

DATA PROTECTION SELF-REGULATION IN SPAIN: AUTOCONTROL'S CODE OF CONDUCT ON DATA PROCESSING IN ADVERTISING ACTIVITIES

Data Protection and Consumer Protection
Conference. 10th March 2023



Why is this code of conduct so relevant?



- First data protection code of conduct in the EU - under the umbrella of the GDPR and approved by the national DPA- which states that the DPA has the power to refer any complaint it receives against a company adhering to the code to the SR body (an ADR) instead of initiating an administrative procedure.
- This is a good example of how ad SR bodies under the supervision of the DPA - can contribute to the protection of consumer rights in the area of data, as it has done for decades in the field of advertising.

1. Basics about AUTOCONTROL
2. Background & regulatory framework
3. Code scope & obligations
4. Extrajudicial dispute resolution procedure
5. Consumers, companies & DPA benefits

ABOUT AUTOCONTROL

- **AUTOCONTROL, Association for the Self-Regulation of Commercial Communications** is a NGO created by the industry to ensure responsible advertising: truthful, legal, honest and fair.
- Its members are **advertisers, advertising agencies, media and professional associations involved in advertising activities.**
- Currently, its **+600 direct members and +4,000 indirect members** (adhered to a Code enforced by Autocontrol) are involved in **around 70% of the advertising investment in Spain.**
- Since its creation **AUTOCONTROL has been actively collaborating -within the framework of the +20 co-regulation & collaboration agreements it has signed- with national and regional administrations competent in the control of advertising activity,** including the Consumers Affair DG, the DPA, the Ministry of Health, the audiovisual authority, the Bank of Spain, and many more.

ABOUT AUTOCONTROL

- We manages the Spanish self-regulatory system for commercial communications on the basis of three main instruments:
 - ❖ **Codes of Conduct:** the *Autocontrol Code of Advertising Practice* (based on the ICC Code of Advertising). Additionally, Autocontrol enforces 20 sectoral advertising codes of conduct (including medicines, cosmetics, toys, alcohol beverages, etc.).
 - ❖ **The Advertising Jury:** recognized as an independent Alternative Dispute Resolution body (ADR) according to the *Directive 2013/11/EU on alternative dispute resolution for consumer disputes*.
 - ❖ **A Legal Advice service:** initially Copy Advice[®] to review ads content (offered by 70 internal lawyers) (*In 2022, Autocontrol's legal team reviewed more than 36,000 advertising campaigns prior to their release*) Since 2013, Cookie Advice[®] & Data Advice[®] as well (Data protection experts & IT experts).

BACKGROUND

- The advertising self-regulation system created by AUTOCONTROL has become the first choice for advertising dispute resolutions in Spain. Since 1995, it has solved +5,000 ad cases.
- Since 2018 Autocontrol is solving data protection complaints as well.

January
2018

MEDIATION SYSTEM TO
SOLVE DATA PROTECTION
COMPLAINTS AGAINST
TELECOMS

Developed in collaboration with the DPA and the main telecommunications companies in Spain.

1,795 complaints received.
75% mediation agreements reached

October
2020

CODE OF CONDUCT ON DATA
PROCESSING IN AD
ACTIVITIES

1st DPA-approved code of conduct in Spain under the GDPR to establish an alternative dispute resolution mechanism to solve claims regarding the processing of personal data related to advertising activities against the companies adhered to that code.

January
2023

NEW CODE OF CONDUCT ON
DATA PROCESSING IN AD
ACTIVITIES

Approved by the DPA in November 2022.

Including the procedure for out-of-court settlement of disputes initiated at the request of the Spanish DPA

BACKGROUND



Reputed SR body

The AUTOCONTROL Jury was the first private body to be accredited as an ADR by the Spanish Government & included in the *EC single list of ADRs* and in the *Online Dispute Resolution Platform* created by the EU.



Legislation that promotes SR

Spanish Commercial Practices legislation & Data Protection legislation recognize and promote codes of conduct & SR



DPA supportive of SR

Spanish DPA has actively promote SR

BACKGROUND



The screenshot shows the official website of the Agencia Española de Protección de Datos (AEPD). The header includes the AEPD logo, the text 'agencia española protección datos', a search bar, and a 'SEDE ELECTRÓNICA' button. The navigation menu contains 'Inicio', 'La Agencia', 'Derechos y deberes', 'Áreas de actuación', and 'Publicaciones y resoluciones'. The main content area features a breadcrumb trail: 'Inicio > Prensa y comunicación > Últimas noticias > La Agencia promueve un sistema de mediación para agilizar la resolución de reclamaciones en materia de publicidad'. The article is dated '17 DE ENERO DE 2023' and has the headline 'La Agencia promueve un sistema de mediación para agilizar la resolución de reclamaciones en materia de publicidad'. Below the headline is a list of four bullet points:

- El código de conducta de AUTOCONTROL establece unos tiempos máximos de 30 días para la resolución de controversias
- La recepción de publicidad no deseada es una de las quejas más frecuentes planteadas ante la Agencia
- Las operadoras de telefonía MásMóvil, Orange, Telefónica y Vodafone se han adherido hoy a este código de conducta, abierto a todas las empresas que desarrollen actividades publicitarias
- Cuando las reclamaciones en materia de publicidad contra las entidades adheridas se planteen directamente ante la Agencia, ésta podrá remitirlas al Jurado de la Publicidad, en su condición de organismo de supervisión del código de conducta



The screenshot shows a tweet from the Agencia Española de Protección de Datos (@AEPD_es) posted 22 hours ago. The tweet text reads: 'Promovemos un sistema de mediación para resolver de forma más ágil las reclamaciones de publicidad. En el acto de presentación han estado la directora de la AEPD, @MarEspañaMartí, y los representantes de #AUTOCONTROL, @masmovil, @orange_es, @Telefonica y @vodafone_es.' Below the text is a video thumbnail showing a group of people seated at a long table during a presentation. A large screen in the background displays the AEPD logo and the text 'AUTOCONTROL'. The tweet interface shows 7 retweets, 8 likes, and 2,532 views.

“The Data Protection Agency promotes a mediation system to speed up the resolution of advertising complaints”

REGULATORY FRAMEWORK

- The main legislation applicable to the Code of Conduct is:
 - 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 (**GDPR**) [Art. 24.3, art.28.5, art.40.1 y 2; art.41.1, art. 57.1 m) y art. 83.2 j)]
 - Spanish Organic Law 3/2018, of 5 December, on the protection of personal data and the guarantee of digital rights (**LPDGDR**) [Art. 38.1 y 2, y art. 65.4 LPDGDR]
 - Spanish Law 34/2002, of 11 July, on information society services and electronic commerce (**LSSICE**).

REGULATORY FRAMEWORK

- Article 65.4 of Spanish Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the Guarantee of Digital Rights, establishes that:

before deciding on the admissibility of a complaint, the Spanish data protection authority may refer it to the supervisory authority (*monitoring body*) of a code of conduct (or, where applicable, to the data protection officer designated by the controller or processor) for the purpose of processing it.

CODE SCOPE & OBLIGATIONS



SUBJECTIVE SCOPE

Any interested companies or entities that process personal data in the context of an advertising activity.

OBJECTIVE SCOPE

Processing carried out in the context of the processing activities of adhered entities established in Spain or affecting data subjects located in Spain.

OBLIGATIONS FOR ADHERED COMPANIES

Substantive obligations, related to: data protection principles; data protection obligations by design and by default; legal bases for processing (consent and legitimate interest); obligation to inform data subjects about data processing; right to object to data processing for direct marketing purposes; obligation to consult advertising opt-out systems; and obligation to comply with obligations on the use of advertising cookies in the LSSI.

Obligations to publicise and communicate their adherence to the Code.

Financial obligations: to contribute, according to the established fees, to cover the costs of implementing the code and providing services related to its application.

CODE SCOPE & OBLIGATIONS: EXAMPLE



4.1. PRINCIPLES. DATA PROTECTION BY DESIGN AND BY DEFAULT

In the processing of personal data related to their advertising activity, the adhered entities shall respect Article 5 GDPR (principles) and Article 25 GDPR (comply with data protection obligations by design and by default) and take into account these provisions:

- a) Avoid collecting and processing more data than they need to send their commercial communications.*
- b) Look into the reasons behind failed commercial communications 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) Keep proof of compliance with data protection regulations in connection with their advertising activity. 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 have been informed of the processing of their data as required by law and that there is a legal basis for those deliveries.*

EXTRAJUDICIAL DISPUTE RESOLUTION PROCEDURE (DPA)



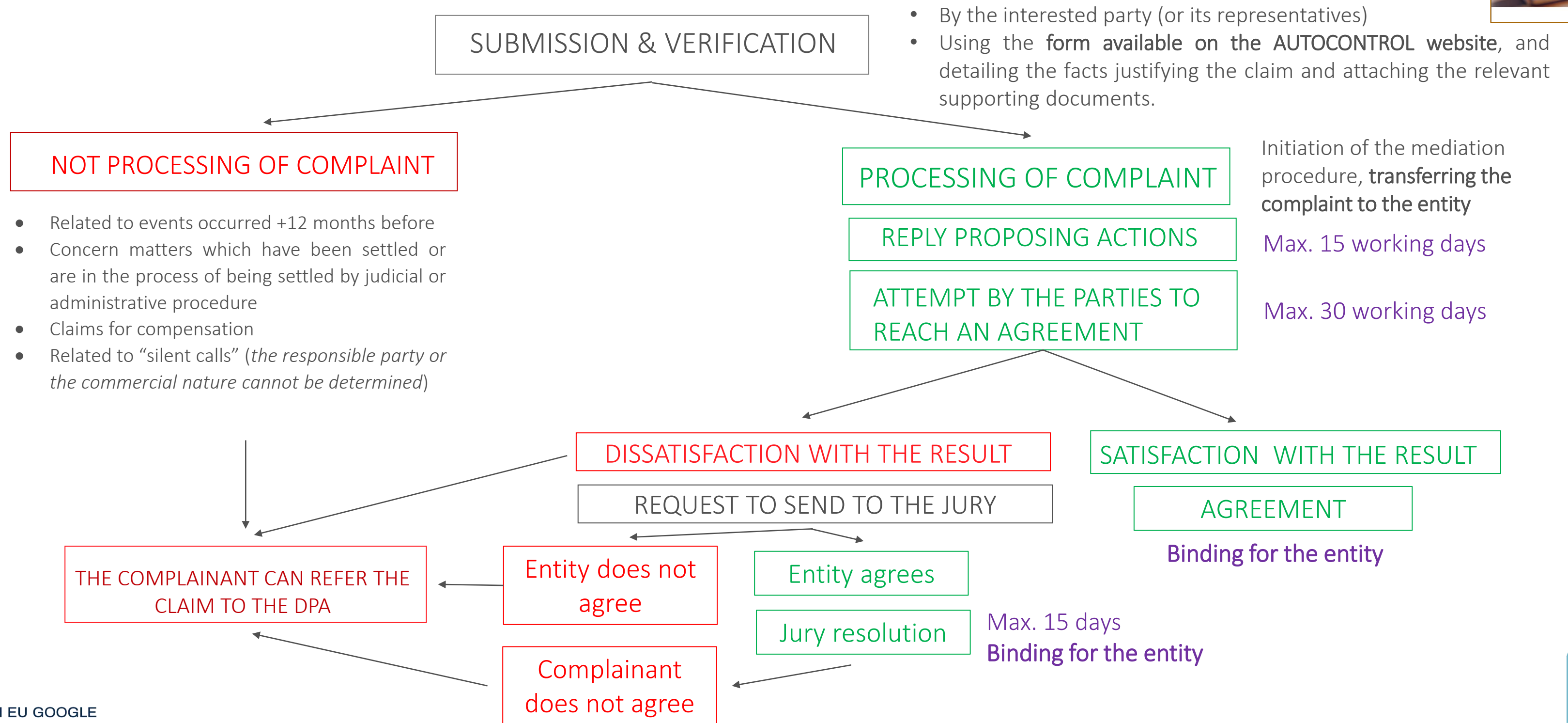
5.1. INITIATED BY THE DATA SUBJECT BEFORE AUTOCONTROL

5.2. INITIATED AT THE REQUEST OF THE SPANISH DATA PROTECTION AGENCY

EXTRAJUDICIAL DISPUTE RESOLUTION PROCEDURE



4.1. INITIATED BY THE DATA SUBJECT BEFORE AUTOCONTROL



EXTRAJUDICIAL DISPUTE RESOLUTION PROCEDURE (DPA)



4.2. INITIATED AT THE REQUEST OF THE SPANISH DATA PROTECTION AGENCY

- In accordance with article 65.4 of the LOPDGDD, the Spanish DPA has the power to refer any complaints it receives to the Jury of Autocontrol in its capacity as the supervisory body of the Code.
- In such cases, the Jury, through its secretariat, will initiate a mediation procedure with the following particularities:

1

The verification carried out by the AEPD before forwarding the claim will be considered valid (although it may be proposed to the AEPD that the claim be rejected for processing within a period of 3 days if there are any deficiencies)

2

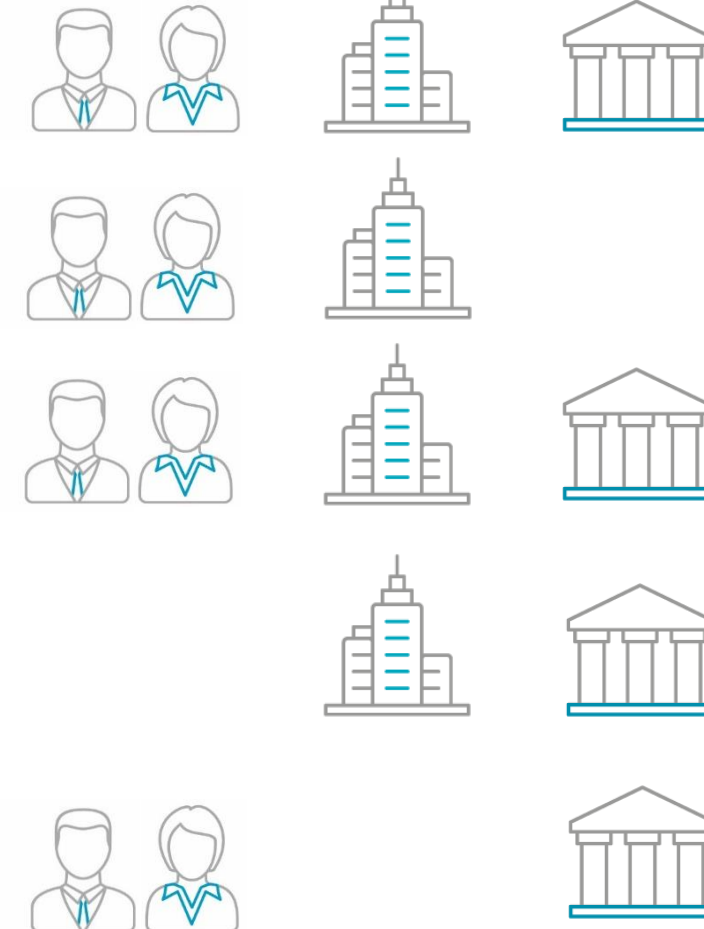
Maximum mediation duration of **27 working days** (instead of the 30 days provided for in the previous procedure).

3

At the end of the procedure, Autocontrol will inform the DPA of the outcome and send it the information on the file.

BENEFITS FOR CONSUMERS, COMPANIES & DPA

1. Dispute resolution more quickly and easily, by a specialized body.
2. Improves companies' reputation & consumer confidence in companies.
3. Free for consumer and DPA & low cost for companies.
4. May reduce administrative proceedings and financial penalties for companies.
5. Reduces the DPA's workload, allowing it to devote its resources to other tasks or to resolving serious or complex cases.



BENEFITS FOR CONSUMERS, ENTITIES & DPA

“Spain speeds up the resolution of advertising complaints with a new mediation system”

Press Note European Consumer Centre Network in Spain (ECC Net)

Centro Europeo
del Consumidor
España



Cofinanciado por la
Unión Europea



Nota informativa

España agiliza la resolución de reclamaciones en materia de publicidad mediante un nuevo sistema de mediación

La Agencia Española de Protección de Datos aprueba el nuevo Código de Conducta con el que se resolverán las controversias en un plazo máximo de 30 días

Madrid, 19 de enero de 2023. La Agencia Española de Protección de Datos (AEPD) ha aprobado la modificación del Código de Conducta de AUTOCONTROL ‘[Tratamiento de datos en la actividad publicitaria](#)’ -al que se han adherido empresas como MásMóvil, Orange, Telefónica o Vodafone- y con el que se ha creado una nueva vía para resolver de forma más ágil las reclamaciones en materia de protección de datos y publicidad que puedan plantear las personas consumidoras.

De esta forma, las resoluciones de las reclamaciones que utilicen esta vía serán vinculantes para las empresas adheridas voluntariamente a este Código de Conducta y en el que se establecen los mecanismos para garantizar la correcta aplicación del Reglamento General de Protección de Datos (RGPD) y la Ley Orgánica de Protección de Datos Personales y garantía de los derechos digitales. A partir de ahora, los ciudadanos que presenten sus reclamaciones a través del [Sistema de Resolución Extrajudicial de Litigios de AUTOCONTROL](#) se podrán beneficiar del nuevo procedimiento de mediación voluntario y gratuito con el que se pretende dar una respuesta más ágil a las reclamaciones que se planteen en materia de publicidad y protección de datos personales sobre litigios relacionados con las entidades adheridas. Para ello, las empresas adheridas deberán demostrar una responsabilidad proactiva en relación con el cumplimiento de los principios de protección de datos, entre ellos, la protección de datos desde el diseño; así como la necesidad de resolver las posibles controversias de forma ágil, efectiva y sencilla. En este contexto, la AEPD ha advertido que la recepción de publicidad no deseada es una de las quejas más frecuentes planteadas por los consumidores y usuarios ante esta institución.

El nuevo código de conducta entrará en vigor el próximo 28 de enero y se aplicará a los tratamientos de datos con fines publicitarios o que versen sobre publicidad que realicen las empresas adheridas, tales como el envío de comunicaciones comerciales, promociones realizadas para recoger datos personales y usarlos con fines publicitarios, uso de cookies o tecnologías equivalentes para la realización de publicidad comportamental o la elaboración de perfiles con fines publicitarios. El organismo acreditado por la AEPD encargado de la supervisión y control de este sistema ha sido el Jurado de la Publicidad. Este organismo estudiará las reclamaciones recibidas a través del Sistema de Resolución Extrajudicial de Litigios de AUTOCONTROL e iniciará el procedimiento de mediación. La empresa adherida deberá responder en el plazo máximo de 15 días, prestando las actuaciones que considere pertinentes, y la duración máxima del procedimiento

COMPANIES & ASOCIATIONS ADHERED

<https://www.autocontrol.es/servicios/reclamaciones-de-proteccion-datos-y-publicidad/empresas-adheridas/>



Thanks

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