in the future, it would be notified exclusively by means of electronics.

On December 1, 2020, this Agency received a document presented by the defendant through which he requested the extension of the term granted for the presentation of the information required in the aforementioned request.

SIXTH: Regarding the required information, the person in charge has not sent a response any to this Spanish Data Protection Agency.

SEVENTH: On June 21, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR).

The aforementioned initial agreement, which was registered at exit on July 1, 2021 with registration number O00007128s2100046793, it was not collected by the person in charge, understood to be rejected in accordance with the provisions of art. 43.2 of the LPACAP in dated July 12, 2021, as stated in the Notific@ certificate that works in the proceedings.

After the period of ten business days granted in the initial agreement for the presentation of pleadings, the respondent party has not presented pleadings.

EIGHTH: On August 10, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

sanction AD735 DATA MEDIA ADVERTISING S.L., with CIF B87781795, for a

infringement of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a

fine of €3,000 (three thousand euros).

Likewise, the procedure was revealed so that within a period of ten days

could allege whatever he considered in his defense and present the documents and

information that it considers pertinent, in accordance with article 89.2 of the

LPACAP.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

NINTH: The motion for a resolution, which was checked out on the 10th of

August 2021 with registration number O00007128s2100056415, was not collected by

responsible, understood as rejected in accordance with the provisions of art. 43.2 of the

LPACAP on August 21, 2021, as stated in the Notific@ certificate

what works in the file.

After the period of ten business days granted in the resolution proposal for

the presentation of pleadings, the respondent party has not presented pleadings.

TENTH: According to the report collected from the AXESOR tool, the entity

AD735 DATA MEDIA ADVERTISING S.L. is a SME (Microenterprise), constituted

in 2017, and with a turnover of 230,199 euros in 2018.

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: The information requirements indicated in the second background and fourth were notified electronically, in accordance with the provisions of article 43 of the LPACAP and copies thereof were reliably delivered via Postcard.

SECOND: The respondent has not responded to the requests for information carried out by the Agency within the periods granted for it, within the framework of the actions referenced with codes E/11264/2019 and E/11385/2019, in which the deadline to respond was one month, and with code E/02801/2020, in which the deadline to respond was fifteen business days.

THIRD: The notification of the agreement to initiate this procedure sanctioning was carried out electronically through the Notific@ system, not being collected by the person in charge and, consequently, understood as rejected, as provided for in art. 43.2 of the LPACAP, dated July 12, 2021. No allegations to the initiation agreement.

FOURTH: The notification of the resolution proposal was made electronically to through the Notific@ system, not being collected by the person in charge and, in consequence, understood as rejected, in accordance with the provisions of art. 43.2 of the LPACAP, dated August 21, 2021. No arguments were presented to the resolution proposal.

FOUNDATIONS OF LAW

Yo

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, 48.1, 64.2 and 68.1 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and solve this procedure.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

The defendant is imputed the commission of an infraction for not having tried to the Spanish Data Protection Agency the information it requested.

With the aforementioned conduct of the defendant, the power of investigation that article 58.1 of the RGPD confers to the control authorities, in this case, the AEPD, it has been seen hampered.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to the claimed party, for violation of article 58.1 of the RGPD, which provides that each control authority will have, among its powers of research:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or in charge of the treatment the presumed infractions of the present Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of in accordance with the procedural law of the Union or of the Member States.”

III

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: "no facilitate access in breach of article 58, section 1".

In the same article it is established that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) as a maximum of the global total annual turnover of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority of competent data protection.”

IV

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

Based on the facts set forth, it is considered that it is appropriate to impute to the party claimed for the violation of article 58.1 of the RGPD typified in article 83.5 e) of the GDPR. The sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. In

Consequently, the sanction to be imposed must be graduated according to the criteria

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

v

Finally, it is appropriate to graduate the sanction to be imposed according to the criteria that

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

In the initial evaluation it is appreciated that no mitigating factor is applicable, and

has considered, as aggravating, the following fact:

- Art. 83.2 b) RGPD: the intention or negligence in the infringement. It is a company that is not newly created and should have procedures established for the fulfillment of the obligations contemplated by the regulations of data protection, among them, to respond to the requirements of the authority of control.

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 AD735 DATA MEDIA ADVERTISING S.L., with CIF

B87781795, for an infringement of Article 58.1 of the RGPD, typified in Article

83.5 of the RGPD, a fine of 3,000.00 euros (THREE THOUSAND euros).

SECOND: NOTIFY this resolution to AD735 DATA MEDIA

ADVERTISING 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 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuan, Resolution 4/10/2021

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es