

□ Procedure No.: PS/00315/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: EXCEL HOTELS RESORT S.A. (hereinafter, the claimant) dated
07/12/2019 filed a claim with the Spanish Data Protection Agency.

The claim is directed against SIGNALLIA MARKETING DISTRIBUTION, S.A., with
CIF A76539030 (hereinafter, the claimed one). The grounds on which the claim is based
are "the malpractice of the claimed party, by terminating a contract for the provision of services
and deny us access to our own servers, access to our passwords,
in addition to refusing to return all the data of our entity causing
serious damage to our systems, our staff, as well as extensive damage
economic when all the work systems are paralyzed".

He states that on 04/29/2019 he sends a burofax to the respondent requesting the change of
servers to the company's facilities under a contract for the provision of services
services signed on 07/01/2011 (attach a copy of the contract).

In the literal copy of the burofax, document 1, it is indicated: "As we have
revealed, it is our intention to change the place in which they are
our company's servers are stored in such a way that they become
located in our central offices and to avoid illegal access to the information that
It is housed in them. Although the truth is that today they have been doing
ignoring our request, intending to misappropriate our
computer equipment and the information that is housed in them, therefore

We warn you that in the event that they do not proceed to put at our disposal the

servers of the company in the non-extendable period of 5 days we will see each other in the obligation to report the facts. In delivery figure: "not delivered, left notice".

A second attempt states "not delivered due to surplus-not picked up at the office."

He states that on *** DATE.1, his company suffered an attempted scam by impersonating someone the mail account, email address, of your financial advisor, demanding through a collaborating company that deposited an amount in an account in a bank. This circumstance was notified to the respondent because she was in charge of the treatment of the computer systems and those who had access to the servers of their business. On this matter, it provides a copy of document 2, dated ***DATE.1, written to claimed, in which he informs him and asks for explanations of what happened, adding "Les We reiterate that once the contract for the provision of services has expired, are obliged to return the servers and provide us with the passwords access by refraining from accessing our servers." delivery unknown effective.

It is stated in the claim, "as of this day and the contract for the provision of ***DATE.2) is requested to services signed on the day (date of termination of the contract this entity the obligation to return the servers and provide us with the access codes.

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I give in to them." Attached document 3, letter from the respondent addressed to the claimant, of *** DATE.3, entitled "notice of non-payment for the provision of the contracted service between the parties on 07/01/2011" and indicates in English that the claimant owes €409,724.50,

of what has already been informed, and that if it is not paid before 05/14/2019, "they will cease in the provision of the service on ***DATE.2, suspending all activity and operations nes". He expresses the continuous delays in the payment of the invoices issued by his company. to the claimed one, informing that this amount is accumulated since January 2017 by the services provided. It tells him that "after a series of demands urged to claimed in recent months, they are forced to claim the amount.

In document 3-1, which is provided, entitled "answer to the letter of ***DATE.3", the claimant in writing of ***DATE.4, shows her surprise at the fact that she he is "owed an amount greater than 10 million euros". He informs you that they have inter-filed a lawsuit against them and indicates that they have breached the "obligation of have the servers owned by the claimant available to the claimant, an issue that is causing serious damage to society and refuse to provide the ad-minister that allows us to operate with our computer equipment, an issue that constitutes a breach of the aforementioned contract.

It also reports that "we have recently detected that there has been a identity theft of the claimant's workers to order third parties that payments are made in current accounts that are not owned by the entity, which which constitutes a serious attempted fraud."

"Despite the fact that we have requested the precise passwords to be able to carry out an investigation of what happened today have not provided us with these keys in a way that we could We can access the system to carry out the corresponding investigations. Hereby we exercise our power to terminate the aforementioned contract so that from the date of receipt, no amount will be accrued for the provision of the indications. two services."

"We ask you to give precise instructions to your technicians so that they refrain from continuing nuar providing computer services and proceed to return the computer material

of our property that was delivered to them at the time of signing the agreement.

deal." The actual delivery of this document is unknown, as no evidence is provided.

of reception.

It states in the claim that on 06/14/2019, the claimant sent a burofax to the

claimed informing you that the non-delivery of your servers and keys has been a

serious damage to them and that they will file a complaint with the Spanish Agency for

Data Protection. Provide a copy of the document, without accrediting a sample of its delivery.

Indicate as damages suffered.

-Since Friday 06/07, the claimant did not have access to the systems

related to accounting, he only kept possession of a copy of some

daily data of each company.

-The program provider informed the claimant that it would take a minimum of

a week to restore the installation of the programs: Account, payment management,

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bank reconciliation, fixed assets and accounting transfers. This meant that by not

recover the historical data the information was lost in digital format for the

accounting records.

Short term:

- impossibility of complying with obligations of the SII system, they should be declared

all invoices within 8 calendar days of issue.

-Similarly, to reduce the IGIC in the monthly declaration, you must inform

on all invoices received, the date to make the data declaration of

bills deductible on June 15. This means that the claimant will have to

pay this month plus IGIC to the Canary Islands Tax Agency,

-Difficulties in preparing draft accounts as of 05/31 that should have been completed.

-ATECRESA informed the claimant that it would take up to 6 months to recover the operability of the system, which implies that they have not been able to assess correctly inventories and the posting of F&B cost to be delayed.

-It has not been able to issue the certified payments, so the payments have been made by transfer or by issuing a voucher, which is very time consuming.

-Problems in completing the claimant's audits.

-The claimant did not have and does not have data to present before any inspection of State Treasury of Canaria.

Long-term:

- delays in preparation and presentation of taxes, sanctions and fines associated

-Impossibility of carrying out business analysis to prepare projections.

- Lack of digital support for fixed assets depreciation accounting.

-Additional expenses related to the reinstallation of work applications additional technicians

Along with the claim, provide:

-Copy of a service lease contract dated 07/01/2011, showing a party as client, SILVERPOINT HOTELS AND RESORTS SA, CIF A-38083101, and as service provider SILVER POINT VACATION SOLUTIONS SA, CIF A-76539030, in which it is entrusted with the provision of prevention services, maintenance and advice of computer equipment in the telecommunications environment and informatics.

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-Copy of document 4 of the claimant's complaint to the Police, date

05/23/2019, for attempted fraud through identity theft suffered on

***DATE.1, which was not finally carried out, when it was detected that it was an operation fraudulent portion.

It is indicated in point 4 of the complaint that a report from the company SIGNA-

LLIA, in charge of the administration and management of the computer systems of the company plaintiff, in which, among other information, it states that it was the account of the di-

The claimant's financial director had been the target of a computer attack.

-Provides a copy of document 5 of the claimant's complaint to the Police, on 06/7/2019,

against the one claimed for professional malpractice and fraud, without further documentation than reveal the reasons.

- Provides document 6, dated 06/13/2019, document from claimant to claimant entitled "car-reply letter" "request for data based on arc rights". "After passing the

legal term of 30 days established in the letter delivered by the representative of the re-

crying -in our offices on May 14, 2019 we have agreed to facilitate

limit the data that our company maintains of EXCEL HOTELES Y RESORTS SA."

"Given their volume and for internal Signallia technical reasons, said information

training will be made available to you 10 days from the sending of this

letter".

-Provides document 8, writ of claim to the claimant, dated 06/20/2019, in which

indicates:

“In order to provide the requested information and comply with the regulations of the Protection data, our company informs you that we have more than 5 terabytes of data cough... The computer security team informs us that the safest way to to treat said data is to follow the following steps...” acquire a hard disk with a minimum memory capacity of 5 terabytes, to be delivered to the individual offices considering that the download time will be two working days, that a name and password to the authorized person and that once the hard drive is delivered and its reading is confirmed, the claimed party would proceed to delete said data.

-Provides document 9, consisting of forms of "XL equipment report"

with PC name, manufacturer, model, and operating system and serial number, date bios, 8 sheets. There is also, document 10, a list of description of equipment computers, including, among others, servers and year of purchase and purchase prices, prepared by the claimant and communicated internally on 04/25/2019, with the text “Please try to find invoices for newer servers. Everything is- are active in Central.”

-Provides document 12, copy of email, 07/1/2019, of an employee of the claimant with a copy to two female employees, addressed to gacacostaytorres.com, possibly their advice or similar, indicating that they have appointed two people to attend the offices of the claimed, to, with a hard drive, try to recover the data. I ad- he puts together a prepared letter in case he sees that something needs to be added. Emails follow precedents dated 06/28/2019, in which the person of gacacostaytorres.com, in

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the same issue of "monitoring the delivery of data by SIGNALLIA to EXCEL"

referred to the importance of obtaining the data and the obstacles they put.

-Copy of a letter dated 07/01/2019 from the claimant to the respondent, indicating in reference

reference to the burofax received on 06/20/2019, where they indicated the procedure to be

guide to treat the data in the safest way, "we deliver a disk

hard" with it is indicated how to deliver the password, according to the email received on

06/27 sent by A.A.A. (of the claimed party) where they expand the requirements.

"In order to access said data, we want to make it clear that SIGNALLIA does not

can be exempt from liability once it has delivered the data as you

They are requesting because some open procedures on this case are in process."

-Copy of an email from 07/01/2019 in which an employee claims her-

informs other people, including gacacostaytorres.com with a copy for two

people of the claimant: "I am attaching an email with the information that occurred today in the office

na designated when two of our EXCEL employees have gone with the hard drive

to recover our data. I would be grateful if you would inform us of how we should proceed.

der after these events. We have redacted in the email below". I attach-

ta the explanation given in turn by email of the people who were to arrive

var the hard disk, indicating "at 12:30 we have moved to the offices of SIG-

NALLIA in order to deliver the external hard drive "We have stated our intention

tion of leaving the external hard drive, and we have been informed that A.A.A., allegedly

top management has left the offices and that they do not have the authority to re-

receive the delivery..."

-Copy of email of the maximum person in charge of the claimant, to the claimant-

dated 07/01/2019 stating "please can you fix this, our employees have

I went to their offices again and they have not been given what my team requested

you have the authorization to pick it up."

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, dated 09/25/2019, is transferred to the claimed copy of the claim, telling you to report on the decision you have adopted on the claim, causes that have motivated the incidence and measures adopted.

According to the postal certificate, the shipment was delivered on 10/21/2019 and was not attended to on request.

THIRD: On 12/23/2019, the admission for processing of the claim.

FOURTH: Dated 01/30/20120, in the phase of preliminary investigation actions for the clarification of the facts, information is required to the claimed, requesting if the data has been returned, and if not, inform of the causes that motivate that they have not been returned, warning you of what the regulations establish on data protection on the responsibility of the person in charge of the treatment.

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The shipment was sent electronically, resulting in “automatic rejection” “date of placement” available 01/30/2020 automatic rejection date 02/10/2020.”

On 02/18/2020, the respondent is required again, warning her of the obligation of interacting telematically with the administration. The shipment that this time is processed, exceptionally, in order to obtain the information, it is done through from the postal service, to the address Avenida San Francisco, urbanization Oasis sur 3865, Los Cristianos, Arona, Santa Cruz de Tenerife (same address as above-

mind was collected) and it turned out: "returned to origin by unknown on 03/06/2020".

On 03/31/2020, a new letter is sent to the respondent,

ADDRESS.1, ***LOCALITY.1 (PROVINCE.1), address of the Mercantile Registry
cantil, giving the result "Returned to Origin by Unknown on 06/22/2020".

FIFTH: Entering the data of the claimed in GOOGLE, it appears that in the

BOE of 10/24/2020, an edict of the Commercial Court no. 2 of

*** PROVINCE.1, in which the reference of the claimed party is indicated, incurs in the
bankruptcy proceeding no. ***PROCEDURE.1, in which an order of ***FE-

CHA.5, rectified on 10/13/2020, declaring the bankruptcy of the company SIGNALLIA
MARKETING DISTRIBUTION S.A., CIF A76539030.

B.B.B. is designated as insolvency administrator, indicating its address.

It is indicated that the opening of the liquidation phase has been agreed.

SIXTH: The defendant, as of 10/5/2020, does not contain any sanction annotation
in the SIGRID application that manages the claims of the AEPD.

SEVENTH: In the "Monitoriza Business" application, the defendant appears, constituted on
03/03/2011, last financial year presented 2017, SME size, agency activities
sales travel: €7,764,059.

EIGHTH: On 12/10/2020, the director of the AEPD agreed:

"INITIATE SANCTION PROCEDURE against SIGNALLIA MARKETING
DISTRIBUTION, S.A., with CIF A76539030, for the alleged infringement of article
28.3.g) of the RGPD, in accordance with article 83.4.a) of the RGPD."

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the
Common Administrative Procedure of the Public Administrations, (as regards
successively, LPACAP) the sanction that could correspond would be an administrative fine
of 100,000 euros, without prejudice to what results from the investigation."

"NOTIFY this agreement to SIGNALLIA MARKETING DISTRIBUTION,

S.A., with CIF A76539030, through the bankruptcy administrator, B.B.B.,”

The respondent did not make any allegations.

NINTH: On 06/03/2021, the trial practice period begins, agreeing:

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Consider reproduced the claim and its documentation, the documents obtained

and generated by the Inspection Services of the claimed party.

As additional evidence, it was requested

1) To the claimant: What was the legal act by which the name of the name was changed?

undersigned, client, of the 2011 service lease agreement, with the claim

mada, since in the same figure: SILVERPOINT HOTELS &RESORTS SA, then in

subsequent writs EXCEL HOTELS &RESORTS SA.

On 06/11/2021 a response was received indicating that on 12/21/2010 the

denomination to SILVERPOINT, they provide document 1, to vary to EXCEL HOTELS

on 02/08/2013, with a copy of document 2.

2) To the claimant, in their claim they provided several burofaxes and letters addressed to the

claimed, warning of the end of the relationship due to alleged non-compliance. is requested

that provide proof of receipt of the shipment and its content by the claim.

message of that communication, and I expanded the causes that motivated for the resolution of the

contract, and if the other party has challenged any point of it in court.

Provides a copy of document 3, document dated 06/13/2019 from the respondent addressed to the

claimant (already commented on in the background) explaining that after the deadline

of 30 days established in the letter delivered by the claimant at her offices last

do 05/14/2019 "we have agreed to provide you with the data that our company "maintains ne" of the claimant, and "given their volume and for international technical reasons, nas" of the claimed "said information will be made available to you 10 days from from the sending of this letter.

Provides document 4, which was also attached to the claim, a letter in which the claimed, on 06/20/2019, indicates to the claimant that he has the data of his systems and that due to the size suggests the way to deliver them,

Document 5 that it provides is a document from the respondent regarding interference in the email account of an employee of the claimed, facts that were reported by the claimant. He comments on the meetings held with the claimant on the affair.

It states that the defendant breached a marketing and reservation agreement and when "we terminated that contract, "they canceled our access to the servers, which led to the termination of the computer maintenance contract". attach document 6 mp3 format, a sound file of 2.25 minutes with a conversation between two people, the caller who belongs to the hotels and the caller. The one who calls one indicates that they have been left without computer access and the other party states that obe-gives orders, the caller speaks of damage to the company and customers and explains that has canceled their reservation contract, marketing contract, not the IT contract, and they can't do this. The other part says that it will probably be reactivated, If he gets the order.

3) To the claimed and claimant, what type of personal data was managed for the one claimed, what periods were covered and how many hotels.

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Claimant indicates that: "Nationality, name and surname, postal address, telephone mobile, email and date of birth"

The insolvency administrator of the claimed party indicates that he is aware that "previous months

Following the declaration of insolvency, 07/28/2020, the company no longer had any activity

na, nor were there workers in it", and that it has no information on the questions

raised, trying to obtain them from the former director (whom he identifies) of the department

IT period until 12/31/2018 (that is, when the disagreements and the

question of the return of the data was not valid) and answers that they were data of

clients, containing nationality, names, addresses, telephone numbers, co-

e-mail addresses, and in certain cases dates of birth and marital status, for five

hotels you identify. The data stored was from 2012.

4) A claimant and claimed, if the claimed issued orders and instructions on

the processing of personal data that was managed through the services

vidores, copy of some. And if you didn't have problems with copies before

security, access etc.

Claimant states that he provides document 7, communication on instructions on

Regarding the processing of the data that SIGNALLIA "indicates to us on 06/20/2019",

which is already mentioned in the present background.

Claimed indicates that data access was performed solely on a need basis

to meet them. In 2017 the "customer marketing" data was migrated to the system in

cloud "Salesforce" and reservations and PMS systems to "SIHOT" (hotel management system).

lera) stored in a virtual environment on Oracle servers, and there were no problems

with backup or access.

5) To claimed and claimant, who owned the servers in which the

claimed stored and managed the claimant's information, and for reasons

Does it appear that the claimant asked the respondent to transfer them?

Complainant indicates that they were his property and that "that is why he requested their transfer" Aporta

an internal email in which on 05/14/2019 the financial director communicates to XX (high

responsible for the claimant) a list with a description of assets, years of purchase and

price, including servers said to have invoices highlighted in green,

and others that "we can prove that we bought it."

Claimed states that she was the owner of the servers, and that the rest cannot

answer for being on medical leave at that time.

6) To claimant and claimed, if the computer equipment that appears in the "information" sheet

me of equipment "were owned by the claimed party and where they were physically located" and that

use was given to them.

Claimant indicates that they were owned by him, and were located, as he refers, in dis-

red hotels, up to four, plus the central one, identified by their initials. They attach documents

ment 8 that relate equipment and invoices.

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Respondent states that she does not know the cited sheet, but "SIGNALLIA owned and

managed teams both locally in their offices and in the service rooms.

res, but also in the server rooms located in each of the hotels."

7) A claimant and claimed, reason why at least one of the backup copies

authority was not available from the claimant herself. If you currently have contracted

similar services and if they have changed their way of having access to files and

databases.

It states to the claimant that in the rental contract for services of

07/1/2011 in the first clause, three, it was established as a task covered by the provider

security copies, management of the backup policy and the custody

all of the same.

“Currently we have our own servers and also services contracted to companies

that offer us different products, compared to those that we have cred-

that allow us to manage them”.

“We have our own network and all the equipment from both the hotels and the

headquarters have administrative accounts” of the claimant.

“Now we have an internal IT department of the company, credentials-

team administrators, own network managed by the department, figure-

We act as authorized persons before the companies that provide us services, credentials

essential to be able to manage users, passwords, profiles, emails, etc.

Claimed indicates that it has not obtained information on the matter, however "SIG-

NALLIA stopped paying Salesforce invoices months before the declaration of the

contest "

8) To claimant and claimed, how did the aspect to which he was referred work with the claimant?

refers in the claim of the keys or passwords, in some points they refer to

“the administrator password that allows us to operate with our computers

tics” that was what allowed said key, who made use of it by the

claimed or in the claimant and, who changed and how often it was changed

this key and by whom. What was the point of the teams key being in

power of the data processor.

The complainant states that the administrator password referring to computers would allow

make changes to computers such as installing applications, changing device settings,

network and, in general, any change that a normal user should not be able to make in a corporate team for operational and/or security issues.

The administrator password referred to the servers with the control of users and passwords.

corporate passwords would allow creating new users, deleting them, blocking them, assigning them to one complex or another, reset passwords when they forget them etc.

The administrator keys of the network systems allow to apply network changes, create subnets, manage Wi-Fi, enable new network posts, monitor the network to see if there are security problems etc.

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“Before, you depended completely on each and every one of the systems and even on all two and each one of the services, even if they are from third parties as well, given that those who they had the passwords for these services and were listed as authorized persons nor were they from EXCEL HOTELS AND RESORTS SA.

Claimed indicates that, within the security protocol, each user had their own pia passwords that were forced to change at least every three months.

9) To claimant and respondent: Inform if there is any pending legal matter related to involved with this claim or has there been a ruling on liability, indemnity, tion etc. on these facts, with a copy of the ruling. The complaint contained a complaint against the claim or with eventual debts included in the contest of creditors of the claimed

Claimant indicates that apart from the fact that his credit is "recognized" in the contest of creditors, there is no other pending matter, and claimed indicates that it has not re-

received no judicial notification related to the matter.

10) A claimant, and claimed, it is appreciated that a process of attempting to in-delivery of the data that the claimed handled of the claimant. You want to know if

Finally, the data is delivered, with accreditation of what was delivered, and date.

The claimant indicates that the then administrator of the claimant "signed a receipt of

a hard drive, but pending confirmation and verification that it never occurred

because information was missing. Provides document 9 in which XX, senior manager of the

claimant sends a letter to claimed, dated 07/25/2019, indicating that he confirms that he has

received the hard drive with the data that was kept by the claimed party and that has

to check and verify that all the data is there and the confirmation would be sent to the

claimed that all data has been successfully transferred.

They provide document 10 which is an internal email from 07/26/2019 in which an employee

tells XX "we need to know with which tool the data has been encrypted and some

some technical details that supposedly "were going to send us in an e-mail", and added

They give the screen print of a conversation by "whatsapp between our informa-

matic and the claimed one", in which it says "I have the external hard drive and I see that there is

a 3tb file with no extension. I understand that it will be encrypted", and asks with what tool.

lie was encrypted. The other party asks if they didn't give him the details, to which he replied-

of, "just hard disk and password", to which the other party replies that he has to talk

with another person, everything has to be through him.

Claimed indicates that it does not offer information on this point, "since it is not part of

This process"

TENTH: On 07/06/2021, a resolution proposal was formulated, with the literal:

"That by the Director of the Spanish Agency for Data Protection, a sanction is made for

SIGNALLIA MARKETING DISTRIBUTION, S.A., with CIF A76539030, for a

infringement of article 28.3.g) of the RGPD, in accordance with article 83.4 b) of the

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RGPD, and article 74.k) of the LOPDGDD, a fine of 100,000 euros, of
in accordance with article 83.2.a) of the RGPD and 76.2.b) of the LOPDGDD.) “

No allegations were received within the period granted to make them.

PROVEN FACTS:

1) The claimant, who administers the management of four hotels, states in her claim that your company "has been affected by the malpractice of the claimed by terminating a contract for the provision of services and denying us access to our own servers, access to our passwords, in addition to refusing to return all the data of our entity causing serious damage to our systems, to our staff, in addition to great economic damage when everything was paralyzed our work system" The personal data that was managed by the claimed were those of: "Nationality, name and surname, postal address, mobile phone, e-mail and Date of Birth"

2) The claimant, (previously called SILVERPOINT VACATION SOLUTIONS SA) signed on 07/01/2011 contracted with the defendant the leasing of services of prevention, maintenance and advice of computer equipment in the environment of telecommunications and information technology, in order to assist in operational needs and operation. As clauses, the most important are meant:

-Object: Provision of preventive and corrective maintenance services for equipment computer systems of the client, which are listed in ANNEX 1 in the networks of telecommunications. The support service provided included the problems of

access to the network of all computer equipment, remote access to e mail

corporate, or adequate access to files and programs (first clause 1.2),

manage the backup policy and guard the same and act as

interlocutor in all technical aspects with the different service providers

of telecommunication. The service would be provided 24/365.

In the contract, the third clause provides that the duration of the contract was initially

for two years, until 06/30/2013, with tacit extensions for periods of one year, if not

there is a complaint 30 days before the corresponding expiration date.

The resolution for non-compliance with any of the stipulations is also foreseen,

the complying party giving notice to the other with five days.

In the 12th clause it adds: termination of the contract: "any of the parties may give

terminate this contract at any time during its duration by

written communication to the other party not less than two months in advance of the

Interested completion date. As causes for resolution are indicated in addition to

the general ones of the commercial and civil code, "those derived from non-compliance by

part of the client of the obligations contracted under the contract.

Clause 11 entitled: "Data Protection", states:

"As a consequence of this contract for the execution thereof, the borrower

will have access to customer data of a personal nature that are subject to

legal regime provided for by the LOPD and its development regulations. For such purposes in

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compliance with the provisions of article 12 of the LOPD, the borrower

expressly states and undertakes to use and process the data with the sole and exclusive purpose of fulfilling this contract, following in any case the instructions received from the client. You will expressly refrain from giving the data any use other than the agreed one and in particular will refrain from altering, using or for their own business interest, or communicate them or allow third party access to the same not even for their conservation. In the event that I had to communicate the data to a third party for the development of this contract, the borrower will notify the client so that the latter signs a contract with said third party. Observe the maximum confidentiality of reservations regarding the data that is provided by the client with respect to the development of the object of this contract committing not to disclose any of this data to any third party, as well as any other information that would have been provided regarding the company. A return to the client, once the provision of services object of this contract all the documents and files in which all or some of the data whatever its support or format, as well as copies of these."

-Ninth clause: "service compliance levels": The client will determine the organization of the services to be provided, dictating those generic regulations necessary for a normal and optimal exercise of the services, remaining in any case in favor of the borrower the power to direct and coordinate the service and staff responsible for its provision."

3) In document 1 of the claim, the claimant asks the respondent for the 04/29/2019 as "instruction of the contract", "that as we have put them repeatedly manifest", "it is our intention to change the place in which the servers of our company are stored, so that they pass to be located in our central offices" "Today they are paying attention

ignoring our request”, announcing that if they do not make the servers available to you,

They will file a criminal complaint. The claimant does not provide evidence that there was delivered to the claimant.

4) The parties, due to disagreements, decide to resolve their relationship. There is a writing of claimed, document 3, of ***DATE.3, which indicates that, if you are not paid what is owes him, he will terminate the contract with effective date ***DATE.2, answering the claimant to the claimed party in writing dated ***DATE.4 that the counterparty owes them a greater amount - greater than 10 million euros - in document 3-1, entitled reply to the letter of ***DATE.3. Informs you that they have filed a lawsuit against them and indicates that they have failed to comply with the "obligation to make available to the claimant the servers of its property, an issue that is causing a serious prejudice to the company and refuse to provide the administrator password that we allows us to operate with our computer equipment, an issue that supposes a breach of said contract.

5) The respondent had access to the claimant's servers and thus derives also of the investigative actions carried out by the respondent for the purpose of attempted scam in the hacking of the email account of an employee of the claimant, who informed the Police on 05/23/2019. In these investigations collaborated the claimed, being at the same time denounced by the claimant

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subsequently before the Police, on 06/7/2019, for professional malpractice and fraud, without more documentation revealing the reasons. The result is unknown as there is no

The parties have not stated anything, only in evidence they communicated that they do not have judicial pending for any matter between them, except the inclusion of credits of the claimant in the contest of the claimed.

6) The representative of the respondent indicated that she “owned and managed equipment both locally in their offices and server rooms, but also in the server rooms located in each of the hotels.”

7) The claimant provides an extensive list of computer equipment that was located in different hotels managed by the claimed party, as well as servers, that it certifies are its property that were managed within the commission contract of treatment.

8) In document 6, dated 06/13/2019, the respondent indicated to the claimant: “petition for data based on arch rights “” After the legal period of 30 days has elapsed established in the letter delivered per day in our offices on 05/14/2019 we have agreed to release the data our company maintains from EXCEL HOTELS AND RESORTS SA.

” “Given their volume and for technical reasons SIGNALLIA internal said information will be made available to you 10 days after counting from the sending of this letter. “

9) On 06/14/2019, the claimant, in a letter, indicates to the respondent: “the time of the term of response of the right of access” that the claimant filed the 05/14/2019 to the one claimed, since it still does not deliver the data or return the servers or provide access codes to access the system, and that the Non-compliance has caused serious damage, communicating that they file a complaint before the AEPD

10) On 06/20/2019, the respondent addressed the claimant, indicating how proceed to receive a copy of the data (doc. 8 of the claim),

"Delivering a hard drive that will take two days to record the data." It detaches from the emails of the claimant, that on 07/1/2019 her employees went to the headquarters of the one claimed to try to recover the data and they were not allowed to leave the disk hard to start the process under the pretext that the person responsible was not there. To date 07/26/2019, according to document 10 provided in evidence, there were still problems with the Data owned by the claimant.

11) The respondent was for a time, without allowing the claimant access to her data, its systems and its servers. The claimant in her claim states that since 06/07/2019, and reiterates it in some subsequent writing, such as that of 06/14/2019, that did not have access to the data, affecting accounting, billing, declaration monthly taxes and invoices among others. Additionally, the claim was delaying the delivery of data to be returned to the claimant for reasons unrelated to the claimant. The claimant provides in evidence a sound file in which you can hear to an employee of the complaining party who states that they have been left without access computer and the other party states that he obeys orders, from "C.C.C.", a person who appears in some writ signatures of the respondent. The caller talks about damages

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to the company and clients and explains that the reservation contract has been cancelled, marketing, not IT, and they can't do this. the other party says which will probably be reactivated, if he receives the order. The claimant does not indicates the date or period in which they could have been without service and in the writing of claim explains the damages that the lack of access has caused.

12) The claimant, although she signed the receipt of an encrypted hard drive with information of your data delivered by the claimed party, was pending confirmation and verification that "never took place because information was missing". It is credited because claimant sent an email to the claimed on 07/25/2019, indicating that he should verify that everything was there and send you a confirmation that everything was fine.

As can be seen in document 10 of his response in evidence by claimant, 07/26/2019, the next day he sends an email to the respondent that reveals that the data is encrypted and the tool has not been sent to them. In the copy of screenshot of WhatsApp between the parties on the absence of details necessary to extract the files, the claimed party sends it back to the superior.

13) In the BOE of 10/24/2020, an edict of the Mercantile Court is published no. 2 of *** PROVINCE.1, in which the reference of the claimed party is indicated in bankruptcy proceeding no. XXX, in which an order of XXXX was issued, rectified on 10/13/2020, declaring the insolvency of the company SIGNALLIA MARKETING DISTRIBUTION S.A., CIF A76539030. The insolvency administrator indicates that "months prior to the bankruptcy declaration, 07/28/2020, the company no longer had activity any, nor were there workers in it.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 04/27/2016, regarding the protection of natural persons with regard to the processing of personal data RGPD recognizes each control authority, and as established in arts. 47 and 48.1 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

The RGPD refers -in section 8 of its article 4-, to the person in charge of the treatment or commissioned as “the natural or legal person, public authority, service or other body that processes personal data on behalf of the data controller.

(here the claimed one), and article 4.7 of the RGPD “responsible for the treatment” or

"responsible" means the natural or legal person, public authority, service or other

body that, alone or jointly with others, determines the purposes and means of the treatment; Yes

the law of the Union or of the Member States determines the ends and means of

treatment, the person in charge of the treatment or the specific criteria for its

appointment may be established by the Law of the Union or of the States

members”, here the claimant, who clearly establishes orders

regarding its servers, the service was interrupted and the data was not returned,

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being that all of them really belong to him for the management of the business, his

collection and treatment of which the claimant is directly responsible.

The treatment by the person in charge will be governed by a contract or act or other legal act with

under the law of the Union or of the Member States that binds the person in charge

with respect to the person in charge and establish the object, duration, nature and purpose

of the treatment, the type of personal data and categories of interested parties, and the obligations

tions and rights of the person in charge (28.3 RGPD). Consequently, the figure of the person in charge

treatment is due to the need to respond to phenomena such as

outsourcing of services by companies and other entities, so

that in those cases in which the data controller entrusts a third party
zero the provision of a service that requires access to personal data,
for this access cannot be considered as a different treatment but rather serves to
responsible, carrying out the actions by the person in charge in the name and on behalf of
ta of the person in charge, as if he were the one who carried it out. The manager must
offer sufficient guarantees to apply appropriate technical and organizational measures,
so that the treatment is in accordance with the requirements of the regulation (art 28.1
GDPR).

For these purposes, the owner of the data does not exercise and cannot exercise the right of access
to some data that are his, for which he is directly responsible, having
collected and by establishing the data it collects and the purposes for which it is used. The
The right of access is a very personal right of the owner of the same, which is not
It must be confused with the person in charge of the treatment and the power that it holds over the data.
themselves. When a person in charge signs a treatment order contract with a
Third, what is done is to implement a legal business that must meet certain
requirements to understand that the data is processed not by a third party, but by a
third party on behalf of the person in charge, so there is no transfer,
transfer or transfer of data to a third party, but continue in the circle of
responsible.

Also and for this reason, there is the power of the person in charge and the specific obligation for the
in charge, when he receives an order to comply with it as it appears from the
article 29 of the RGPD: "The person in charge of the treatment and any person who acts
under the authority of the person in charge or the person in charge and has access to personal data
They may only process said data following the instructions of the person in charge, unless
are obliged to do so by virtue of the law of the Union or of the Member States".

Certainly, as has been said, the instructions of the data controller

they can still leave some degree of discretion on how best to serve the interests of the person in charge of the treatment, allowing the person in charge of the treatment to choose the most appropriate technical and organizational means. In practice, if a person in charge of the treatment engages a data processor to carry out the treatment on your behalf, often means that the processor will be able to make certain decisions for yourself about how to carry out treatment.

It is recognized that there may be some room for maneuver for the person in charge of the treatment may also make some treatment decisions.

Here the defendant has a technical role in that the collection of customer data from hotel is carried out by the claimant who enters them into the system, serving the claimed the technical means with material provided by the same claimant.

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Since the processing must be carried out on behalf of a data controller, but not under their direct authority or control, acting “on behalf of” means serving the interests of another person and recalls the legal concept of "delegation". In this case, the server change instructions were not followed, it was left without access to the systems deliberately by the claimed one and the return of the data delaying and putting conditions to some data of the responsible for unjustified matters.

It is the person in charge, in this case the claimant, who decides to put in the hands of the in charge of the data so that it can carry out the tasks agreed upon in the contract. In this case, activities of a technical telecommunications nature,

servers and access to systems and their storage. Even using the claimed
its experience and discretion in technical matters, the control of the data resides
in the claimant.

In the present case, it is a situation that affects the claimant in the
development of its activities with the data for which it is responsible, since despite
their requirements, the respondent has not delivered the personal data files or
servers, making it difficult and even impossible to carry out the activity
ordinary management of the usual commercial traffic of its activity.

In short, the infraction that is accredited and imputed to the claimed one is that of article
28.3.g) which indicates:

"3. The treatment by the person in charge will be governed by a contract or other legal act with
under the law of the Union or of the Member States, binding the person in charge
with respect to the person in charge and establish the object, duration, nature and purpose
treatment, the type of personal data and categories of interested parties, and the obligations
cations and rights of the person in charge. Said contract or legal act shall stipulate, in part,
ticular, that the person in charge:

g) at the choice of the person in charge, will delete or return all personal data once
Once the provision of treatment services ends, and will delete the copies
existing unless the retention of personal data is required under
of the Law of the Union or of the Member States".

Determines article 83.4 of the RGPD:

III

"Infractions of the following provisions will be sanctioned, in accordance
with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,
in the case of a company, an amount equivalent to a maximum of 2% of the
global total annual turnover of the previous financial year, opting for

the largest amount:

a)

the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43;

Article 74 of the LOPDGDD, indicates:

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“They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the

Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

“k) Non-compliance by the person in charge of the stipulations imposed in the contract or legal act that regulates the treatment or the instructions of the person in charge of the treatment, unless it is legally obliged to do so in accordance with the Regulation (EU) 2016/679 and this organic law or in the cases in which it is necessary to avoid infringement of data protection legislation and would have warned the person responsible or the person in charge of the treatment of this.

In no way was the delivery of the data owned by the claimant, it is not proven to have been made effective, as recognized by the claimed that all the data was never finally provided despite the time that had elapsed.

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances

of each individual case.

IV

The determination of the sanctions that should be imposed in the present case requires observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, mind, have the following:

"1. Each control authority will guarantee that the imposition of the fines

in accordance with this article for infringements of these Regulations.

indicated in sections 4, 9 and 6 are in each individual case effective, proportionate tioned and dissuasive."

"two. Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose an admissible fine and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages they have suffered;

the intentionality or negligence in the infringement;

b)

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied in under articles 25 and 32;

any prior infringement committed by the controller or processor

I lie;

and)

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f) the degree of cooperation with the supervisory authority in order to remedy

to the infringement and mitigate the possible adverse effects of the infringement;

the categories of personal data affected by the breach;

g)

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure;

i) when the measures indicated in article 58, section 2, have been ordered

given previously against the person in charge or the person in charge in question in relation to

the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits obtained or losses avoided, direct or indirect.

straight, through the infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "San-

tions and corrective measures”:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the

Regulation (EU) 2016/679 will be applied taking into account the criteria of

graduation established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affection of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, alternative conflict resolution mechanisms, in those cases in which that there are controversies between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

For the assessment of the sanction, its assessment was contained in the initial agreement without detriment of the instruction, and as an amount for the estimated infraction, were considered 100,000 euros fine.

It was taken into account:

-The disturbance in the development of the actions of the claimant of special gr-truth by preventing operation with the data (83.2.a RGPD) since 06/7/2029, adding that on 07/26/2019 it is neither completed nor accredited by the one that carries out the treatment. on behalf of the claimant who complied with said ordinary obligation established

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established in the treatment order contracts, thus not considering delivery-

two (art 83.2.a) of the RGPD.

- The linking of the activity of the offender with the performance of data processing

personal (art. 76.2 b LOPDGDD).

The aforementioned circumstances and amount are ratified after the instruction and proposal.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanction whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a fine of 100,000 euros, on SIGNALLIA MARKETING

DISTRIBUTION, S.A., with CIF A76539030, for an infringement of article 28.3.g) of the

RGPD, in accordance with article 83.4 b) of the RGPD, and article 74.k) of the

LOPDGDD, with the concurrent circumstances in articles 83.2.a) of the RGPD and

76.2.b) of the LOPDGDD.

SECOND: NOTIFY this resolution to SIGNALLIA MARKETING

DISTRIBUTION, S.A.

THIRD

: Warn the sanctioned person that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of 1/10, of the Common Administrative Procedure of the

Public Administrations (hereinafter LPACAP), within the voluntary payment period

established in art. 68 of the General Collection Regulations, approved by Real

Decree 939/2005, of 07/29, in relation to art. 62 of Law 58/2003, of 12/17,
by entering, indicating the NIF of the sanctioned person and the procedure number
that appears at the top of this document, in the restricted account number ES00
0000 0000 0000 0000 0000, opened in the name of the Spanish Protection Agency
of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will proceed to
its collection in executive period.

Received the notification and once executed, if the date of execution is
between the 1st and 15th of each month, both inclusive, the term to make the payment
voluntary will be until the 20th day of the following month or immediately after, and if
between the 16th and last day of each month, both inclusive, the payment term
It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this
Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the
Director of the Spanish Agency for Data Protection within a month from
counting from the day following the notification of this resolution or directly
contentious-administrative appeal before the Contentious-Administrative Chamber of the
National Court, in accordance with the provisions of article 25 and section 5 of

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the fourth additional provision of Law 29/1998, of 13/07, regulating the

Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the cited LPACAP. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the agency does not was aware of the filing of the contentious-administrative appeal in the period of two months from the day following the notification of this resolution, would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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