

☐ File No.: PS/00120/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated August 21, 2020, by the Director of the Spanish Agency
of Data Protection, a resolution was issued in the sanctioning procedure number
PS/00095/2020, filed against the CITY COUNCIL OF BURGOS (hereinafter, the
claimed party). In said resolution, in addition to imposing a sanction of
warning, in the Third Law Basis it is indicated:
“According to the available evidence, it is considered that the
facts denounced, that is, send the email address and the DNI of the
claimant without using the BCC option to make the shipment, supposes the violation of
the principles of “purpose limitation” and “integrity and confidentiality”
regulated in art. 5.1 b) and f) of the RGPD, as well as the proactive responsibility of the
data controller to demonstrate compliance.”

Likewise, the dispositive part of the resolution requires the following:

“SECOND: REQUIRE the respondent party so that within a period of one month
certify to this body compliance with:

☐ the adoption of all necessary measures so that the denounced entity
act in accordance with the principles of "purpose limitation" and
"integrity and confidentiality" of art. 5.1 b) and f) of GDPR respectively.”

SECOND: The resolution of the sanctioning procedure was notified
irrefutably on August 28, 2020 to the claimed party, granting
the period of one month for the adoption of the imposed measures, as stated

accredited in the file.

THIRD: After the expiration of the indicated term without this Agency having received any written on the measures implemented by the claimed party, it is proceeded to request them again on two occasions so that, within a month, prove to this Agency that they have adopted the appropriate corrective measures, in attention to what was agreed in the aforementioned Resolution.

These requirements were collected by the person in charge on October 8, 2020 and September 16, 2021, as stated in the Notific@ certificates that they work in the file.

FOURTH: The respondent has not sent any response to this Agency that certifies compliance with the imposed measures.

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FIFTH: Against the aforementioned resolution, in which the adoption of measures is required, There is no ordinary administrative appeal due to the expiration of the deadlines established for it. Likewise, the interested party has not stated his intention to file a contentious-administrative appeal, nor is this Agency aware that the same has been filed and a precautionary suspension of the resolution.

SIXTH: On March 21, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the GDPR.

SEVENTH: Notification of the aforementioned start-up agreement in accordance with the established rules in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The resolution of the sanctioning procedure and the requirements indicated in the third antecedent were notified in accordance with the provided in article 43 of the LPACAP.

SECOND: The respondent has not sent any response to this Agency that certifies compliance with the imposed measures.

THIRD: The notification of the agreement to initiate this procedure sanctioning was carried out in accordance with the provisions of article 43 of the LPACAP.

FOURTH: The respondent party has not submitted arguments to the agreement to initiate this sanctioning procedure within the period indicated for it.

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FOUNDATIONS OF LAW

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Competition

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD) recognizes each

control authority, and according to the provisions of 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), the Director of the

Spanish Agency for Data Protection is competent to initiate and resolve this

process.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

unfulfilled mandate

In accordance with the available evidence, it is considered that the party

claimed has failed to comply with the resolution of the Spanish Agency for Data Protection

in relation to the measures imposed on him.

Therefore, the facts described in the "Proven Facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the article 58.2.d) of the RGPD, which provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed below:

(...)

d) order the person in charge 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;"

Typification and qualification of the infraction

III

This infringement is typified in article 83.6 of the RGPD, which stipulates the following:

"Failure to comply with the resolutions of the control authority pursuant to article 58, paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount."

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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:

“m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

IV

Imputed sanction

Article 83.7 of the RGPD provides the following:

“Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

“1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and to those affected who had the condition interested party, if any.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions

of the autonomous communities the actions carried out and the resolutions issued

under this article."

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Adoption of measures

This Agency agrees to impose on the controller the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of control may "order the person responsible or in charge of the treatment that the processing operations comply with the provisions of this Regulation, when appropriate, in a certain way and within a specified period...".

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It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE the BURGOS CITY COUNCIL, with NIF P0906100C, by an infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD, a warning sanction.

SECOND: REQUEST the CITY COUNCIL OF BURGOS, with NIF P0906100C, to that within a month proves before this body the adoption of all the

measures necessary for this City Council to act in accordance with the principles of "purpose limitation" and "integrity and confidentiality" of art. 5.1 b) and f) of RGPD respectively, in relation to the infraction sanctioned in the procedure PS/00095/2020.

THIRD: NOTIFY this resolution to the BURGOS CITY COUNCIL.

FOURTH:

in accordance with the provisions of article 77.5 of the LOPDGDD.

COMMUNICATE this resolution to the Ombudsman,

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-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

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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

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