



## RESOLUTION APPROVING THE CODE OF CONDUCT AND ACCREDITATION OF THE MONITORING BODY

Having regard to the request for the approval of the code of conduct called “CODITION OF DATE TREATMENT IN PUBLICITARY ACTIVITY”, promoted by the ASSOCIATION FOR THE SELF-REGULATION OF COMMERCIAL COMMUNICATION “AUTOCONTROL” (hereinafter referred to as the code owner or the owner), and taking into account the following:

### **BACKGROUND**

**First.**— On 5 November 2018, the Association for Self-Regulation of Commercial Communication, “Autocontrol”, submitted to the Spanish Data Protection Agency (AEPD) the draft code of conduct “DATA PROCESSING IN PUBLICITARY ACTIVITY”, for its approval under Article 40 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 or GDPR)

The following documentation was accompanied to the request:

- Code of Conduct for Data Processing in Advertising Activity
- Powers of representation of the Director-General of Autocontrol
- Rules of the Advertising Jury
- Statutes of AUTOCONTROL
- Certification of agreements adopted in AUTOCONTROL’s governing bodies, in connection with the signing of the code of conduct
- List of Autocontrol Partners

**SECOND.**— On December 7, 2019, Organic Law 3/2018 of 5 December on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD) enters into force, supplementing the regulation of the GDPR and, therefore, of the codes of conduct.

**Third.**— Consequence of meetings and contacts held between the General Sub-Directorate of the General Data Protection and Autocontrol to clarify and specify certain aspects of the code of conduct, dated 26 March 2019, a corrected version of the draft code of conduct was submitted, which was the subject of a report on the same date on the draft code of conduct.

its characteristics of the General Sub-Directorate of the General Data Protection Registry, which, together with the draft code of conduct and the rest of the documentation provided, was forwarded to the Legal Office of the Spanish Data Protection Agency for a report on the adaptation of the project to the applicable data protection regulations, the GDPR and the LOPDPGDD.

**Fourth.** — On 4<sup>th</sup> June 2019, the European Data Protection Board (EDPB) adopts Guidelines 1/2019 on codes of conduct and their monitoring bodies pursuant to Articles 40 and 41 of the GDPR (hereinafter referred to as the Guidelines), which state that all codes of conduct, with the exception of those promoted by public authorities and bodies (Article 41.6 GDPR), must have a monitoring body which must be accredited by the monitoring authority competent for approval and compliance with Article 41.4 GDPR.

**Fifth.-** On 27<sup>th</sup> February 2020, the AEPD published the criteria for the accreditation of the monitoring bodies for codes of conduct, approved in accordance with Article 41.3 of the GDPR, following the EDPB Opinion (1/2020).

**Sixth.—** The EDPB Guidelines and the publication of the accreditation criteria of the monitoring bodies of codes of conduct by the AEPD motivated Autocontrol to rethink the proposal of the monitoring body that it had designated in the draft code of conduct to comply with the accreditation criteria and meet the requirements.

**Seventh.** — Autocontrol submitted, on 3 April 2020 (entry registration to the AEPD of 15 April), new documentation on the characteristics of the designated code of conduct monitoring body (the Advertising Jury) in order to demonstrate that it meets the requirements for accreditation in accordance with the AEPD Criteria and in accordance with the EDPB Guidelines. The documentation provided, which is complementary to the code of conduct and which must be taken into account as part of it, includes:

- Information on compliance with accreditation requirements and criteria.
- Report on the activities of the Advertising Jury as an Alternative Dispute Resolution Entity (ADR).
- The Statutes of Autocontrol (also provided with the initial request).

- The Rules of Procedure of the Advertising Jury which, with respect to the one provided with the initial request, include the amendment made on 11 July 2019.
- The list of persons who are part of the Advertising Jury.

**Eighth.-** On 21 July 2020, the Sub-Directorate-General of the General Data Protection Registry issued a supplementary report to that of 26 March 2019, concerning the characteristics, requirements and criteria for accreditation of the monitoring body proposed by Autocontrol for the code of conduct which, together with the new documentation provided by Autocontrol and other aspects of the file were sent to the Legal Office of the AEPD for an opinion on the conformity of the project with the GDPR and the LODPDGG.

**Ninth.-** On 16 September 2020, the Legal Office of the AEPD reported favorably the approval of the code of conduct for data processing in the advertising activity presented by Autocontrol, as well as the accreditation of the Advertising Jury as its monitoring body.

## **LEGAL GROUNDS**

### **I**

The Director of the Spanish Data Protection Agency is competent to issue this decision, in accordance with the provisions of Articles 40.5, 55 and 57.1.m) of the GDPR and Articles 38.3 and 47 of the LOPDPGDD.

### **II**

The GDPR has led to a paradigm shift in its application and compliance, which is based on the principle of “accountability” or proactive liability, as set out in *the LOPDPGDD’s Statement of Reasons, which states that “the greatest novelty presented by Regulation(EU)2016/679 is the evolution of a model based primarily on compliance control to another based on the principle of active liability, which requires a prior assessment by the controller or by the processor of the processing”.*

In accordance with the GDPR, in recitals 77, 81, 98 and 99, as well as in Articles 24.3 and 35.8, one of the main instruments envisaged to comply with the aforementioned principle of “accountability” or proactive liability is the codes of conduct which, given its relevance, regulate, in detail, its nature, content, approval and supervision in Articles 40 and 41.

Article 40 of the GDPR provides in paragraph 2 that *“Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of this Regulation, such as with regard to:*

- (a) fair and transparent processing;*
- (b) the legitimate interests pursued by controllers in specific contexts;*
- (c) the collection of personal data;*
- (d) the pseudonymisation of personal data;*
- (e) the information provided to the public and to data subjects;*
- (f) the exercise of the rights of data subjects;*
- (g) The information provided to, and the protection of, children, and the manner in which the consent of the holders of parental responsibility over children is to be obtained;*
- (h) the measures and procedures referred to in Articles 24 and 25 and the measures to ensure security of processing referred to in Article 32;*

- (i) the notification of personal data breaches to supervisory authorities and the communication of such personal data breaches to data subjects;*
- (j) the transfer of personal data to third countries or international organisations; or*
- (k) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing, without prejudice to the rights of data subjects pursuant to Articles 77 and 79. “*

Paragraph 4 provides that the codes of conduct “[...]shall contain mechanisms which enable the body referred to in Article 41(1) to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of supervisory authorities competent pursuant to Article 55 or 56.”

And in paragraph 5, “Associations and other bodies referred to in paragraph 2 of this Article which intend to prepare a code of conduct or to amend or extend an existing code shall submit the draft code, amendment or extension to the supervisory authority which is competent pursuant to Article 55. The supervisory authority shall provide an opinion on whether the draft code, amendment or extension complies with this Regulation and shall approve that draft code, amendment or extension if it finds that it provides sufficient appropriate safeguards.”

Article 41.1 states that “Without prejudice to the tasks and powers of the competent supervisory authority under Articles 57 and 58, the monitoring of compliance with a code of conduct pursuant to Article 40 may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for that purpose by the competent supervisory authority”

And paragraph 2 of that Article provides that ‘A body as referred to in paragraph 1 may be accredited to monitor compliance with a code of conduct where that body has:

- (a) demonstrated its independence and expertise in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;*
- (b) established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation;*
- (c) established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public; and*
- (d) demonstrated to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.*

The LOPDPGDD, for its part, devotes Article 38 to codes of conduct, which in paragraph 1 provides that *“The codes of conduct governed by chapter IV, Section 5 a of Regulation (EU) 2016/679 shall be binding on those who adhere to them. Such codes may be equipped with mechanisms for out-of-court dispute resolution.”*

### III

Codes of conduct are configured as one of the voluntary elements that the GDPR offers for compliance, taking into account the specific characteristics of the different treatment sectors, of a voluntary nature, the content of which is binding on those who adhere to them as provided for in Article 38.1 of the LOPDPGDD.

For their approval, they must comply with the GDPR and provide sufficient and adequate guarantees, as provided for in Article 40.5 thereof, and national legislation, in this case the LOPDPGDD,

The GDPR attributes to codes of conduct certain benefits, such as that set out in its Article 24.3 by providing that; *‘Adherence to approved codes of conduct as referred to in Article 40 or approved certification mechanisms as referred to in Article 42 may be used as an element by which to demonstrate compliance with the obligations of the controller’* with the obligations of the controller’s review and assessment of compliance with a number of formal and material requirements to be met for approval by *the EDPB*, which the EDPB has developed through its Guidelines 1/2019.

The Guidelines set out a number of conditions that must be met in order for the competent monitoring authorities to assess and revise in full the code of conduct submitted for their approval, which, for the purposes of this draft, are as follows:

- Clear and concise statement of the reasons, purpose and scope of the Code and how it will facilitate the implementation of the GDPR.
- Representation. The owner of the code of conduct as an association representing categories of data controllers and controllers
- Scope of treatment. The draft code must have a defined object and must clearly and accurately determine the processing of the personal data it covers, as well as its categories.
- Territorial scope, specifying whether it is a national or international code.

- Submission to a Supervisory Authority in accordance with Article 55 GDPR.
- Include monitoring mechanisms to enable the parties to supervise compliance with its provisions.
- Monitoring body. The draft Code should propose a monitoring body for compliance under Article 41 of the GDPR.
- Consultation with interested parties as defined in recital 99 of the GDPR.
- Confirmation that the draft code complies with relevant national legislation.

Requirements which, as can be seen from the reports of the General Data Protection Registry and the Legal Office of this Agency, meet the request submitted by Autocontrol on the grounds that:

- It is legitimate to act as a promoter of the code, as it is a representative association of categories of controllers and responsible for the processing of personal data in the advertising sector in Spain, insofar as it integrates the main advertisers, advertising agencies, media and professional associations related to advertising activity.
- The application has been submitted to the AEPD as a competent authority pursuant to Article 55(1) of the GDPR which states that *“Each supervisory authority shall be competent for the performance of the tasks assigned to and the exercise of the powers conferred on it in accordance with this Regulation on the territory of its own Member State.”*

Both Autocontrol and the entities it represents have their main establishment in Spain and are therefore subject to the control of the AEPD.

- As a justification for the need to draw up a code of conduct for the sector to which Autocontrol represents, the growth of digital advertising is argued, as a consequence of the rapid technological evolution and the dynamism that characterizes the advertising sector. Technological developments have transformed advertising, allowing it not only to reach more people, but also to do so taking into account their interests, habits, demographic data, etc., which must always be addressed with respect for the rights of users and, among them, the right to data protection.
- The subjective, objective and territorial scope is reflected in the code by providing that advertisers, agencies and associated media can adhere to the code. Autocontrol, as well as those associations or entities representing a sector associated with Autocontrol, and also, under the conditions agreed by its Board of Directors, any other entities of the advertising industry

The objective or material scope is the processing or operations of data processing for advertising purposes, in particular the sending of commercial communications; promotions for the purpose of collecting personal data for use for advertising purposes; the use of cookies and equivalent technologies for the management of advertising spaces or the conduct of behavioral advertising; profiling for advertising purposes; and, essentially, the establishment of a procedure for the out-of-court settlement of disputes between adhered entities and data protection stakeholders.

**With regard to the territorial scope, the Code provides that it applies only to processing carried out in Spanish territory by the entities that are attached. However, on this point, the report of the Legal Cabinet emphasizes that Article 3 GDPR includes, among the criteria for territorial application, the assumption that the processing relates to interested parties residing in the Union, *‘when the processing activities are related to (a) the supply of goods or services of those interested in the Union, irrespective of whether the latter are required to pay them, or (b) the control of their behavior, to the extent that it takes place in the union’.***

The Legal Office therefore considers that the territorial scope of the Code should be amended to take it into account in Article 3 of the GDPR, without prejudice to the retention of its character as a national code and the competence of the AEPD insofar as *its application is limited to the processing activities carried out in the context of the activities of a controller or processor located on Spanish territory or involving data subjects with residence in Spain.*

- The code includes mechanisms to monitor compliance: such as internal reports, compliance audits and disciplinary proceedings.

It is envisaged that an annual statistical report will be prepared for each entity attached with the relevant data of the activity generated by that entity, as well as an annual collective statistical report to be provided to the Spanish Data Protection Agency.

It is also envisaged that both the Advertising Jury and the affiliated entities may voluntarily request to Autocontrol an audit of compliance with the decisions handed down by the Advertising Jury itself.

The disciplinary procedure, which is carried out in cases where the Publicity Jury has revealed an infringement of the agreements reached with the interested parties or of the decisions issued by the Advertising Jury itself, should also be included among the control mechanisms.

- As a monitoring body for code of conduct Autocontrol has designated the Advertising Jury, whose analysis is carried out later in order to determine its accreditation.
- The preparation of the draft code, as set out in its preamble, has been submitted to the agents involved (advertising agencies) at a meeting of the General Assembly on 7 June 2018 and the Board of Directors of 12 July and 18 October 2018.
- With regard to the alignment of the code with national legislation, in particular the LOPDPGDD, with regard to the consultation of advertising exclusion systems (Article 23), or Law 34/2002 of 11 July on the service of the information society and electronic commerce (Article 22.2) for the use of cookies, there is no discrepancy, given that the central content of the code is the establishment of a procedure for the extrajudicial resolution of disputes that may occur in the field of advertising industry.
- Finally, as the reports of the Legal Office and the General Sub-Directorate of the General Data Protection Registry show, the formal requirements have also been met, since the following documents are submitted to the procedure:
  - Code of Conduct for Data Processing in Publication
  - Powers of representation of the Director-General of Autocontrol
  - Rules of the Advertising Jury
  - Autocontrol statutes
  - Certification of agreements adopted in Autocontrol management bodies, in connection with the signing of the code of conduct
  - List of Autocontrol Partners

#### IV.

In view of the concurrence of the requirements that would determine the admissibility of the code, it is necessary to analyse its suitability with the GDPR and the LOPDPGDD.

Article 40.1 of the GDPR provides that codes of conduct are intended to contribute to their proper application, taking into account the specific characteristics of the different treatment sectors.

The EDPB Guidelines state that compliance with this general requirement requires the promoter of a code of conduct to be able to demonstrate that the code:

- 1) It meets a particular need for this processing sector or activity, with the proposed solutions beneficial not only for those responsible but also for those affected.
- 2) Facilitates the implementation of the GDPR, identifying specific needs (e.g. adapting sector terminology).
- 3) It specifies the application of the GDPR, focusing on the problems of the sector and providing added value, without merely reproducing the precepts of the GDPR.
- 4) It provides effective mechanisms to monitor compliance with the Code, both in terms of structures and procedures, and the existence of an accredited monitoring body is mandatory, except in the case of public authorities and bodies.

The assessment of compliance with these criteria, which make it possible to determine that the code meets the purpose assigned to it by Article 40.1 GDPR, requires an analysis of its substantive content.

As stated in the report of the Sub-Directorate-General for the General Registry of Data Protection, the draft Code distinguishes three clearly differentiated parts. The first one, relating to the application of the GDPR to the data processing operations carried out by publicity officials and managers, in which, in turn, it is possible to distinguish those contents that are limited to referring to the regulation of the GDPR, indicating that it is to be complied with, that it must be complied with, which does not incorporate any other value added, and that the contents are limited to refer to the regulation of the GDPR, indicating that it must be complied with, that it must be complied with, that it does not incorporate any added value, and that it is possible to distinguish the contents that are limited to the regulation of the GDPR, indicating that it must be complied with, that it must be complied with, which does not incorporate any other value added, and that it must be observed.

A second part, which is the central objective and *raison d'être* of the code of conduct, which establishes a system of out-of-court resolution of conflicts that may arise in the area of data protection with entities that adhere to the code of conduct.

And a final part, dealing with provisions aimed at ensuring proper compliance with the data protection code and regulations.

The content of the code, in addition to meeting the needs of the advertising sector in connection with technological development, which, as set out in its preamble, must always be addressed with respect for the rights of users and, among them, the right to data protection, providing solutions that are beneficial not only to the adherents but also to those affected by the following reference, shows that it meets the criteria set out by the EDPB.

Facilitates the effective implementation of the GDPR and the LOPDPDGDD, in particular through the establishment of an out-of-court procedure for the settlement of disputes that may occur between data subjects and entities adhered to the Code, as well as the inclusion of a list of sector-specific definitions that contribute to a better understanding of the rules (paragraph 3 of the Code) and the identification of aspects of particular relevance to the sector, such as the obligations of those responsible for the data protection by design and by default; the provision of consent; or the information to be provided in the processing of data for advertising purposes, including indications and examples for carrying it out.

It provides criteria on the legal basis to be applied in commercial communications, in particular the consent of the interested parties, to which it has just been referred, and the legitimate interest, providing guidance criteria and examples for their determination, without prejudice to the obligation of the acceded entity to carry out a corresponding weighting of its legitimate interest with the fundamental rights and freedoms of the parties concerned in determining their prevalence.

These inputs, the use of industry-specific terminology, the inclusion of examples and, again and in particular, the out-of-court data protection procedure, contribute to specifying the application of data protection regulations to the advertising industry sector, and constitute the added value that codes of conduct must contain in order not to be a mere reproduction of unavailable regulation.

The code, in order to be approved, must provide sufficient guarantees, as provided for in Article 40(5) of the GDPR “The monitoring authority shall decide whether the draft Code or the amendment or extension is in conformity with this Regulation and shall approve the draft code, amendment or extension if it considers the appropriate guarantees provided to be sufficient”.

The code contains requirements to be observed by the affiliated entities in the data processing operations covered by the code in the field of advertising, to which reference has just been made, as well as those relating to the use of cookies that reflect a level of protection appropriate to interested parties.

The Code also includes mechanisms, referred to above, which allow the monitoring body to monitor its compliance.

## V

Codes of conduct should include a compliance monitoring body which, in accordance with Article 41.1 of the GDPR, is to be accredited by the competent supervisory authority, unless the code applies to data processing carried out by public authorities and bodies.

The GDPR does not determine the internal or external character of the monitoring body, an aspect on which it offers flexibility, so that it can conform to the characteristics of the promoter, provided that they comply with the provisions of Article 41.2 of the GDPR.

The EDPB Guidelines set out a set of requirements to be met by monitoring bodies for accreditation by the competent supervisory authority, and the AEPD, in compliance with the provisions of Article 41.3 of the GDPR, approved and published the criteria for accreditation of the monitoring bodies for codes of conduct.

Given the submission of the draft code of conduct prior to both the adoption by EDPB of its Guidelines and the approval by the AEPD of the criteria for accreditation of the monitoring bodies for codes of conduct, the promoter, dated 3 April 2020 (entry registration 15 April), submitted the documentation indicated in the Seventh Fact Background for the purpose of demonstrating compliance with the accreditation criteria by the proposed monitoring body.

The Code has designated the Advertising Jury as the body for supervising its compliance, and has a dual role to play, on the one hand, as a monitoring body and, on the other, as a body involved in the procedure for the extrajudicial settlement of disputes that may occur between those affected and those who adhere to the data protection code in the commercial communication or advertising sector, forecast, the latter, which responds to the provisions of Article 40(2)(k) of the GDPR.

The Advertising Jury is an organ of the promoter of the code and is therefore an internal monitoring body, for which both the EDPB Guidelines and the AEPD Criteria require greater rigor in demonstrating that they meet the requirements.

From the information and documentation provided for this purpose by Autocontrol, and as reflected in the supplementary report of the Sub-Directorate General for Data Protection, referring exclusively to the Advertising Jury as a monitoring body, as in the report of the Legal Cabinet, it is concluded that the Advertising Jury meets the criteria for accreditation of the AEPD, demonstrating that it meets the requirements of Article 41.2 of the GDPR to be accredited. However, compliance with those criteria should be reviewed:

- INDEPENDENCE

The owner of the code of conduct must demonstrate that the proposed monitoring body is capable of carrying out its monitoring functions independently and autonomously, without the influence of the code owner, the members of the code or the profession, industry or sector of activity to which it relates.

The Advertising Jury is established in the statutes of Autocontrol (art. 22) as a specialized advertising body whose objective is to monitor compliance with the code of conduct on advertising, through the out-of-court processing of complaints arising in this area. The Board of Directors of Autocontrol approved the Regulations of the Advertising Jury, the last amendment of which dates from July 11, 2019. Article 1 of the Rules of Procedure provides that the Advertising Jury shall enjoy full and absolute independence in its functions. Its characteristics are those of a specialized body in the field of ethics and advertising, composed of independent persons and governed by its own rules of procedure.

The Advertising Jury is composed of a President, between three and six Vice-Presidents, and between nine and twenty members of undisputed impartiality, who are appointed and renewed by a majority of the members of the Board of Directors of Autocontrol among independent experts of recognized personal and professional prestige. None of its members may have a commercial, labor, organic or other relationship with the members of Autocontrol during the 3 years prior to their appointment, or during their term of office, which is two years with the possibility of extension. Article 32 of the Rules of Procedure of the Publicity Jury guarantees that they are not removed without just cause and prohibits them from receiving instructions from any party to a dispute, or to maintain any relationship with them during the previous 3 years. The remuneration received by members of the Advertising Jury shall be unrelated to the outcome of the proceedings.

From the set of formal rules and procedures for the appointment of its members and operations, as well as information on its funding and budget, it is concluded that the Advertising Jury responds to the criterion of independence which, for internal oversight bodies, such as this one, must have the proper separation of staff, management, accountability and function of other areas of the organization.

- ABSENCE OF CONFLICTS OF INTEREST

Members of the Advertising Jury are subject to a regime that shows compliance with this criterion:

- They must not have an employment, commercial, organic or other relationship with the parties to a dispute in which they are involved.
- Their mandate is for a certain period of time without being removed without justifiable cause.
- They shall not receive instructions from any party to a dispute in which they intervene, or their representatives, or maintain or have maintained a relationship with them during the preceding three years.
- The remuneration of the members of the Advertising Jury shall be unrelated to the outcome of the proceedings.
- Article 1.2 of the Rules of Procedure of the Advertising Jury establishes the obligation of its members to abstain in the event of a conflict of interest.
- Article 14 of the Rules of Procedure of the Jury establishes the list of cases that give rise to the challenge and abstention of its members, which is concluded with any other which may lead to a conflict of interest or may raise doubts as to their independence and impartiality.
- The parties to the dispute and the Autocontrol bodies may exercise the challenge and, if considered, a substitute is appointed within the members of the relevant section of the jury.

These characteristics allow, in accordance with the accreditation criteria of the AEPD, to consider that the Advertising Jury is subject to measures and procedures that guarantee its impartiality and the absence of conflicts of interest.

- EXPERIENCE

The Advertising Jury is composed of a President, between three and six Vice-Presidents, and between nine and twenty members of undisputed impartiality, who are appointed and renewed by the Board of Directors of the Autocontrol, by a majority of its members, among independent experts of recognized personal and professional prestige.

The functions of the Publicity Jury as the monitoring body for the code of conduct are assigned to Section Seventh, whose members, as evidenced by the documentation provided to the procedure, are persons whose professional career allows them to attribute the necessary knowledge and experience both in the legal field, and in particular in the field of data protection, as well as in advertising and commercial communication, which is the sector of activity to which the code of conduct is directed.

- PROCEDURES AND STRUCTURE

The AEPD accreditation criteria require that the monitoring body have adequate procedures, structures and resources to carry out the monitoring process, including the assessment of the suitability of the controllers or processors to implement the code, monitor its compliance and conduct periodic reviews of its operations.

In this regard, on the one hand, it is envisaged that the applicants for accession to the code of conduct shall notify the interlocutors and, where appropriate, the data protection delegate in order to allow for the necessary dialogue that requires the development of the mediation procedure with Autocontrol and with the Publicity Jury. A prerequisite for accession and that it configures the procedure for determining the suitability of candidates to be part of the code.

In turn, the Advertising Jury shall regularly verify that the companies adhered to the Code maintain the requirements for their accession and shall periodically update the data of the interlocutors communicated for the management of complaints.

In this area, consideration should also be given to the procedure for reviewing the criterion on any data processing provided for in the Code of Conduct by the Advertising Jury in the terms of article 11 of the Code of Conduct.

On the other hand, Article 12 of the Code of Conduct states that *“When the Advertising Jury, in resolving a complaint, declares an infringement of the code, the decision shall be reasoned and shall decide on penalties which, where appropriate, should be imposed in accordance with its Rules of Procedure”*. The Regulation sets out in Title III on its operation a Chapter (I) on infringements of codes and rules of conduct, applicable to the reference code of conduct.

The Advertising Jury is structured into seven sections and the supervision of the code is assigned to the seventh section. It also has a Technical Secretariat and an Administrative Secretariat to carry out its work. The Technical Secretariat has lawyers who are experts in advertising law and data protection.

Procedures and structure considered sufficient for the purposes of accreditation.

- **TRANSPARENT MANAGEMENT OF COMPLAINTS**

The monitoring body shall demonstrate that it has a documented, effective, impartial and transparent procedure for the receipt, evaluation, monitoring, registration and resolution of complaints within a reasonable time.

To the extent that the procedure for the resolution of disputes by the Advertising Jury is that established by its Rules of Procedure for the management and resolution of complaints concerning compliance with the code of conduct may be considered in accordance with the accreditation criteria established by the AEPD, since it has the following characteristics:

- Simplicity, the Autocontrol website provides information on how to file a complaint, the procedure followed and the members of the Advertising Jury.
- Free of charge for the persons concerned, without the need to be assisted by a lawyer or legal adviser.
- Accessibility, via an online form.
- Principle of contradiction, the parties may make claims.
- Promptness, the deadline for the resolution of a claim shall be no more than 15 days after the claim has been completed.
- Reasons for the resolutions, binding on the adhered entities.
- Double instance, possibility of appeal.
- Notification of decisions to the parties and their full publication on the Autocontrol website, as well as statistical data.
- Registration of complaints received.
- Traceability of claims through the Secretariat of the Jury, which is responsible for consultations on the status of the proceedings.

- **COMMUNICATION WITH THE SPANISH DATA PROTECTION AGENCY**

The monitoring body is required to report annually to AEPD on the activities carried out, both the measures and steps taken to verify compliance with the code, the results thereof, the complaints received and the results thereof, as well as when there is a substantial change that could affect the independence of the monitoring body, its expertise or conflicts of interest, which must be communicated without undue delay to the EFTA in order to initiate, if necessary, a new accreditation procedure.

To this end, the Advertising Jury shall keep the AEPD informed of all its activity as a monitoring body, in particular of the measures it takes pursuant to Article 41.4 of the GDPR, for which purpose Autocontrol has created an exclusive e-mail address for this type of complaint.

Likewise, paragraph 13 of the Code provides that the Secretariat of the Publicity Jury will also draw up an annual collective statistical report that it will provide to the Spanish Data Protection Agency.

A specific channel has been established for the communication of the Publicity Jury with the AEPD to provide it with the necessary information, without prejudice to the fact that it also comes from the Autocontrol itself, as in the case of sanctions for infringement of the code adopted or of any changes that may occur in the members of the Advertising Jury, or any other substantial change that could affect their independence, expertise or generate conflicts of interest so that, where appropriate, a new accreditation process will be initiated, so that this criterion would be sufficient.

- MECHANISMS FOR REVISING THE CODE

The monitoring body plays a key role in the revision of codes of conduct and must demonstrate that it has documented procedures to assess the effectiveness of the code of conduct and to ensure that it continues to be relevant to its members and continues to comply with the implementation of the GDPR, or, in another case, that it should be reviewed and adapted to the findings of the evaluations carried out.

To this end, the Advertising Jury, as set out in Articles 4(a) and 46 of its Rules of Procedure and the Statutes of Autocontrol, respectively, has the task of formulating preliminary draft codes of ethics and other rules of conduct in the field of commercial communication. Likewise, Article 4(h) of the Regulations of the Publicity Jury provides that the Board of Directors of Autocontrol entrusts it with other functions, including those relating to privacy and data protection, which could include the revision of the code.

**A regulation which is appropriate to fulfil this function, on which the Legal Office, in its report, points out, however, that *“taking into account the impact on the advertising field of the protection of personal data, resulting from the increase in new technologies and the growth of digital advertising, based on the profile of those affected, as stated in the Code itself to justify its need, it would be desirable to continue to revise it in order to adapt it to the evolution of these technologies and to expand that part of its content, action in this regard by the Publicity Jury, as the monitoring body for the code.***

- LEGAL STATUS

Under this accreditation criterion, the monitoring body is required to provide all the information necessary to assume responsibility in the event of non-compliance with its obligations, as provided for in Article 41.4 of the GDPR, and to meet the administrative fines referred to in Article 83(4)(c) of the GDPR.

The Advertising Jury, headquartered in the city of Madrid, is an internal body of the association promoting the code of conduct that lacks its own legal personality. Therefore, Autocontrol is legally responsible for its actions, in particular as a monitoring body for the code of conduct, which can be sanctioned in accordance with the provisions of the GDPR and the LOPDPGDD.

To this end, Autocontrol has, in accordance with its statutes, a fund to cover any liabilities and has entered into an insurance contract to respond to any infringements of data protection regulations.

The information provided by Autocontrol allows the Publicity Jury to be considered liable to be sanctioned, as well as the provision of remedies to deal with any sanctions that could be imposed by the AEPD for infringements of its obligations as a monitoring body.

## VI

As indicated, the monitoring body for the code has to be accredited by the AEPD, and the resolution to be adopted should therefore include not only the approval of the code of conduct submitted whether it is in conformity with this GDPR and the LOPDPDGG; and if the appropriate guarantees offered are considered sufficient, but, in that case, it must also provide for the accreditation of the monitoring body if in accordance with the accreditation criteria approved by the AEPD and meets the requirements set out in Article 41.2 of the GDPR.

The EDPB Guidelines, in its section on definitions, indicate that “Accreditation” refers to verifying whether the proposed monitoring body satisfies the requirements set out in Article 41 of the GDPR for monitoring compliance with the code of conduct. Verification is carried out by the supervisory authority responsible for the approval of the code. The accreditation of a monitoring body only applies to a specific code, without prejudice to the fact that the same monitoring body may be accredited for more than one code if it satisfies the accreditation requirements.

The Publicity Jury, as the monitoring body for the code of conduct called "CODE OF CONDUCT DATA PROCESSING IN ADVERTISING ACTIVITIES", promoted by the ASSOCIATION FOR THE SELF-REGULATION OF COMMERCIAL COMMUNICATION "AUTOCONTROL", meets the requirements laid down in Article 41.1 of the GDPR for the purpose of being accredited to this particular code, as indicated in the EDPB Guidelines and is set out in the Legal Office's report, without prejudice to the fact that other draft codes of conduct in the field of advertising and commercial communication or related activities may refer to such accreditation, provided that the structures, procedures, mechanisms and measures that have been identified in this accreditation process are maintained and, where appropriate, the expertise in the subject matter of the code is accredited; and it is included as a monitoring body by the promoters of such codes.

## VII

The draft code of conduct, in accordance with the criteria set out in the reports of the Sub-Directorate General of the General Data Protection Registry and the Legal Cabinet, favors the approval of the code of conduct and the accreditation of the Publicity Jury as its monitoring body on the grounds that they comply with the provisions of Articles 40.5 and 41.1 of the GDPR, respectively, without prejudice to taking into account the comments of the Legal Office's report relating to the adaptation of the territorial scope of the code as mentioned before.

## VIII

Article 40.6 of the GDPR provides that *'Where the draft code, or amendment or extension is approved in accordance with paragraph 5, and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.'*

For its part, Article 38.5 of the LOPDPGDD stipulates that *"The Spanish Data Protection Agency and the regional data protection authorities shall keep records of the codes of conduct approved by them, which will be interconnected with each other and coordinated with the registry managed by the European Data Protection Committee in accordance with Article 40.11 of the said regulation [RGPD]. Registration shall be accessible through electronic means."*

Consequently, having regard to the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency,

## RESOLVES

**First.**— To approve the “CODE OF CONDUCT DATA PROCESSING IN ADVERTISING ACTIVITIES”, whose promoter is the Association for the Self-Regulation of Commercial Communication “AUTOCONTROL”.

**Second.**— Accredit as a monitoring body for the code of conduct to the Advertising Jury.

**Third.**— Register and publicize the code of conduct, and communicate it to the European Data Protection Board for the purposes of its registration and public disposition.

**Fourth.**— Notify this resolution to the Association for the Self-Regulation of Commercial Communication “AUTOCONTROL”.

Against this decision, which terminates the administrative procedure, they may lodge an appeal for replenishment with the Director of the Data Protection Agency within one month from the day following the notification of this decision, or, directly in the contentious-administrative appeal before the Administrative Disputes Chamber of the National High Court, in accordance with the provisions of article 25 and paragraph 5 of the fourth additional provision of Act No. 29/1998 of 13 July, in accordance with the provisions of Article 13 of the Act,

Mar España Martí  
Director of the Spanish  
Data Protection Agency