

□ File No.: PS/00280/2022

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On March 9, 2021, he entered this Spanish Agency for
Data Protection (hereinafter AEPD) written claim, presented by
A.A.A., (hereinafter, claimant) because their personal data has been transferred to a
third party, without your consent.

SECOND: In accordance with the mechanism prior to the admission for processing of the
claims that are formulated before the AEPD, provided for in article 65.4 of the Law
Organic 3/2018, of December 5, Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD), the claim was transferred to
MEDIA MARKT SATURN ADMINISTRACION ESPAÑA, S.A. to proceed to
its analysis and provide a response within a month, which it verified by means of a written
date of entry into this Agency of May 28, 2021.

THIRD: On June 7, 2021, after analyzing the documentation that was in the
in the file, a decision was issued by the director of the Spanish Agency for
Data Protection, agreeing not to admit the claim for processing.

The resolution was notified to the claimant on June 9, 2021, according to notice of
receipt in the file.

FOURTH: On June 15, 2021, the claimant files an appeal
Optional replacement (**EXP.1) through the Electronic Registry of the AEPD,
against the decision in the file **EXP.2, in which he shows his
disagreement with the contested resolution, stating that it refers to

facts not disclosed by him.

Your claim does not refer to the assignment made by MEDIA MARKT,
but the responsibility for that action lies with the delivery company (UNITED
PARCEL SERVICE SPAIN LTD AND COMPANY SRC).

She states that her request was delivered to one of the neighbors of the community in which
resides, without prior notice and therefore, without your prior and express consent,
also breaching Law 43/2010 of the Universal Postal Service. Likewise, he argues
who exercised the right of opposition, without obtaining any response.

FIFTH: On December 23, 2021, the claim formulated was sent and the
appeal filed against the delivery company UNITED PARCEL SERVICE ESPAÑA
LTD Y COMPAÑIA SRC within the framework of the provisions of article 118 of the Law
39/2015, of October 1, of the Common Administrative Procedure of the
Public Administrations for the purpose of formulating the allegations and
Submit the documents and supporting documents that you deem appropriate.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/10

The notification of the hearing process occurred on December 23, 2021,
through the Electronic Notification Service and Authorized Electronic Address,
according to the certificate that appears in the file.

UNITED PARCEL SERVICE ESPAÑA LTD Y COMPAÑIA SRC has not formulated
any allegation

SIXTH: The Director of the Spanish Data Protection Agency resolves:

Estimate the appeal for replacement (**EXP.1) filed by A.A.A. against

□

the resolution of this Agency issued on June 7, 2021.

Admit for processing the claim made against UNITED PARCEL

□

SERVICE ESPAÑA LTD Y COMPAÑIA SRC, in accordance with article 65 of the LOPDGDD.

SEVENTH: On July 5, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the GDPR and article 32 of the GDPR, typified in article 83.5 of the GDPR.

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, he stated that in the case at hand it is a service provider that has to fulfill the services agreed with MEDIA MARKT under the conditions provided in the contract signed between them.

In this sense, it should be noted that it acts and proceeds as agreed with MEDIA MARKT, and in order to guarantee the delivery of the order in the term and form agreed with MEDIA MARKT, always in favor and in the interest of the complainant himself.

Clause 10 and 11 of the terms and conditions of the contract that govern them are sent:

(https://www.ups.com/assets/resources/webcontent/es_ES/terms_carriage_es.pdf)

which includes, on the one hand, the possibility of delivering the package to the neighbor in absence of the addressee; and on the other, the obligation of the sender of the shipment, in our case MEDIA MARKT, to duly inform the addressee about the treatment of

your data within the framework of the services offered by the claimed entity.

“10. Delivery

If the receiver is not available, the package can be deposited in the mailbox of postal correspondence from the recipient's address, if deemed appropriate, or delivered to neighbor unless the sender has excluded this delivery option by choosing the applicable additional service. “

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

"eleven. Data Protection

11.2. On the other hand, the sender guarantees that he has duly informed the recipient that UPS may use the personal data of the recipient of in accordance with the above link to the UPS Privacy Notice in effect at the time of shipment with respect to uses other than those specified in the previous subsection.”

The entity claimed as a MEDIA MARKT provider has no proof that in the specific shipment to the complainant, it would have been necessary to proceed in a manner specific or different from what was agreed with MEDIA MARKT.

Therefore, if the Agency decided not to admit the initial claim filed by the complainant against MEDIA MARKT in which the complainant expressly referred to the communication of your data to a third party without your consent, you understand this part should proceed equally in the case at hand, since the entity claimed has acted as agreed with its client MEDIA MARKT.

If the Agency agreed not to admit the claim against MEDIA MARKT for processing, then there can be no reason for this not to happen equally before the entity

claimed.

NINTH: On August 9, 2022, the instructor of the procedure agreed to give by reproduced for evidentiary purposes the claim filed by A.A.A. and his documentation, the documents obtained and generated during the admission phase to processing of the claim, and the report of previous investigation actions that are part of the procedure ***EXP.1.

Likewise, it is considered reproduced for evidentiary purposes, the allegations to the initiation of the referenced sanctioning procedure, presented by UNITED PARCEL SERVICE ESPAÑA LTD Y COMPAÑIA SRC, and the documentation that they accompanies.

TENTH: On August 22, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction UNITED PARCEL SERVICE ESPAÑA LTD Y COMPAÑIA SRC, with NIF C28328508, for a violation of article 5.1.f) of the GDPR and for a second violation of article 32 of the GDPR, typified respectively in articles 83.5 a) and 83.4 a) of the GDPR, with a fine of 50,000 euros (fifty thousand euros) and 20,000 euros (twenty thousand euros) respectively.

ELEVENTH: On September 5, 2022, allegations are made to the proposed resolution by the claimed entity alleging that MEDIA MARKT was aware of and had contractually agreed that UPS could leave your packages to the attention of a neighbor, since this is stated in clauses 10 and 11 of the Terms and Conditions of the contract signed between the claimed entity and MEDIA MARKT.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

In this way, it is MEDIA MARKT itself, as sender of the product, which should have excluded the possibility of delivery to a neighbor of the delivery, as UPS expressly informed him that in the absence of this exclusion this was possible.

Therefore, the respondent entity considers that it has acted in accordance with the contract signed with MEDIA MARKT, being MEDIA MARKT itself as responsible for data processing who had the obligation to inform the claimed entity that could not proceed to delivery through a neighbor.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The request made by the claimant was delivered to one of the neighbors of the community in which you reside, without prior notice and therefore, without your prior and express consent.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 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 (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

The principles related to the processing of personal data are regulated in the

Article 5 of the GDPR which establishes that "personal data will be:

"a) treated 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 said 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 shall not be

considered incompatible with the initial purposes ("purpose limitation");

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/10

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

that are processed ("data minimization");

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the erasure or rectification without delay of the personal data

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

e) maintained in such a way that the identification of the interested parties is allowed during

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

personal data may be retained for longer periods as long as

processed exclusively for archiving 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 appropriate technical and organizational measures that imposes this Regulation in order to protect the rights and freedoms of the data subject ("retention period limitation");

f) processed in such a way as to guarantee adequate data security personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or organizational ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions of paragraph 1 and able to demonstrate it ("proactive responsibility")."

Article 72.1 a) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years, the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679".

II

Security in the processing of personal data is regulated in article 32 of the GDPR where the following is established:

"1. Taking into account the state of the art, the application costs, and the nature of nature, scope, context and purposes of processing, as well as probability risks and variable severity for the rights and freedoms of natural persons, the responsibility responsible and the person in charge of the treatment will apply appropriate technical and organizational measures. measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include yeah, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence of the destruction, loss or accidental or illegal alteration of personal data transmitted collected, preserved or processed in another way, or the unauthorized communication or access two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanical certification document approved in accordance with article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of this article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and having access to personal data can only process such data following instructions of the controller, unless it is required to do so by Union law or by the Member States.”

Article 73.f) of the LOPDGDD, under the heading "Infringements considered serious

has:

"Based on article 83.4 of Regulation (EU) 2016/679, serious and

Offenses that involve a substantial violation of the law shall prescribe after two years.

of the articles mentioned therein, and in particular the following:

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679

IV.

It is considered that the claimed party has transferred the claimant's data to a third party, without your consent.

According to Directives 07/2020 of the European Committee for Data Protection (CEPD)

on the concepts of controller and processor in the GDPR, the

concepts of person in charge and person in charge are functional and have to be assigned taking into account the actual activities of each one. must be analyzed in each case

the legal relationship established between the parties.

In this specific case, the claimed party has provided the terms and conditions that

govern the contract signed with MEDIA MARKT to allege that it has acted

accordance with said contract for the provision of services, according to which it must be

MEDIA MARKT who requests the consent of his client when he requests the

product delivery service by courier. However, UPS has not accredited

that the necessary requirements are met to be considered in charge of the

treatment, since it has not been proven that MEDIA MARK and UPS have signed

the contract that should govern the relationship between the person in charge and the person in charge of the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/10

processing of personal data as established in article 28.3 of the GDPR

where the precise instructions for the processing of personal data are detailed

given by the person in charge.

In this sense, note that article 28.3 b) and c) of the GDPR, regarding the personal data processors establishes the following:

"The treatment by the person in charge will be governed by a contract (...) that binds the person in charge with respect to the person in charge.

Said contract or legal act shall stipulate, in particular, that the person in charge:

b) will guarantee that the persons authorized to process personal data have

committed to respect confidentiality or are subject to an obligation of

confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

Therefore, the fact of having signed a contract with MEDIA MARKT does not

exempt UPS from liability, in this case the defendant company, because it was not

has specified whether we are dealing with a service contract or a contract entered into

between responsible and person in charge of the processing of personal data, being in this

second case, of obligatory fulfillment that all the required guarantees are fulfilled

in accordance with article 28 of the GDPR.

Thus, the known facts are constitutive of an infraction, attributable to the

claimed party, for violation of precept 5.1 f) of the GDPR, in accordance with the

established on the basis of law II.

This Agency also considers that we are facing a violation of the

Article 32 of the GDPR, since the security measures of the requested entity do not

are adequate and should be improved after it has been verified that they have not been sufficient to avoid the facts denounced.

For all these reasons, this Agency considers that the claimed entity has infringed the Articles 5.1 f) and 32 of the GDPR, by violating the principle of integrity and confidentiality, as well as not adopting the necessary security measures to guarantee the protection of the personal data of its customers.

V

Article 58.2 of the GDPR provides the following: "Each control authority shall have of all of the following corrective powers listed below:

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

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

SAW

The violation of article 5.1 f) of the GDPR, can be sanctioned with a fine of 20,000

€000 maximum or, in the case of a company, an amount equivalent to 4%

maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount, in accordance with article 83.5 of the

GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR, considering as aggravating circumstance according to article 76.2 b) LOPDGDD, the relationship of the person responsible with the processing of personal data.

VII

The violation of article 32 of the GDPR can be sanctioned with a fine of 10,000,000 € maximum or, in the case of a company, an amount equivalent to 2% maximum of the overall annual total turnover of the financial year above, opting for the one with the highest amount, in accordance with article 83.4 of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR, considering as aggravating circumstance according to article 76.2 b) LOPDGDD, the relationship of the person responsible with the processing of personal data.

VIII

In accordance with the precepts transcribed, in order to set the amount of the fines to impose, are considered concurrent in the present case, for both infractions, in quality of aggravating circumstances, the following factors:

The linking of the offender's activity with the performance of

□

processing of personal data.

In view of the foregoing, the following is issued

VIII

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

FIRST: IMPOSE UNITED PARCEL SERVICE ESPAÑA LTD AND COMPANY

SRC, with NIF C28328508, for a violation of article 5.1.f) of the GDPR, typified in

Article 83.5 of the GDPR, a fine of 50,000 euros (FIFTY THOUSAND euros).

SECOND: IMPOSE UNITED PARCEL SERVICE ESPAÑA LTD AND COMPANY

SRC, with NIF C28328508, for a violation of article 32 of the GDPR, typified in the

Article 83.4 of the GDPR, a fine of 20,000 euros (TWENTY THOUSAND euros).

THIRD: NOTIFY this resolution to UNITED PARCEL SERVICE

SPAIN LTD AND COMPANY SRC.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of 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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

It will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica->

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

web/], or through any of the other registries 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 proceedings within a period of two months from the day following the
Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-120722

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es