



# CODE OF CONDUCT DATA PROCESSING IN ADVERTISING ACTIVITIES

This translation is provided for information purposes only. In case of any discrepancy between the original Spanish version of this document and the English translation, the Spanish version shall prevail.



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## 1.1. ABOUT AUTOCONTROL

AUTOCONTROL, the Association for the Self-Regulation of Commercial Communication (hereinafter, "AUTOCONTROL"), a not-for-profit association established in 1995, is a self-regulatory and supervisory organization working in the Spanish advertising industry. Its purpose is to ensure responsible advertising: truthful, legal, honest and loyal.

AUTOCONTROL manages the Spanish self-regulatory system for commercial communication on the basis of three main instruments:

- Codes of Conduct, specifically the AUTOCONTROL Code of Advertising Practice (based on the International Code of Advertising and Marketing Communication Practice of the International Chamber of Commerce) and the nineteen Sectoral Codes of Advertising Conduct which AUTOCONTROL has been entrusted to implement.
- The Advertising Jury, a body specializing in codes of ethics pertaining to advertising, composed of independent persons and responsible for the extrajudicial resolution of disputes and complaints relating to commercial communication. The Jury operates with complete independence, in keeping with [AUTOCONTROL's Articles of Association](#).
- Legal Advice, a service offered by professionals who are experts in advertising, privacy and data protection law working on an exclusive basis for AUTOCONTROL and advising companies on how to fulfill their legal obligations in these areas.

The advertising self-regulation system created by AUTOCONTROL has become the first choice for advertising dispute resolutions in our country, and from its start up to 1 January 2022, the Advertising Jury processed nearly 5,000 cases.

On 1 January 2018, in response to the growing importance of data protection in the advertising sector, notably in the digital arena, AUTOCONTROL launched a voluntary mediation system, developed in collaboration with the Spanish Data Protection Agency, to settle data protection complaints against telecommunications companies. This voluntary mediation system will continue to apply after this Code enters into force.

## 1.2. ABOUT THIS CODE OF CONDUCT

Article 40.2 of the General Data Protection Regulation, applicable from 25 May 2018, states that associations and other bodies representing categories of controllers or processors may draw up codes of conduct to specify the application of this Regulation, with regard to various matters, expressly providing for the possibility of articulating extrajudicial procedures and other dispute resolution processes which allow for the resolution of complaints raised by citizens against entities that process their data.

AUTOCONTROL is an association that represents the advertising sector in Spain composed of the main advertisers, advertising agencies, communication media and professional associations involved in advertising activities. Currently, the more than 600 members of AUTOCONTROL are involved in approximately 70% of the advertising-related investment in Spain.

The use of new technologies for advertising purposes is now the standard, and the growth of digital versus traditional advertising, as consequence of the rapid evolution of technology and the changing nature of the advertising sector itself, poses challenges for the various players involved in advertising, particularly in terms of personal data protection. The evolution of technology has transformed advertising, allowing it not only to reach more people, but to do so while also taking into account their interests, habits and demographics, among others. Phenomena such as big data, cloud computing or the internet of things are already part of the sector's transformation and can provide valuable benefits; but their use, like that of any new technology, must always respect the rights of users, including the right to data protection.

This entails, on the one hand, the obligation to demonstrate accountability in data processing, complying with the principle of data protection by design, among others. On the other hand, it also involves the need to offer a fast, effective and straightforward way of resolving possible disputes that may arise in relationships with data subjects once processing has begun.

Therefore, in this ever-changing environment, in which flexibility and immediacy are decisive, reliable and effective self-regulation mechanisms which reflect the industry's commitment to complying with certain principles and standards, as well as its aim to comply with the independent third-party resolution of disputes over non-compliance with those principles and standards, are of particular importance.

AUTOCONTROL developed this code of conduct (hereinafter, the "Code of Conduct" or the "Code") within this context and in order to contribute to the application of the General Data Protection Regulation in the Spanish advertising sector, laying out, primarily, an extrajudicial procedure for the resolution of disputes between entities adhered to the Code and data subjects.

This Code was submitted to the agents involved (advertising industry organizations) at the General Assembly meetings held on 7 June 2018 and 17 September 2020. This updated version of the Code was approved by the AUTOCONTROL Board of Directors on behalf of the AUTOCONTROL Assembly on 29 September 2022.

Adherence to the Code of Conduct, once approved by the supervisory authority, may be used by adhering entities to demonstrate compliance with data protection obligations, where applicable, with regard to the matters covered by the Code.

## 2 REGULATORY FRAMEWORK

The legislation applicable to the Code of Conduct is that which applies to data protection. In particular, 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 (hereinafter, "GDPR"); Organic Law 3/2018, of 5 December, on the protection of personal data and the guarantee of digital rights (hereinafter, "OLPDGDR"); as well as Law 34/2002, of 11 July, on information society services and electronic commerce (hereinafter, "LISS").

## 3 DEFINITIONS

- 1) The terms "**personal data**," "**special categories of personal data**," "**data subject**," "**processing**," "**controller**" and "**processor**" shall be understood as defined in Article 4 of the GDPR.
- 2) **Data processing for advertising purposes:** any processing of personal data (as defined in the GDPR) derived from or relating to a communication made in the course of a commercial, industrial, craft or professional activity, for the purpose of directly or indirectly promoting the procurement of real or personal goods, services, rights and obligations.
- 3) **Commercial communication:** any form of communication aimed at either the direct or indirect promotion of the brand, goods or services of a company or organization that performs trade, business, craft or professional activity.
- 4) **Cookies:** any data recovery and storage device as described in the Information Society Services Law or in the law that replaces it.
- 5) **Behavioral advertising:** any commercial communication based on profiling of the data subjects to whom it is addressed.
- 6) **Dispute:** any dispute between entities adhering to the Code and data subjects in connection with the processing of data for advertising purposes.
- 7) **Advertising Jury (Jury):** body responsible for the monitoring of the Code.
- 8) **Adhered entities:** those entities that adhere to this Code, which may be (i) advertisers, agencies and media that are members of AUTOCONTROL, (ii) associations or entities representing a sector that are members of AUTOCONTROL, on their behalf, as well as on behalf of their partners or represented parties, or (iii) any other entities of the advertising industry.

## 4 SUBJECTIVE SCOPE. ADHERED ENTITIES

Companies that are members of AUTOCONTROL, as well as those associations or entities representing a sector who are members of AUTOCONTROL, may adhere to this Code. These associations or representative entities may adhere to the Code on their own behalf, as well as on behalf of their associates or represented parties.

Any other interested companies or entities that process personal data in the context of an advertising activity may also adhere to this Code, under the conditions agreed by AUTOCONTROL's Board of Directors in order to ensure the sustainability of the system.

In both cases, entities wishing to adhere to the Code must send AUTOCONTROL the declaration of adherence attached as **Annex 1** (individual adherence) or **Annex 2** (collective adherence) in writing, undertaking to comply with the obligations set forth therein.

This statement shall include their contact details, the interlocutor designated by the entity for the purpose of notifications related to the Code, the data protection officer (if appointed) and the interlocutors who will deal with communications made in extrajudicial dispute resolution procedures.

The adhered entities shall inform AUTOCONTROL of any change in the details of their representatives and contact persons, in particular those of the data protection officer.

At the time of applying for adherence, the entity shall provide the declaration of compliance contained in **Annex 3**, which shall be forwarded to the Secretariat of the Advertising Jury, acting as monitoring body. If the declaration reveals any lack of compliance, the Secretariat of the Jury shall allow the entity a period of up to four months to resolve the non-compliance and reissue the declaration. For these purposes, the entity may voluntarily request the advisory services of AUTOCONTROL, and after the provision of the service, a verification of whether the non-compliance has been remedied will take place. If this period has elapsed without having received the declaration or if the non-compliances have not been resolved, the entity must begin the processing of its application for adherence again.

AUTOCONTROL will keep the list of adhered entities duly updated, informing the Spanish Data Protection Agency of any modifications made to it. This list will be accessible to the public and available on the association's website ([www.autocontrol.es](http://www.autocontrol.es) or one replacing it).

This Code applies to the processing of data for advertising purposes or relating to advertising carried out by adhered entities, such as:

- Sending of commercial communications, including those cases in which the data subject is registered in an advertising exclusion list.
- Promotions performed with the aim of collecting personal data, to be used for advertising purposes.
- The use of cookies and similar technologies to manage advertising spaces or carry out behavioral advertising.
- Profiling for advertising purposes.
- Any other processing of personal data in connection with advertising activities (e.g. the exercise of rights).

The Code also regulates the procedure for the extrajudicial resolution of data protection disputes between adhered entities and data subjects.

The Code shall apply only to processing: 1) carried out in the context of the processing activities of adhered entities established in Spanish territory; or 2) affecting data subjects located in Spain, provided that the processing operations are related to the offering of goods or services to said data subjects in Spain or to the monitoring of their behavior in Spain within the objective scope set forth in this section.

## DATA PROCESSING OF REPRESENTATIVES AND CONTACT PERSONS<sup>1</sup>

The personal data of representatives and contact persons, representing and/or acting on behalf of AUTOCONTROL and the adhered entities within the framework of this Code, exchanged between AUTOCONTROL and the adhered entities, shall be processed by the receiving party as data controller for the management of the relationship between the parties, the development of the provisions contained in this Code and the fulfillment of their respective legal obligations. The legal basis for the processing is the legitimate interest of both parties in being able to fulfill those purposes, in the terms provided for in Article 19 of the OLPDPGDR.

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<sup>1</sup> In light of possible changes in the information to be provided, the data protection clause in force at any given time will be provided during the adherence process.

The data subject may exercise the rights of access, rectification, erasure, objection, restriction of processing and, where appropriate, portability, with respect to the processing for which each party is respectively controller, by writing to the following addresses, along with their ID number or other means of proof of identity:

- For AUTOCONTROL: by emailing [proteccion.datos@autocontrol.es](mailto:proteccion.datos@autocontrol.es) or by post to Príncipe de Vergara, 109, 5ª Planta, 28002 Madrid.
- For adhered entities: to those listed in the declaration of adherence.

Personal data will be kept for as long as the adhered entity remains adhered to the Code of Conduct and after its withdrawal for however long it may need to fulfill any responsibilities arising during the period of adherence.

It is the responsibility of the party providing the personal data of its representatives and contact persons to provide these representatives and contact persons with the information foreseen in these paragraphs before providing their personal data to the other party, as well as to comply with any other requirements that may be applicable for the correct disclosure of this personal data, without the receiving party having to take any additional action before the data subjects.

## 7 OBLIGATIONS OF ADHERED ENTITIES

By adhering to the Code, the adhering entities undertake to comply with data protection regulations in their advertising activity and, in particular, the obligations detailed in the following sections.

### 7.1. PRINCIPLES. DATA PROTECTION BY DESIGN AND BY DEFAULT

In the processing of personal data related to their advertising activity, the adhered entities shall respect the principles set forth in Article 5 of the GDPR.

They shall also comply with the data protection obligations by design and by default as set forth in Article 25 of the GDPR.

With regards to these principles, the adhering entities shall take into account the provisions of the following paragraphs:

- a) The adhered entities will avoid collecting and processing more data than they need to send or present their commercial communications.

In particular, if the adhered entity first collected more data than necessary for the advertising purpose because such additional data was needed for a different purpose, as soon as this other purpose has been fulfilled, the data that is not needed for the advertising purpose shall be

erased (without prejudice to the obligation the adhered entity may have to block such additional data).

**Example:** An entity holds a contest and intends to use its database of participants, not only to manage the contest and award prizes, but also to be able to send, at a later time, electronic advertising to all participants.

In this case, once all the procedures related to the contest have been completed, the entity will only keep the information that it needs from the data subjects to send them advertising electronically, and it will erase all the data that is not necessary for this purpose, such as the address data requested from the winners to send them the prizes.

- b) When the adhered entities follow up on the commercial communications they carry out by electronic means and verify that there failed deliveries, they will look into the reasons behind these failed deliveries, and, if they are due to an error in contact details (e.g. the system indicates that the destination email address does not exist), they will erase or, where possible, rectify the inaccurate information.
- c) The adhered entities must keep proof of compliance with data protection regulations in connection with their advertising activity. For these purposes, with regards to the sending of commercial communications, they may carry out a periodic review, checking a representative sample of the deliveries made, to verify that the recipients of said sample have been informed of the processing of their data as required by law and that there is a legal basis for those deliveries.

## 7.2. LEGAL BASIS FOR PROCESSING IN COMMERCIAL COMMUNICATION

Any processing of personal data by the adhered entities in their advertising activity must be grounded on one of the legal bases provided for in Article 6 of the GDPR.

It is the responsibility of the adhered entities to determine the appropriate legal basis for the processing of personal data in each case.

However, the following principles and guidelines should be taken into account by the adhered entities with regards to the legal bases that, depending on the case, may legitimize the processing of personal data for advertising purposes.

### 7.2.1. Consent

When entities use consent as a legal basis for processing personal data for advertising purposes, they shall take into account the following:

- a) The action to be taken by the data subject to give their consent to the processing for advertising purposes must be unambiguous, so that there is no doubt that the action in question is linked to the willingness to consent. Therefore, the adhered entity shall ensure that the data subject understands that they are being asked for their consent, what the purpose for this is and what action they must carry out to give it.

**Example:** Consent obtained by ticking an opt-in box ("I wish to receive advertising about [...]") or by scrolling a selection bar shall be valid, provided that the action in question is preceded by clear and sufficient information about what that action entails.

- b) Where consent for advertising purposes is requested in the context of a contract whose performance does not require the sending of advertising, such consent shall be provided separately from the general acceptance of the contract.

**Example:** To obtain consent for processing for advertising purposes, a specific box for obtaining this consent may be included in a clearly visible manner (next to the fields to be filled in by the data subject, next to the signature box, next to the box for acceptance of the terms and conditions of the contract, etc.).

- c) When personal data is to be disclosed to third parties so that they may send advertising based on the consent of the data subject, this consent must be obtained separately from that which is collected for the sending of its own advertising.
- d) With reference to the previous point, the data subject must also be informed of the identity of the data recipients and of the types of products or services they offer in their commercial communications. For the purposes of identifying third parties, the address of a publicly accessible website where this information can be found may be included.
- e) Where personalized advertising is intended, a single consent may be obtained for profiling and advertising purposes.

**Example:** The inclusion of an opt-in box with the text "I consent to the sending of advertising based on the profile created from my interests in products/services of [...]" will be valid.

- f) In terms of advertising sent electronically, the adhering entity shall comply with the regulations governing these types of commercial communications at all times.

### 7.2.2. Legitimate Interest

If, in accordance with the applicable law, the legal basis for legitimizing the processing of data for advertising purposes may be the satisfaction of a legitimate interest of the adhered entity, the adhered entity shall weigh, according to the circumstances of each individual case, whether the interests or fundamental rights and freedoms of the data subjects prevail over said interest. Some of the factors to take into account for these purposes may be:

- The expectations of the data subjects regarding the advertising carried out.
- Whether the data subjects are persons requiring special protection (e.g., minors).
- How easy it is for data subjects to object to the processing.
- Whether advertising is based on profiles and the degree of sophistication of these profiles.
- The frequency of deliveries.

It shall be presumed, unless proven otherwise, that there is a legitimate interest in sending advertising in the following cases, although the participating entities must assess whether their interest prevails over the fundamental rights and freedoms of the data subjects according to the circumstances of each specific case and document it:

- a) When the advertising is sent by the adhered entity to its customers and its own products or services, similar to those initially purchased, are the subject. To assess their similarity, what type of products or services these are, according to the sector of the activity (food, beauty and hygiene, banking products and means of payment, etc.), should be taken into account.
- b) When the adhered entity sends advertising to its customers, and the products or services of entities belonging to its business group<sup>2</sup>, which are similar to those initially purchased, are its subject, without any disclosure of data to other entities.
- c) When the adhered entity shares the data of its customers with entities belonging to its business group so that they can advertise their products or services, provided that these are similar to those initially purchased by the customer from the adhered entity. In this case, the data subject must be given the opportunity to object at the time of data collection (e.g., by ticking an opt-out box).

### 7.3. INFORMATION ABOUT DATA PROCESSING FOR ADVERTISING PURPOSES

The adhered entities shall inform data subjects about the processing of their personal data, specifying, depending on whether they obtain the data from the subject or from a different source, the aspects covered by Articles 13 and 14 of the GDPR.

This information must be provided "in a concise, transparent, intelligible and easily accessible form, using clear and plain language", as required by Article 12 of the GDPR.

When fulfilling their duty to inform, the adhered entities shall take into account the following:

- a) Where appropriate to improve transparency and prevent data subject fatigue, information about processing may be provided in layers.

**Example:** In the digital environment, this requirement could be fulfilled by means of drop-down texts or any other means that allows easy and immediate access to the remaining information provided for in Articles 13 or 14 of the GDPR, if applicable.

- b) When the data subject is informed of changes to a processing operation for advertising purposes which has already begun, the complete information clause shall be provided with the corresponding changes made clear to the data subject. If the nature of these changes makes it advisable, they may be highlighted to facilitate their identification and understanding. Alternatively or additionally, a summary of such modifications may be provided. Changes of

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<sup>2</sup> For the purpose of defining a business group, the concept of business group in Article 42 of the Code of Commerce shall be considered.

wording or changes that only correct typographical errors need not be notified if they do not modify the content of the informative clauses.

**Example:** An example of a notification of the change of the informative clause could be as follows (changes are marked in bold): "We will keep a record of the products you view and purchase in our online store, **as well as any inquiries you make about our products**, in order to show you advertising and product recommendations on our website based on your interests, which we identify based on the products you view or purchase, **or which you inquire about.**"

A summary of the modification of the above informative clause could be as follows: "In addition to considering the products you view and purchase in our online store **to tailor our advertising to your interests**, from now on we will also take into account the **products you inquire about** (asking about availability or sizes, for example)."

- c) Information on processing for advertising purposes shall be provided in clear and simple language that is easily understood by those to whom it is addressed, avoiding unnecessary references to legal precepts, confusing jargon and terms that are ambiguous or make little sense to those to whom they are addressed. In particular, alternatives shall be explored so that these conditions are met when recipients of the information may have different degrees of understanding (for example, because the information is addressed to both adults and minors), for example, by using a single version of the information that is understandable to all recipients or by providing different versions of the information with language adapted to the different types of recipients.

#### 7.4. RIGHT TO OBJECT TO PROCESSING FOR DIRECT MARKETING PURPOSE

The adhered entities shall inform data subjects of their right to object to the processing of their personal data for direct marketing purposes at the time of collection of their personal data and, at least in the case of communications sent by email or other similar electronic means of communication, in each commercial communication addressed to them.

The adhered entities shall respect the right to object without the need for data subjects to justify their request. Thus, if the request is addressed to the adhered entity, and it is possible to verify that the request was originally made by the data subject, then it shall suffice. The procedure for exercising the right to object must be simple and free of charge.

#### 7.5. ADVERTISING EXCLUSION SYSTEMS

Adhered entities which aim to carry out direct marketing communications must first consult the advertising exclusion systems that affect them (Robinson lists, for example), in order to exclude data subjects who have expressed their objection to processing. In order to comply with this obligation, it will suffice to consult the exclusion systems included in the list published by the competent supervisory authority on its website.

The consultation of these exclusion systems will not be necessary if the data subject has provided their consent to receive the communication to whoever intends to send it or if the controller is covered by the exception provided for in Article 21.2 of the LISS.

In any case, the processing must be legitimized and must also comply with the duty to provide information in accordance with the provisions of Articles 13 and 14 of the GDPR.

## 7.6. USE OF COOKIES FOR ADVERTISING PURPOSES

The use of cookies (including other similar technologies) by the adhered entities shall be subject to the provisions of the Information Society Services Law or the regulations that replace it.

If the use of cookies involves the processing of personal data for advertising purposes, the adhered entities must obtain informed consent for such use, in accordance with the provisions of the GDPR.

In particular, the adhered entities shall take into account the following:

- a) They shall avoid ambiguous descriptions when describing the advertising purposes of cookies.
- b) If cookies are used for personalized or behavioral advertising, the user will be expressly informed of this fact, with reference also being made to the fact that such advertising is based on a profile created from the user's browsing history, use of an application, and so forth.
- c) If third-party cookies are used for advertising purposes, the data subject will be informed of this fact.

## 7.7. FINANCIAL OBLIGATIONS OF ADHERED ENTITIES

The entities adhering to this Code shall pay the fees in force for adherence, services and complaints management provided at any time by AUTOCONTROL in compliance with this Code. These amounts, established by AUTOCONTROL's governing bodies, shall be used to cover the costs generated by the implementation of this code and the provision of services associated with its application.

# 8 PRINCIPLE OF LAWFULNESS

This Code of Conduct has been drawn up in accordance with the regulations in force at the time of its approval.

In the event of any contradiction between the contents of this Code and the regulations in force at any given time, the provisions of the regulations in force shall prevail.

## EXTRAJUDICIAL DISPUTE RESOLUTION PROCEDURE INITIATED BY THE DATA SUBJECT BEFORE AUTOCONTROL

- 9.1. AUTOCONTROL has implemented an extrajudicial resolution system to resolve disputes arising between adhered entities and data subjects involving data processing carried out in advertising activities. Information about this system and the complaints form for data subjects is available at the following link [www.autocontrol.es/servicios/reclamaciones-de-proteccion-datos-y-publicidad](http://www.autocontrol.es/servicios/reclamaciones-de-proteccion-datos-y-publicidad) (or any other that may replace it).
- 9.2. When AUTOCONTROL receives a complaint against an adhered entity through the channels implemented for this purpose, it will verify that the following is included in writing:
- a) Name and surname, address and the claimant's national ID number or similar personal document and, if applicable, the personal details of the representative who must also provide proof of representation.
  - b) Email address to which notifications may be sent, any notification sent to that address being valid from that moment on.
  - c) Description of the issues complained about.
  - d) Supporting documents, depending on the issues complained about.

**Example:** If registered in an advertising exclusion system, proof of this and the date of registration; for commercial calls, proof of receipt of the call; for SMS or promotional emails, copy of these.

- 9.3. AUTOCONTROL will not allow for the processing of claims that:
- a) Concern events which occurred more than 12 months prior to the date on which the complaint was filed<sup>3</sup>.
  - b) Involve issues that have been resolved or are being processed in a judicial or administrative proceeding, unless, in the latter case, AUTOCONTROL's action is requested by the Administration.
  - c) Claim for the payment of compensation or indemnification.
  - d) Complaints related to silent calls for which the responsible party or whose commercial nature are impossible to determine will not be admitted for processing.

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<sup>3</sup> In the case of continuous infringement, the twelve (12) month period shall commence when the infringing conduct has ceased.

- 9.4. If the complaint has rectifiable defects, AUTOCONTROL will contact the applicant so that they may rectify the complaint within ten (10) days. If not remedied within this period, AUTOCONTROL will dismiss the complaint.
- 9.5. If the complaint meets the above requirements, AUTOCONTROL will admit the complaint and initiate the mediation procedure, transferring the complaint to the adhered entity. Once the mediation procedure has begun, the adhered entity shall reply to AUTOCONTROL within a maximum period of fifteen (15) days, proposing the actions it considers appropriate for the mediation process. The maximum duration of the procedure shall be thirty (30) days. AUTOCONTROL's Mediation Unit shall encourage the parties to reach an agreement that resolves the dispute.
- 9.6. If, during the processing of the complaint, judicial or administrative proceedings are initiated in connection with the facts which are the subject of the complaint, AUTOCONTROL will close the complaint.
- 9.7. If, at the end of the mediation process, the data subject, within a period not exceeding one calendar month from its completion, expresses dissatisfaction with the result (due to disagreement with the solution offered by the adhered entity or its data protection officer -if applicable-, or lack of solution or agreement), AUTOCONTROL, with the agreement of the adhered entity, will refer the matter to the Advertising Jury, which will process the complaint in accordance with its [Rules](#). The adhered entity shall have a period of ten (10) calendar days, from the notification by the Mediation Unit of the dissatisfaction of the data subject to confirm whether it wishes the complaint to be transferred to the Advertising Jury. If there is no response from the adhered entity, then it shall be understood that it does not, in no case implying the tacit acceptance of the transfer of the complaint. If this option is rejected by the adhered entity, AUTOCONTROL will terminate the procedure, duly informing of this matter.
- 9.8. The proposals of the AUTOCONTROL Mediation Unit shall not be binding. However, the agreement reached in mediation, as well as, if applicable, the final decisions of the Advertising Jury, shall be binding for the adhered entities.
- 9.9. With the exception of those cases in which the Code establishes the computation of deadlines by calendar days, only working days will count in the computation of deadlines established by days, with Saturdays, Sundays, and national, regional and local holidays corresponding to the city of Madrid being considered non-business days for these purposes. In the proceedings before the Advertising Jury, in addition to the above-mentioned periods, 24 to 31 December and the month of August shall not count.
- 9.10. Proceedings before AUTOCONTROL shall be conducted in Spanish, using email as the means of communication.

- 9.11. In all matters not provided for in this Code regarding the resolution system regulated herein, the [Rules of the Advertising Jury shall apply subsidiarily](#).

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# EXTRAJUDICIAL DISPUTE RESOLUTION INITIATED AT THE REQUEST OF THE SPANISH DATA PROTECTION

- 10.1. When complaints are made directly and previously before the Spanish Data Protection Agency, the latter may refer them to the Jury in its capacity as monitoring body, as established in Article 65.4 of Organic Law 3/2018, of 5 December on data protection and the guarantee of digital rights. In such a case, the Jury shall handle the complaint through its Secretariat, which shall initiate the procedure following the general processing rules established in the previous section, without prejudice to the special features described below.
- 10.2. Once a complaint has been received from the Spanish Data Protection Agency, a verification that the following has been provided in writing will be performed:
- a) Name and surname, address and, if applicable, the personal data of the representative who must also provide proof of representation.
  - b) Email address to which notifications may be sent, any notification sent to that address being valid from that moment on.
  - c) Description of the facts that are the subject of the complaint.
  - d) Supporting documents, depending on the reasons for the complaint.

**Example:** If registered in an advertising exclusion system, proof of this and the date of registration; for commercial calls, proof of receipt of the call; for SMS or promotional emails, copy of these.

The verification of the identity of the claimants and the content of the complaint carried out by the Spanish Data Protection Agency shall be considered valid. Notwithstanding the foregoing, within 72 hours of receipt of the complaint, if AUTOCONTROL considers that any of the above points are not met, it may propose to the Spanish Data Protection Agency to reject the complaint. This information will be provided to the adhered company so that it can record the unsubstantiated complaints managed by AUTOCONTROL.

- 10.3. If the complaint meets the above requirements and none of the scenarios described in Section 9.3 has come about, the complaint shall be admitted for processing and the mediation procedure shall begin, transferring the complaint to the adhered entity through the specific channel that the Parties agree upon once adherence to this Code has taken place. AUTOCONTROL shall also designate a specific account for the management of matters substantiated under this Code, which in no case shall be the same as that used under other protocols or codes. Once the mediation procedure has begun, the adhered entity shall reply to AUTOCONTROL within a maximum period of fifteen (15) days, proposing what actions it considers appropriate for the mediation process. The maximum duration of the procedure shall be twenty-seven (27) days. AUTOCONTROL's Mediation Unit shall encourage the parties to reach an agreement to resolve the dispute, although the proposals of the Mediation Unit shall not be binding at any time. The computation of these periods shall be carried out in accordance with the provisions of Section 9.9 above.
- 10.4. Once the mediation procedure has been completed, the Jury shall inform the Spanish Data Protection Agency through its Secretary of the result of the mediation process, and it will send the agency the information contained in the file.

## 11 PROCEDURE CONFIDENTIALITY

The mediation procedure, as well as the agreement reached through it, if any, and the processing of the complaint by the Advertising Jury shall be confidential.

The decisions of the Advertising Jury will be made public by AUTOCONTROL. The adhered entity that is a party to the procedure shall refrain from disseminating the decision until it has been published by AUTOCONTROL.

The duty of confidentiality shall not prevent AUTOCONTROL from fulfilling its duty to cooperate with public administrations, both administrative and judicial. In particular, it will not prevent it from responding to requests for information from the Spanish Data Protection Agency concerning:

- The existence of a mediation or procedure before the Advertising Jury.
- The agreements reached through mediation.
- Statistical information with aggregated data on its mediation work.
- The decisions of the Advertising Jury.

The duty of confidentiality will not prevent adhered entities from providing documentation related to mediation or a procedure before the Advertising Jury in administrative or judicial proceedings of which they are part.

In addition to the ex post control that implies the submission to the Advertising Jury, before adhered entities begin data processing in their advertising activities, they may voluntarily request that AUTOCONTROL verify the compliance of said processing with this Code.

AUTOCONTROL's Technical Office will issue non-binding opinions, reports and so forth on the processing proposed.

If the adhered entity disagrees with the analysis of the Technical Office, it may appeal to the Advertising Jury within four (4) days from the day following receipt of the opinion.

AUTOCONTROL will carry out this work as part of the services offered in the scope of its activity. Information exchanged during the prior advisory services will be subject to the strictest confidentiality.

Without prejudice to the functions and powers of the Spanish Data Protection Agency as the competent supervisory authority, the Advertising Jury shall act as the monitoring body of this Code.

The Jury will have a Secretariat comprised of experts in data protection and in the resolution of related conflicts. The Secretariat will act under the direction of the Jury. Any discrepancies with the proceedings of the Secretariat may be submitted to the Jury.

When in resolving a complaint the Advertising Jury declares a breach of the Code, the decision shall be reasoned and contain all or some of the pronouncements provided for in its Rules, such as:

- a) Statement of violation of the Code of Conduct.
- b) Requirement to cease the infringing activity.
- c) Request for correction.
- d) Publication of the decision through AUTOCONTROL's own media.
- e) Transfer of the file to the competent authorities.

## MONITORING MECHANISMS. COMPLIANCE REPORT

Annually, the Secretariat of the Advertising Jury shall prepare a statistical report for each adhered entity with the relevant data of the activity generated by it, including data related to both the mediations and decisions of the Advertising Jury.

The Secretariat of the Advertising Jury will also prepare an annual collective statistical report, which it will provide to the Spanish Data Protection Agency.

The Advertising Jury and the adhered entities may voluntarily request reports from AUTOCONTROL on compliance with the mediation agreements, the decision issued by the Advertising Jury and the obligations contained in this Code. The appropriate checks will be carried out within the scope of the services offered by AUTOCONTROL. Access to the content of the compliance reports by the adhered entities shall be limited to those agreements and decisions to which they have been a party in order to avoid access to confidential information.

## REPORTING TO THE SPANISH DATA PROTECTION AGENCY

In compliance with the provisions of Article 41.4 of the GDPR, the Jury shall inform the Spanish Data Protection Agency of the measures adopted and the reasons for them.

Furthermore, AUTOCONTROL will prepare an annual collective statistical report based on the information provided by the Jury, which will be provided to the Spanish Data Protection Agency.

## ADVERTISING AND DISSEMINATION

AUTOCONTROL will publish this Code of Conduct in the [Codes of Conduct](#) section of its website (or any website replacing it). The Code may be downloaded free of charge by any user.

Adhered entities shall publish the fact that they are adhered to the Code.

AUTOCONTROL will encourage adhered entities to:

- Make the Code of Conduct available on their website in an easily accessible way, allowing for its free download.
- Promote the system regulated by this Code as an extrajudicial dispute resolution mechanism, publicizing and disseminating it in the business and institutional sectors in which they act as well as in Spanish society in general and, especially, among their customers.
- Refer explicitly to this system in their informative data protection clauses and share it using whatever means they consider most effective (section of the website where information is provided to consumers and users on the complaints channels, websites, invoices, etc.) and informing AUTOCONTROL of such means.

## 17 TRAINING ACTIVITIES

AUTOCONTROL shall organize training activities with the frequency and format it deems appropriate to boost compliance with data protection regulations in the advertising sector.

The training will be led by experts in this field and, if deemed appropriate, with the collaboration of the Spanish Data Protection Agency and the regional supervisory authorities, as well as leading professionals in the advertising sector.

## 18 VOLUNTARY WITHDRAWAL OF ADHERED ENTITIES

Adhered entities may withdraw from the Code of Conduct by notifying AUTOCONTROL in writing and expressly declaring their intention to do so, at least one month before the date on which they wish to withdraw from the Code of Conduct. This notification must be signed by an authorized representative of the adhered entity.

Withdrawal will not affect the procedures in process on that date nor those which deal with events prior to the effective date of the withdrawal, which will continue until fully completed, in accordance with the provisions of this Code.

- 19.1.** The Advertising Jury, in its capacity as monitoring body and with the support of its Secretariat, shall be responsible, through the sanctioning procedure regulated in the following sections, for the application of the following rules to those entities adhered to the Code.
- 19.2.** The sanctioning system regulated in this Code is established without prejudice to the sanctioning powers granted to the Spanish Data Protection Agency by the GDPR, the OLPDPGDR and the other applicable provisions on data protection.
- 19.3.** The following shall be classified as minor infringements:
- a) Delay in complying with jury decisions or mediation agreements.
  - b) Abusive or not sufficiently objective use of mediation agreements or Jury decisions.
  - c) Failure to comply with the advertising and dissemination obligations set forth in Section 16 of this Code.
  - d) Any other infringements with no specific categorization in this Code.
- 19.4.** The following shall be classified as serious infringements:
- a) Refusal to provide the data requested by the Advertising Jury or AUTOCONTROL, provided that such refusal is not sufficiently justified in the opinion of said body.
  - b) Failure to comply with decisions adopted by the Advertising Jury or mediation agreements.
  - c) Repeated or relevant breaches of the legislation in force or of the Code, as determined by the Advertising Jury.
  - d) Providing false or inaccurate information at the time of applying for adherence or at any time thereafter, tending to affect the outcome of the opinions, reports, studies of any kind or nature, mediation agreements or decisions of the Advertising Jury.
  - e) Failure to comply with the corresponding economic obligations, with the exception provided for in Section 19.5.c).
  - f) The commission of two minor offenses in a period of less than one year.
- 19.5.** The following shall be considered very serious infringements:
- a) Serious or manifest non-compliance with the decisions adopted by the Advertising Jury or with the mediation agreements, the seriousness of the non-compliance being assessed according to the following circumstances:
    - i. Importance for or impact of the conduct on the data subjects.
    - ii. Continuous nature of the infringement.

- iii. Impact of the processing carried out taking into account the number of data subjects affected.
  - iv. Lack of collaboration with the Code's monitoring body.
  - v. Recidivism.
- b) Refusal to participate in mediation processes.
  - c) Serious or repeated failure to comply with the corresponding economic obligations. Non-compliance shall be considered serious and reiterated when it persists for a period of twelve months.
  - d) The commission of two serious offenses in a period of less than one year.
  - e) Any other failure to comply with the requirements for adherence to the Code.

## 19.6. Sanctions.

Sanctions for minor infringements may consist of:

- a) Private warning.
- b) Public warning through AUTOCONTROL's own media.
- c) Temporary suspension of the rights of the entity adhered to the Code for a period of 1 to 6 months.

Sanctions for serious infringements may consist of:

- a) Temporary suspension of the rights conferred by this Code to the adhered entity for a period of six (6) to twelve (12) months.

Sanctions for very serious infringements may consist of:

- a) Temporary suspension of the rights conferred by this Code to an adhered entity for a period of one (1) to five (5) years.
- b) Expulsion from the Code. This sanction shall be imposed in the case considered in Section 19.5.c).

**19.7.** The sanctions agreed upon by the Advertising Jury shall be public, except for the private warning, which, by its very nature, will in no case be published.

Within the framework of the sanctioning system, as well as in the imposition of sanctions, the due proportionality, suitability and necessity of the sanction to be imposed and its adequacy to the seriousness of the fact constituting the infringement must be observed. Due diligence measures adopted by the adhered entities will also be taken into account.

**19.8.** Sanctions consisting of the suspension of the rights of the adhered entity or its expulsion from the Code shall be communicated to the Spanish Data Protection Agency.

- 19.9.** The disciplinary proceedings shall be initiated by the investigating judge, who shall be the Secretary of the Advertising Jury or the person delegated by it, (hereinafter, the "Judge"), ex officio or following a complaint from any person with a legitimate interest.
- 19.10.** The agreement to initiate the sanctioning file shall include, at least, the following points:
- a) The facts which motivated the initiation of the sanctioning file.
  - b) Classification of the facts.
  - c) Possible sanctions to be imposed.
  - d) The right of the adhered entity to make as many allegations as it deems appropriate and the deadline for their presentation.
- 19.11.** Once the sanctioning procedures have begun, the affected adhered entity shall be notified of the agreement and may submit any allegations they deem pertinent within a maximum period of five (5) days.
- 19.12.** Once the allegations of the affected entity have been received, and the appropriate evidence has been gathered by the Judge, if the latter considers that the facts have not been accredited or do not constitute an infringement, then they may propose to the corresponding Section of the Advertising Jury in turn that the file be closed. If the corresponding Section of the Advertising Jury agrees to close the file, the affected parties shall be notified and may file an appeal before the Plenary of the Advertising Jury within five (5) days of being notified.
- 19.13.** If such an appeal is filed, the other party or parties affected shall be notified, in case they wish to file allegations within a term not exceeding five (5) days from the notification. The Plenary of the Advertising Jury shall decide on the appeal.
- 19.14.** If the file is continued, the Judge shall issue a proposal for decision within a maximum period of one month from the date of initiation, which shall include at least the following points:
- a) Proven facts
  - b) Legal characterisation
  - c) Proposed sanction
- 19.15.** The proposal for decision shall be submitted by the Judge to the appropriate Section of the Advertising Jury.
- 19.16.** The Advertising Jury Section shall adopt its decision, which must be reasoned, by a simple majority of its members.

**19.17.** The decision adopted by the Advertising Jury Section shall be notified immediately to the affected adhered entity and to the complainant, if applicable.

**19.18.** Both the affected adhered entity and the complainant may file an appeal against the above decision within five (5) days. If such an appeal is filed, the other party or parties affected shall be notified, in case they wish to file allegations within a term not exceeding five (5) days from the notification. Said appeal shall be heard by the Plenary of the Advertising Jury, which shall issue a reasoned decision, terminating the proceedings.

## 20 EFFECT

This Code shall be fully effective two (2) months after its approval by the Spanish Data Protection Agency.

## 21 MODIFICATION OF THE CODE

This Code may be amended with the approval of AUTOCONTROL's Board of Directors.

Modifications or extensions of the Code will be submitted to the Spanish Data Protection Agency for its opinion as to whether they comply with data protection regulations and whether it considers the guarantees offered to be sufficient for the approval of the Code thus modified or extended.

Modification of the Code will be shared with the adhered entities. Adhered entities will have a period of one month to request the withdrawal from it; if they do not request withdrawal, their adherence will be renewed.



## DECLARATION OF INDIVIDUAL ADHERENCE TO THE CODE OF CONDUCT DATA PROCESSING IN ADVERTISING ACTIVITIES

\_\_\_\_\_, an entity incorporated under Spanish law,  
with Tax ID Number \_\_\_\_\_, registered office at \_\_\_\_\_,  
and registered in the Registry of \_\_\_\_\_, represented  
by Mr./Ms. \_\_\_\_\_, with ID number \_\_\_\_\_,  
acting in the capacity of \_\_\_\_\_  
of the aforementioned entity.

### DECLARES

- 1) That it understands the Code of Conduct for Data Processing in Advertising Activities ("Code") of AUTOCONTROL, Association for the Self-Regulation of Commercial Communications ("AUTOCONTROL").
- 2) That it hereby adheres to the Code, committing to comply with and assume the obligations derived therefrom. It undertakes to meet the financial obligations set forth by AUTOCONTROL arising from its adherence to the Code.
- 3) That it designates the following party as interlocutor for notification purposes:

Name:

Job Title:

Professional address:

Phone number:

Email address:

4) That its data protection officer is<sup>4</sup>:

Name:

Job Title:

Professional address:

Phone number:

Email address:

5) That the representatives designated to handle communications made regarding the procedures of extrajudicial dispute resolution with the data subjects, are:

Name:

Job Title:

Professional address:

Phone number:

Email address:

Name:

Job Title:

Professional address:

Phone number:

Email address:

6) That it has informed the above persons of the processing of their data by AUTOCONTROL, in accordance with the provisions of the Code of Conduct and will also inform any other person whose data they provide to AUTOCONTROL in the same terms.

7) That, for the purposes of fulfilling the data protection rights of AUTOCONTROL's representatives and staff, the data subjects may write to \_\_\_\_\_ or by email to \_\_\_\_\_.

Signed:

In \_\_\_\_\_, on \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_

<sup>4</sup> This point will only be included if the entity has designated a data protection officer.



## DECLARATION OF COLLECTIVE ADHERENCE TO THE CODE OF CONDUCT DATA PROCESSING IN ADVERTISING ACTIVITIES

with Tax ID Number \_\_\_\_\_, incorporated under Spanish law,  
\_\_\_\_\_, registered office at \_\_\_\_\_,  
and registered in the Registry of \_\_\_\_\_, represented  
by Mr./Ms. \_\_\_\_\_, with ID number \_\_\_\_\_,  
acting in the capacity of \_\_\_\_\_,  
of the aforementioned entity.

### DECLARES

- 1) That it understands and have disclosed the Code of Conduct for Data Processing in Advertising Activities ("Code") of AUTOCONTROL, the Association for the Self-Regulation of Commercial Communications ("AUTOCONTROL"), with the entities it represents, and which are listed in the Annex to this declaration.
- 2) That it and the entities they represent hereby adhere to the Code, in accordance with and assuming the obligations derived therefrom. Both the entity indicated in the heading of this declaration and the entities it represents undertake to meet the financial obligations arising from their adherence to the Code established by AUTOCONTROL.
- 3) That it designates the following party as interlocutor for notification purposes:

Name:

Job Title:

Professional address:

Phone number:

Email address:

4) That their data protection officer is<sup>5</sup>:

Name:

Job Title:

Professional address:

Phone number:

Email address:

5) That the representatives designated to handle communications regarding extrajudicial dispute resolution procedures with the data subjects, are:

Name:

Job Title:

Professional address:

Phone number:

Email address:

Name:

Job Title:

Professional address:

Phone number:

Email address:

6) That it has informed the above persons of the processing of their data by AUTOCONTROL, in accordance with the provisions of the Code of Conduct and will also inform any other person whose data they provide to AUTOCONTROL in the same terms.

7) That the entities it represents have informed the persons whose information appears in the Annex of the processing of their data by AUTOCONTROL, in accordance with the provisions of the Code of Conduct and will also inform any other person whose data they provide to AUTOCONTROL in the same terms.

8) That, for the purposes of fulfilling the data protection rights of AUTOCONTROL's representatives and staff, the data subjects may write to \_\_\_\_\_ or by email to \_\_\_\_\_.

Signed:

In \_\_\_\_\_, on \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_

<sup>5</sup> This point will only be included if the entity has designated a data protection officer.

OBLIGATION <sup>6</sup>	Compliance (Yes/No)
<b>PRINCIPLES. DATA PROTECTION BY DESIGN AND BY DEFAULT</b>	
The processing principles of Art. 5 of the GDPR are complied with <sup>7</sup>	
Only data necessary for processing is collected and processed (data minimization)	
The data is erased as soon as it is no longer needed, after blocking if necessary (storage limitation)	
Inaccurate data is rectified or erased (accuracy)	
Proof of compliance with data protection regulations is kept (accountability)	
Data protection by design and data protection by default obligations of Art. 25 of the GDPR are complied with	
<b>LEGAL BASIS FOR PROCESSING IN COMMERCIAL COMMUNICATIONS</b>	
The processing is legitimized by one of the legal bases of Art. 6 of the GDPR	
The data subject's consent is obtained through an unambiguous action	
The consent requested for the processing of data for advertising purposes within the context of a contract is requested separately from the acceptance of the contract	
Consent for the sending of advertising by third parties is requested separately from consent for the sending of its own advertising, informing the data subject of the identity of these third parties and of the products or services that will be the subject of commercial communications	
Whether the fundamental rights and freedoms of the data subjects prevail over the legitimate interest, according to the circumstances of each case, is taken into account	
Electronic commercial communications are made in compliance with the provisions of the LISS <sup>8</sup> (in particular, Title III)	

<sup>6</sup> All obligations refer exclusively to the processing of data for advertising purposes carried out by the entity.

<sup>7</sup> 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.

<sup>8</sup> Law 34/2002 of 11 July on information society services and e-Commerce.

<b>INFORMATION ABOUT DATA PROCESSING FOR ADVERTISING PURPOSES</b>	
The data subjects are informed of the processing in accordance with Art. 13 of the GDPR or, if the data is obtained from a source other than the data subject, in accordance with Art. 14 of the GDPR	
The information is provided in a concise, transparent, intelligible and easily accessible form, with clear and plain language, as required by Art. 12 of the GDPR	
The data subjects are informed of possible changes in the processing that has been carried out, providing the complete informative clause and making clear the changes made	
<b>RIGHT TO OBJECT TO PROCESSING FOR DIRECT MARKETING PURPOSES</b>	
Data subjects are informed of their right to object to processing for direct marketing purposes at the time of collection of their personal data and, in the case of electronic commercial communications, when each commercial communication is made	
The right of objection is respected, without the need for the data subject to justify their decision to object	
<b>ADVERTISING EXCLUSION SYSTEMS</b>	
The advertising exclusion systems are consulted before sending direct marketing communications, as required by Art. 23.4 of the OLPDPGDR <sup>9</sup>	
<b>USE OF COOKIES FOR ADVERTISING PURPOSES</b>	
Informed consent is obtained for the use of cookies, or other data storage and retrieval devices, for advertising purposes on users' terminal equipment, as required by Art. 22.2 of the LISS	

<sup>9</sup> Organic Law 3/2018 of 5 December on Personal Data Protection and the guarantee of digital rights.



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