

**PRESIDENT
OF THE PERSONAL DATA
PROTECTION OFFICE**

Jan Nowak

Warsaw, 6 July 2021

Ref. No.: ZSPR.440.1070.2018.PT.BS

(previous Ref. No.: ZSPR.440.1070.2018.LS.I)

DECISION

On the basis of Article 104 § 1 of the Act of 14 June 1960 Code of Administrative Procedure (consolidated text: Dz. U. [Journal of Laws] of 2021 item 735), Article 7 (1) of the Act of 10 May 2018 on personal data protection (consolidated text: Dz. U. [Journal of Laws] of 2019 item 1781), Article 60 (8) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L 119 of 04/05/2016, p. 1, OJ EU L 127 of 23/05/2018, p. 2 and OJ EU L 74 of 04/03/2021, p. 35), regarding the complaint of [REDACTED], running a business under the name of [REDACTED] [REDACTED] (address: [REDACTED]), on the irregularities in the processing of his personal data by [REDACTED], based in Barcelona ([REDACTED] [REDACTED]), consisting in the processing of personal data without a legal basis, President of the Personal Data Protection Office

rejects a complaint.

JUSTIFICATION

On 3 August 2018, the Personal Data Protection Office received a complaint from [REDACTED] [REDACTED], running a business under the name of [REDACTED] [REDACTED] (address: A [REDACTED]), hereinafter referred to as: the

Complainant, about irregularities in the processing of his personal data by [REDACTED] based in Barcelona ([REDACTED]), hereinafter referred to as: the Company, consisting in the processing of the complainant's personal data without a legal basis.

The President of the Personal Data Protection Office identified the case as having a cross-border nature in accordance with Article 4 (23) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L 119 of 04/05/2016, p. 1, OJ EU L 127 of 23/05/2018, p. 2 and OJ EU L 74 of 04/03/2021, p. 35), hereinafter referred to as: Regulation 2016/679, and referred the case to the Spanish supervisory authority (Spanish: *Agencia Española de Protección de Datos*), hereinafter referred to as: AEPD, which took the case as leading supervisory authority.

After conducting the proceedings on the submitted complaint, AEPD notified the President of the Personal Data Protection Office about the findings made by it and presented a proposal for resolving the matter by closing the case. The President of the Personal Data Protection Office agreed with the factual findings made by AEPD.

In the course of administrative proceedings, the President of the Personal Data Office Protection established the following facts:

1. On 18 June 2015, the Company concluded an agreement with [REDACTED]. The subject of the above-mentioned of the contract was to carry out the activity of collecting personal data of certain natural persons who showed interest in receiving advertising messages. The above contract specified the scope of personal data subject to the order: name, surname, gender, date of birth, e-mail address, time stamp or registration time and IP address. The contract also included the complementary service 'COI' (Opt-In confirmation), thanks to which [REDACTED] is obliged to apply the mechanism of double verification of the registration of the interested person in the database which is the subject of the contract, in order to guarantee the acquisition of data and the correct understanding and willingness to provide it by the user. The contract specifies the purpose of further data use by the Company – sending advertising messages using e-mail marketing techniques. In addition, it states that [REDACTED] V. is obliged to provide the interested party with information about the recipient of their data (which in this case was the Company), as well as about the methods of use / processing to

which the data will be subjected (in this case, for sending advertisements by electronic means) (AEPD findings of 9 February 2021).

2. The Complainant's personal data (including: name, surname, gender, date of birth, zip code, e-mail address, time stamp and IP address) were obtained by the Company on 7 March 2015 at 19:02 via the Internet promotional campaign organized by [REDACTED], [REDACTED], [REDACTED] run at the website: [REDACTED]. In the Company's opinion, the Complainant's consent to the processing of data for direct marketing purposes was deliberate because additional confirmation was necessary by clicking on the link in the e-mail received (AEPD findings of 9 February 2021).
3. The AEPD established that the Company had demonstrated that on 7 March 2015 the Complainant consented to the processing of his data in order to receive marketing e-mails (AEPD findings of 9 February 2021).
4. The findings of the AEPD show that the Company complied with the request and informed the Complainant about the deletion of his personal data, after receiving the Complainant's request to be removed from the Company's mailing list (AEPD findings of 9 February 2021).
5. The Complainant, via the 'Opt-Out' link in each marketing message sent directly or on behalf of the Company, on 22 June 2018 at 17:41, objected to the processing of his personal data for direct marketing purposes. The company stopped processing the Complainant's personal data (AEPD findings of 9 February 2021).

After reviewing the entirety of the evidence collected in the case, the President of the Office for Personal Data Protection considered the following.

It should be pointed out that Regulation 2016/679 defines the obligations of the data controller, which include the processing of personal data in compliance with the conditions set out in this regulation. The provision entitling data controllers to process ordinary data of natural persons, including their disclosure, is Article 6 (1) of Regulation 2016/679, according to which data processing is allowed only if one of the conditions indicated in this provision is met. The catalog of premises listed in Article 6 (1) of Regulation 2016/679 is closed. Each of the premises legalizing the processing of personal data is autonomous and independent. This means that these conditions are, in principle, equal, and therefore meeting at least one of them determines the lawful processing of personal data. As a consequence, the consent of the data subject is not the only basis for the processing of personal data, because the data processing process will be

compliant with Regulation 2016/679 also when the data controller demonstrates that another of the above-mentioned conditions is met. Regardless of the consent of the data subject (Article 6 (1) (a) of Regulation 2016/679), the processing of personal data is allowed, inter alia, when processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (letter b); processing is necessary for compliance with a legal obligation to which the controller is subject (letter c); processing is necessary in order to protect the vital interests of the data subject or of another natural person (letter d); processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (letter e); processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child (letter f).

At the outset, it should be noted that Article 21 of Regulation 2016/679 regulates the issue of the party's right to object to the processing of their personal data. In accordance with paragraph 2 and 3 above of the provision, if personal data are processed for direct marketing purposes, the data subject has the right to object at any time to the processing of his personal data for the purposes of such marketing, including profiling, to the extent that the processing is related to such marketing direct. If the data subject objects to processing for direct marketing purposes, the personal data may no longer be processed for such purposes.

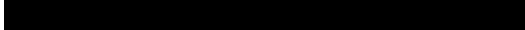

Referring the above to the process of processing his personal data for marketing purposes questioned by the Complainant without a legal basis, it should be indicated that until the date of the Complainant's objection, i.e. until 22 June 2018, the Company processed his personal data on the basis of the consent expressed by the Complainant on 7 March 2015, and therefore this process was based on Article 6 (1) (a) of Regulation 2016/679, and during the period of the Act of 29 August 1997 on the protection of personal data (Dz. U. [Journal of Laws] of 2016, item 922, as amended), it was legal pursuant to Article 23 (1) (1) of this act.

As follows from the evidence collected in this case, the questioned sending of the information containing the marketing offer took place after the Complainant consented to the processing of his personal data for marketing purposes on 7 March 2015, but before he submitted an objection on 22 June 2018. The above means that the Company did not breach the provisions on the protection of personal data, as this process was based on Article 6 (1) (a) of Regulation 2016/679.

It should be noted here that the administrative procedure conducted by the President of the Personal Data Protection Office serves to control the compliance of data processing with the provisions on the protection of personal data and is aimed at issuing an administrative decision restoring the legal status pursuant to Article 58 (2) of Regulation 2016/679. The assessment made by the President of the Personal Data Protection Office in each case serves to examine the legitimacy of issuing an order to a specific subject corresponding to the disposition of Article 58 (2) of Regulation 2016/679 to restore the lawful state in the data processing process – so it is justified and necessary only insofar as there are irregularities in the processing of personal data. In the opinion of the President of the Personal Data Protection Office, there are no grounds to conclude that such irregularities exist in this case, because the processing of Complainant’s personal data by the Company for marketing purposes questioned by him, was based on Article 6 (1) (a) of Regulation 2016/679.

In this factual and legal background, the President of the Personal Data Protection Office adjudicated as in the sentence.

Under the authority of the President
of the Personal Data Protection Office

This decision is a final decision. Based on Article 7 (2) of the Act of 10 May 2018 on the Protection of Personal Data (consolidated text: Dz. U. [Journal of Laws] of 2019, item 1781) and in connection with Article 13 § 2, Article 53 § 1 and Article 54 of the Act of 30 August 2002 Law on proceedings before administrative courts (consolidated text: Dz. U. [Journal of Laws] of 2019, item 2325), the party has the right to bring a complaint to the Provincial Administrative Court in Warsaw against this decision, within 30 days from the date of delivery of this decision, through the President of the Personal Data Protection Office (address: Urząd Ochrony Danych Osobowych, ul. Stawki 2, 00 – 193 Warszawa [Personal Data Protection Office, Stawki 2, 00-193 Warsaw]). The fee for the complaint is PLN 200. The party has the right to apply for the right of assistance, which includes exemption from court costs and the appointment of an attorney, legal advisor, tax advisor or patent attorney. The right of assistance may be granted upon application by a party submitted prior to the initiation of the proceedings or in the course of the proceedings. This application is free of court fees.