 File No.: PS/00439/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with

based on the following

BACKGROUND

FIRST: A.A.A., with NIF ***NIF.1 (hereinafter, the complaining party) filed

claim before the Spanish Data Protection Agency (AEPD) on the date

07/13/2020. The claim is directed against INMARÁN ASESORES, S.L., with NIF

B85508232 (hereinafter, the claimed party or INMARÁN).

The claim made deals with the recording that INMARÁN, supposedly,

made of the telephone conversations that the complaining party had with her, which

which occurred, as explained by that party, without the respondent having informed him of

the recording and without her having given her consent to such treatment.

The complaining party has stated, regarding the conversations held

with the claimed party, that "it is not reported that they are being recorded in any

moment, so they do not have my consent to record the conversation."

He explains that he contacted the respondent for "a consultation on

rental aid for those under 35 years of age in the 2019 income tax return." and that,

"After some problems with the contracting of their services (...) (a request is being processed

consumer claim), a series of emails are exchanged in which we

threaten that if payment is not made for "services" rendered within a

48 hours, they would file a lawsuit against us, providing as evidence

recorded telephone conversations. (emphasis ours)

Attach these documents to your claim:

- The excerpt from an email sent to him by Ms. B.B.B., an employee of

INMARÁN, which does not contain the date of shipment but only the indication

"Wednesday". The text of the email is as follows:

“Claim of non-payment of Income 2019 of Ms. [the claimant] and D. C.C.C.”.

"Hello.

1. You provided your personal data by email to carry out your

income tax returns, providing documentation by e-mail, among which

the rental contract for the application of the deduction C Madrid. Doing

several telephone consultations that are recorded by e-mail, where it is

proof of contracting the services.

2. In the income of Ms. ª [the claimant]”. (emphasis ours)

-The copy of a form - "Claim sheet of the Community of Madrid" - that

is completed, although the information contained therein is not legible. Carries

stamped the seal of INMARAN. It is not appreciated that the document has been

Stamping a stamp certifying that the claim form had been submitted

in a public record.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the claim was transferred to INMARAN so that

proceed to its analysis and inform this Agency within a month of the

actions carried out to adapt to data protection regulations.

The notification to the claimed party was made electronically, in accordance with

Law 39/2015, of October 1, on the common administrative procedure of the
Public Administrations (hereinafter, LPACAP), being the date of implementation
disposition on 08/12/2020 and on 08/23/2020 the automatic rejection date.
The AEPD, exceptionally, reiterated the notification by post, which was
received by INMARAN on 09/17/202, reminding him that, according to the LPACAP, he was
obliged to interact electronically with the Public Administrations.
The respondent responded to the request for information in writing received on 10/28/2020
in which he recounts, in chronological order, the following events that are
relation to the claim:
That in the month of April 2020 D. C.C.C. (hereinafter, D.C.C.C.) requested him via
email “information on the price of the realization and presentation of the taxes on
the 2019 income for both him and Ms. [the claimant]”
That on 04/17/2020 he replied in the same way asking him to send a number
phone to inform you by phone, since the price varied depending on the
type of statement and personal situation.
That on 06/01/2020 he requested a copy of the DNI and the personal income tax return
corresponding to fiscal year 2018. It states that “Between June 1 and 4 [the claimant]
provided us with a copy of the DNI of both, a copy of the 2018 income statement and
copy of the rental contract to make your declaration and its subsequent presentation.
That in the following days he prepared the tax declaration and communicated to the
claimant that he could not be deducted for the rental of the home and adds that "He was
repeatedly requested via email that you please provide us with the number of
account to be able to present it since it came out to return it.”
The respondent concludes her presentation by saying that "For all of the above
exposed, it is demonstrated that [the claimant] requested the services of the
[claimed] for the realization and subsequent presentation of the tax declaration

of the income of natural persons 2019 "and that it took advantage of the services

provided by the consultancy to present said Treasury declaration itself

since, once all the data had been checked, he got the same result as

indicated the draft, thereby ceasing to pay for services rendered.

INMARAN has provided eleven emails exchanged with the claimant,

of which five she referred. In all of them, the following appears at the bottom of the message

legend:

“In accordance with the provisions of Organic Law 15/1999, on Protection

of Personal Data Inmarán Asesores, S.L., domiciled in Calle

Santiago Ramón y Cajal, 63 -28939- Arroyomolinos (Madrid), informs you that

The data you have provided us will be part of a data file of

personal character, responsibility of said entity, with the purpose of

manage the communications that could be maintained with the staff of the

same. In the event that you wish to exercise the rights that assist you

access, rectification, cancellation and opposition direct a communication by

written to Grupo Inmarán at the indicated address (...) including a copy of your

National identity document (...)".

Among the messages that INMARAN exchanged with the claimant, copies of which have

contributed, highlights the one sent on 07/01/2020 from administracion@inmaran.com to

her employee, Ms. B.B.B., who was in charge of forwarding it to the claimant, with the

Matter “Claim of non-payment of rents 2019 of Ms. ª [the claimant] and D. C.C.C.”. I know

It is the same message that the complaining party attached to its claim before this Agency, but of which he contributed only a fragment. It is in this message that the claimed refers to the recording of the conversations he had with the claimant, a circumstance that would give rise to the latter formulating the claim that has given rise to this procedure. The text is as follows:

"Hello:

1. You provided your personal data by email to carry out your income tax returns providing documentation by email, among which the rental contract for the C Madrid deduction application. making several Telephone consultations that are recorded and email where the hiring of services.

2. The income of Ms [the claimant] is recorded at the request of INMARAN ASESORES, of your account number for making the return of the income that he did not want to send, taking advantage of the realization of the statement by INMARAN (...)

[...] in case of non-payment, we will proceed to the judicial claim of the amounts not paid" (emphasis added).

Noteworthy, too, is the reply message sent by the claimant to INMARÁN, on the same date, from the address ***EMAIL.1, in which states that his income tax return was filed by INMARAN without his authorization, so he did not intend to pay for a service that, he says, is provided without your consent.

The remaining emails that INMARAN has provided to the AEPD precede in the time to the two previously mentioned and are the following:

1.-Dated 04/17/2020, at 12:30 p.m., sent from the Department of Administration of the claimed -administracion@inmaran.com- by the employee

B.B.B.., addressed to ***EMAIL.2 regarding the matter “Income Declaration”. The claimed

date 06/01/2020 sent by

informs that it has received your communication and requests a telephone number to

notify you by phone.

2.-Dated 06/01/2020, sent from administracion@inmaran.com, addressed to

***EMAIL.2, with the subject “Income 2019”. informs you that in order to inform you

about the realization of the income statement we need you to provide us by

email a photocopy of the DNI and the 2018 income tax return and once received

will contact you to inform you of the price and the necessary documents for

perform the.

3.-Dated 06/01/2020 at 18:06, sent by the claimant from ***EMAIL.1

addressed to administracion@inmaran.com, with the subject “Renta 2019 C.C.C. (...)”. In the

message mentions the incorporation of two annexed documents.

the claimant -***EMAIL.1- to

4 of

administracion@inmaran.com, with the subject “Income 2019 C.C.C. (...)”. It mentions the

incorporation of seven annexed documents.

5.- Dated 06/01/2020 sent by the claimant - ***EMAIL.1- addressed to

administracion@inmaran.com, with the subject “Role papers rent 2019 C.C.C. (...)”. The

mail mentions the incorporation of nine attached images.

6.- From

the claimant addressed to

administracion@inmaran.com, with the subject “Renta C.C.C. (...)”. It mentions the

incorporation as annexes of two images.

7-

claimant addressed to

administracion@inmaran.com, with the subject “Rental contract C.C.C. (...)”. I know

They mention five annexed documents.

8.- Dated 06/29/2020 at 11:57 sent from administracion@inmaran.com to

***EMAIL.1 with the subject “Rent”.

The claimant is informed that they need her to provide them with her account number in order to

be able to present your personal income tax return 2019 in order to be able to request the refund by

transfer. The same message is repeated in another mail of the same date sent

a few hours later (at 2:20 p.m.)

9.- Sent on 06/30/2020 from administracion@inmaran.com addressed to ***EMAIL.1

with the subject “Rent”. The respondent informs the claimant that the

C.C.C. 2019 personal income tax return; what is the amount pending payment for

its services and provides you with the bank details so that you can proceed with the payment. Also,

reiterates the message sent on 06/29/2020; warns that it is the last day of presentation

of the declaration and declines all responsibility derived from not having presented it

as a consequence of the claimant having omitted the precise documentation.

date 06/02/2020 sent by

date 06/04/2020 sent by

Of

the

THIRD: On 11/11/2020, the Director of the Spanish Protection Agency

Data agrees to accept the claim for processing.

The agreement for admission to processing is notified on the same date to the complaining party

by electronic means.

FOURTH: The Subdirectorate General for Data Inspection, by virtue of the powers

of investigation granted to the control authorities in article 58.1 of the

Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter

RGPD), and in accordance with the provisions of Title VII, Chapter I, Section

second, of the LOPDGDD, proceeded to carry out preliminary investigation actions

for the clarification of the facts.

The excerpt from the Report on investigative actions is transcribed below

Regarding the result of the actions carried out:

<<RESULT OF THE INVESTIGATION ACTIONS

On January 19, 2021, it has been requested by email in the

addresses labor@inmaran.com and administracion@inmaran.com relative information

a:

1. Established procedure to provide information prior to recording

of the calls

2.Copy of all documentation that allows to prove that the claimant was informed

of the recording of their calls (a screen print of an email was attached in

that the claimant is informed that they have recorded calls)

Also on that same date, the Notification Service requested

Electronic the same information. According to INMARAN ASESORES SL -

B85508232 has accepted the mail dated 01/19/2021 at 17:00:27 through its

representative ***NIF.2, D.D.D.

To date, no response has been received to any of the requirements.>>

FIFTH: On September 21, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed party

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of the Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of article 13 of the RGPD, typified in

Article 83.5.b) of the RGPD.

SIXTH: The opening agreement was notified electronically to INMARAN in accordance with

as provided in the LPACAP. The notification was reiterated by postal mail, which resulted

delivered on 10/25/2021, as evidenced by the proof of delivery that is in the

proceedings.

INMARÁN did not make any objections to the agreement to initiate the procedure.

SEVENTH: On 03/22/2022, the instructor of the procedure agreed to open

of a test phase and the practice of the following procedures:

1. Consider reproduced the claim made by the claimant and its documentation

annex; the documents generated and obtained by the Subdirectorate of Inspection of

Data on the occasion of the informative request, prior to admission for processing of the

claim, in the process of preliminary investigation actions and the report of

preliminary investigative actions.

2. Request the claimed:

2.1. To provide the AEPD with a copy of the recordings of the conversations and

queries he had with the claimant, given that in his email

email dated 07/01/2020, sent from labor@inmaran.com, said to have

carried out “[...] several telephone consultations that are recorded in email where it is

record the contracting of services."

2.2. The copy of the DNI that the claimant would have provided on the occasion of the relationship kept with it, as well as a copy of any other document relating to the person from the claimant (for example, a copy of a contract to which the claimant was a party; of your personal income tax returns from previous years, etc.)

The notification was made by electronic means in accordance with the provisions of the LPACAP. The notification was reiterated by postal mail, which was delivered on 04/18/2021 as evidenced by the proof of delivery that is in the file.

INMARAN did not respond to the requested evidence.

EIGHTH: On 05/12/2022, the instructor of the procedure signed the proposal for resolution that was formulated in these terms:

<<That by the Director of the Spanish Agency for Data Protection sanction INMARAN ASESORES, S.L., with NIF B85508232, for an infraction of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, with a fine amounting to €2,000 (two thousand euros)

That by the Director of the Spanish Agency for Data Protection, of In accordance with article 58.2.d) of the RGPD, INMARAN ASESORES is ordered, S.L., with NIF B85508232, for an infringement of article 13 of the RGPD typified in article 83.5.b) of the RGPD, which, within a month from when it was enforce the resolution that is issued, adopt the appropriate measures to comply with the obligations imposed by article 13 of the RGPD.>>

A list of the existing documents was attached to the proposal, as an annex.

in the procedure.

The proposed resolution was notified to the party complained against electronically, being

the date of availability on 05/13/2022 and the date of automatic rejection on

05/24/2022, as evidenced by the FNMT certificate in the file.

In accordance with article 82.2. of the LPACAP, a period of ten business days was granted to

evacuate the process of allegations, so the term ended on 06/07/2022. To date

06/08/2022 there is no news that the respondent had filed with the AEPD

arguments to the proposed resolution.

Of the actions carried out in this procedure and the documentation

that works in the file, the following have been accredited:

PROVEN FACTS

1.) The claimant has stated in her claim that she contacted the

claimed party, INMARÁN, for "a consultation on rental assistance to minors

35 years in the 2019 income tax return", while the claimed party has

declared that in April 2020 Mr. C.C.C. requested via email "information on

the price of the realization and presentation of the 2019 income tax for both

he as for" the claimant.

The complaining party [is wrong, I should say the

] has stated

also that on 04/17/2020 he replied to Mr. C.C.C. in the same way asking

to provide you with a telephone number to inform you by telephone, since the price

it varied depending on the type of declaration and the personal situation; that he

06/01/2020 requested a copy of their ID and the income tax return corresponding to the

fiscal year 2018 and that between June 1 and 4, 2020 the claimant provided them with a copy

of the DNI of Mr. C.C.C. and yours, of the 2018 income tax return and of the contract of

rental.

claimed party

2.) They are in the file, provided by INMARÁN and reproduced in the Antecedent

second of this writing, various emails exchanged between her of

one party and the claimant on the other.

The emails that the claimant sent to the claimed -to her address

administracion@inmaran.com - show that the latter had access to numerous

documents with personal data concerning Mr. C.C.C. and to her own

claimant, as evidenced by the fact that INMARAN could come to prepare the

Personal income tax return 2019 of the claimant:

-The one sent on 06/01/2020 at 18:06 to administracion@inmaran.com from the

electronic address of the claimant -***EMAIL.1- with the subject “Income 2019 C.C.C.

(...)”, which mentions the incorporation of two attached documents. (does number 3

of those listed in the second Antecedent)

-The one sent on 06/01/2020 to administracion@inmaran.com from the address

email of the claimant -***EMAIL.1- with the subject “Income 2019 C.C.C. (...)", in

which mentions the incorporation of seven annexed documents. (makes number 4

of those listed in the second Antecedent)

-The one sent on 06/01/2020 to administracion@inmaran.com from the address of the

claimant -***EMAIL.1- with the subject “Income papers 2019 C.C.C. (...)”, in which

mentions the incorporation of nine attached images. (Does number 5 of the

related in the Second Antecedent)

-The one sent on 06/02/2020 to administracion@inmaran.com from the address of the

claimant -***EMAIL.1- with the subject “Renta C.C.C. 2019 (...)”, which mentions the

incorporation as annexes of two images. (Does number 6 of the related

in the Antecedent second)

-The one sent on 06/04/2020 sent to administracion@inmaran.com from the address

of the claimant - ***EMAIL.1- with the subject “Rental contract C.C.C. (...)", that

mentions the incorporation as annexes of five documents. (does the number 7 of

those listed in the second Antecedent)

3.) At the bottom of the emails that INMARÁN sent to the claimant – to the

address ***EMAIL.1-, emails dated 06/29/2020 at 11:57 a.m. and at 2:20 p.m., in

those who told you that they needed your bank account number for the

presentation of the 2019 personal income tax return in order to request the refund; Of date

06/30/2020, in which he reiterated the previous request; on 07/01/2020, in which he requested

the payment of his services, as well as in those he addressed to Mr. C.C.C. – to the address

***EMAIL.2-, dated 04/17/2020, in which he acknowledged receipt of his mail and requested a

telephone number to inform you, and dated 06/01/2020, in which you requested that

send by email a photocopy of the DNI and the 2018 income tax return, in

all, appeared including this legend:

“In accordance with the provisions of Organic Law 15/1999, on the Protection of

Personal data Inmarán Asesores, S.L., domiciled in Calle

Santiago Ramón y Cajal, 63 -28939- Arroyomolinos (Madrid), informs you that the

data that you have provided us will be part of a data file of

personal nature, responsibility of said entity, in order to manage

the communications that could be maintained with the staff of the same. In the

assuming that you wish to exercise the rights that assist you of access,

rectification, cancellation and opposition send a written communication to Grupo

They will send to the indicated address (...) including a copy of their National Document

of identity (...)".

4.) INMARÁN has not provided any document proving that there was

provided to the claimant, in her capacity as interested party, the information that is

mandatory according to the RGPD.

FOUNDATIONS OF LAW

Yo

Competition of the AEPD

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Conduct on which the claim was related and object of this procedure

The conduct contrary to the data protection regulations that the claimant

denounced was, exclusively, about the recording that, supposedly, would have

made INMARAN of the conversations that both maintained; recording for the

which the respondent party would not have informed him or obtained his consent.

Article 4 of the RGPD, “Definitions”, establishes that “For the purposes of this

Regulation shall be understood as:

1)<<personal data>>: all information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;”

In accordance with the definition of personal data transcribed, the voice of a person, by itself

alone, it is personal data, so when making a recording it is collected,

and therefore it is a data of that nature. We refer, for all, to the

judgment of the Supreme Court (STS), Contentious-Administrative Chamber, of

06/22/2020 (RCA. 4958/2019) that rejected the appeal of the judgment of the High Court

National (SAN), Contentious-Administrative Chamber, of 04/04/2019, which had

dismissed the contentious-administrative appeal (Rec. 423/2017) filed against

a sanctioning resolution of the Director of the AEPD. Says the sentence (FJ

first):

“With regard to resolving the appeal raised, referred to in

what conditions or to what extent a person's voice should be considered

personal character, this Chamber considers the reasoning of the

Court of instance, which maintains, based on the jurisprudence of the Court of

Justice of the European Union, that the voice, as it constitutes a sound register

of a person who provides information concerning the same, it is

included in the definition of "personal data" referred to in article

2.3 a) of Organic Law 15/1999, of December 13, on Data Protection

Personal Character.” (emphasis ours)

Reference to article 2.3.a) of the repealed LOPD that, at present, we must

understand what is done to article 4.1. of the GDPR.

Thus, the recording of the voice of a third party entails data processing of

personal nature and such conduct is subject to the GDPR.

Given the foregoing, it should be remembered that the only evidence that the claimant provided

about the recording of his telephone conversations with the respondent, regarding the

which his claim was about, was the email he had received from INMARAN on

07/01/2020, with the subject “Claim of non-payment of rents 2019 of Ms. [the claimant]

and D. C.C.C.”, in which the respondent tells him that the telephone consultations

that she and D.C.C.C. carried out "are recorded and email where there is a record of the

hiring of services.

In the numerous emails exchanged between the claimant and the

claimed there is no other mention of the recording of the conversations

maintained. Nor is there any other evidence in the file that could be inferred

that the recording that the claimant denounced came into existence. The phrase that INMARÁN

included in the electronic message sent on 07/01/2020 is the only reference to the

hypothetical recording of the conversations and, regarding that appointment, one should not

ignore the context in which the respondent claimed to have recorded the conversations or

the purpose he pursued with the message in which he included it. The text of the message

aforementioned evidence that the complaining party questioned the existence of

between the two a contract for the provision of services for the preparation of your

declaration of the income tax of natural persons and that, through the aforementioned

mail, the respondent required the payment of her services with the warning to go to

the judicial route to obtain the payment of the outstanding amounts.

In short, the statement made by the respondent in the email sent on

07/01/2020, by itself, was clearly insufficient to take that for granted.

conduct at the time of agreeing to open the sanctioning file.

This Agency then ordered the practice of preliminary investigation actions with

the purpose of obtaining some indication that would confirm the facts exposed by the party

claimant. However, no results were obtained, so in the

At the time of the opening of the procedure, there was absolutely no evidence

that the recording that the complaining party denounces had been made or

nor had they been able to obtain reasonable evidence that it had arrived

to exist.

For this reason, the opening agreement circumscribed its object to the conduct of

INMARÁN contrary to the RGPD on which there was reasonable evidence - the infringement

of the duty of information - without taking into consideration as the object of the procedure the

purported recording of the conversations.

In the evidence phase, the respondent was required to provide the recording or

recordings that he had made of the conversations he had with the

claimant. The respondent party did not respond to the evidence requested.

Therefore, what had already been appreciated in the opening procedure was confirmed.

initial agreement: the absence of evidence in which to support that the conduct

denounced - the recording of the conversations - actually took place.

As has been indicated, the only element of judgment regarding the denounced recording was

a statement that the respondent made in a context in which she was pursuing a

particular purpose: the request to pay the claimant for her services, for which

which warned him of his intention to go to court to collect the amounts

that he considered owed and claimed to have, as evidence, a recording of his

Phone conversations.

In view of the negative result of the tests carried out on the respondent

in this procedure, the motion for a resolution underlined that it was not possible to extend

the object of the procedure, possible in that process, in such a way that the object of the

procedure continued to be limited to conduct contrary to the RGPD that was

described in the agreement to open the sanctioning file. This is reproduced

excerpt from the proposal brief on the issue:

<<Consequently, according to the tests carried out, it is not appropriate in

this phase of the resolution proposal expand the object of the procedure that is

specified in the agreement to open the sanctioning file for the conduct

which the claimant attributed to the respondent and which was the subject of her complaint.

Consequence that is a requirement of the principle of presumption of innocence

that governs the sanctioning Administrative Law (article 24 of the Constitution

Spanish), according to which the imposition of a sanction requires that there be

means of proof of charge or incriminating the reproached conduct, that the

The burden of proof corresponds to the accusing Administration, without the

defendant is bound to prove his own innocence, and that any insufficiency

in the result of the tests carried out, freely valued by the

sanctioning, must be translated into an acquittal pronouncement (STC 76/1990,

of April 26),

Thus, the object of the sanctioning file that concerns us continues

circumscribed to the conduct of the complainant contrary to the RGPD that was determined

at the opening of this proceeding. >>

III

Applicable legal regulations

The RGPD deals in its article 5 with the principles that govern the treatment of personal data.

personal data, provision that provides:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and

transparency>>)

[...]

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it (<<proactive responsibility>>)"

The principle of transparency is fundamentally regulated in articles 12 to 14 of the

RGPD framed in sections 1 ("Transparency and modalities") and 2

(“Information and access to personal data”) of Chapter III, regarding the rights

Of the interested.

Regarding transparency, recital 39 of the RGPD indicates that this

principle “[...] requires that all information and communication regarding the processing of

such data is easily accessible and easy to understand, and that a language is used

simple and clear. This principle refers in particular to the information of the

interested parties about the identity of the person in charge of the treatment and the purposes of the same and

to the information added to guarantee a fair and transparent treatment with

regarding the natural persons affected and their right to obtain confirmation and

communication of personal data concerning them that are subject to

treatment. Natural persons must be aware of the risks,

rules, safeguards and rights relating to the processing of personal data

as well as the way to assert their rights in relation to the treatment. In

In particular, the specific purposes of the processing of personal data must be

explicit and legitimate, and must be determined at the time of collection. The data

Personal information must be adequate, relevant and limited to what is necessary for the purposes

for which they are treated. [...]”

Article 12 of the RGPD, under the heading "Transparency of information,

communication and modalities of exercising the rights of the interested party”, provides that

"1. The person responsible for the treatment will take the appropriate measures to facilitate the

interested party all the information indicated in articles 13 and 14”.

The aforementioned precept contains various rules on the "form" in which it must and
can provide the information that is required. In that sense, it provides that
will provide “in a concise, transparent, intelligible and easily accessible form, with a language
clear and simple(...).” That “it will be provided in writing or by other means, even if
proceeds, by electronic means.” And that “When requested by the interested party, the
information may be provided verbally provided that the identity of the
interested by other means.”

The content of the information related to the processing of the data that is required
provide the interested party is regulated in the RGPD in articles 13 and 14 that distinguishes
two hypotheses: that the data is collected from the interested party (article 13 RGPD) or
obtained from another source (article 14 RGPD).

Article 13 of the RGPD establishes:

"1. When personal data relating to him is obtained from an interested party, the
responsible for the treatment, at the time these are obtained, will provide
all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their
representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the legal basis
of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests
legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their
case;

f) where appropriate, the intention of the controller to transfer personal data to a third party
country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a

necessary requirement to sign a contract, and if the interested party is obliged to provide

personal data and is informed of the possible consequences of not

provide such data;

f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the

interested party, prior to such further processing, information on that other purpose

and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information." (emphasis ours)

This precept, in addition to determining in its sections 2 and 3 the information that the

responsible for the treatment must offer, determines that it must be provided in the

time of data collection. However, the provision of article 13,

sections 1 and 2, it must be put in relation to article 13.4 that exempts from the

obligation to which both provisions refer "when and to the extent that the

interested party already has the information."

The GDPR recitals reiterate the same idea. Thus, recital 61 indicates

that "Information on the treatment of their personal data should be provided to interested parties.

personal data at the time it is obtained from them or, if obtained from another

source, within a reasonable time, depending on the circumstances of the case (...)" And the

recital 62 says that "However, it is not necessary to impose the obligation to

provide information when the interested party already has the information, (...)." (The

underlining is ours)

In any case, it must be taken into account that according to recital 60, it is up to the

responsible for the obligation to “provide the interested party with as much information

supplementary information is necessary to guarantee fair and transparent processing,

having regard to the specific circumstances and context in which the

personal information".

GDPR violation attributed to the complained party

IV

The agreement to initiate this sanctioning procedure attributed to INMARAN a

infringement of article 13 of the RGPD typified in article 83.5.b) of the RGPD.

In light of the documents in the administrative file, it is evident

that the claimed party processed, as the person in charge, various personal data of

the claimant: her name and surnames, her NIF or NIE, her email address, her

domicile and others of a strictly private and economic nature that were

essential for the preparation of your personal income tax return corresponding to the

financial year 2019.

To this end, we refer to the second Proven Fact that shows that the claimant

sent abundant documentation to the claimed party, necessary for the preparation of the

Income tax returns of Mr. C.C.C. and her, in which her data was recorded

personal. With all the emails that the claimant sent to INMARAN between

06/01/2020 and 06/04/2020 attached attached documents; in some of his

electronic messages, references to up to seven attached documents appear. I know

addition to the above that the same claimed party, in the mail sent to the

claimant on 07/01/2020 with the matter “Claim of unpaid rent 2019 of Ms.

[the claimant] and D.C.C.C.” -message that would cause the complaining party

formulated this claim-, acknowledged that it had processed their personal data. The

email text begins by saying:

"Hello:

1. You provided your personal data by email to carry out your

income tax returns providing documentation by email, among which the

rental contract for the C Madrid deduction application. [...]” (The underlining is

our)

Ultimately, whatever the legal nature of the relationship that existed between

INMARÁN, on the one hand, and on the other, the claimant and Mr. C.C.C. -question on which

omits any pronouncement because it is absolutely foreign to the competition that this

Agency is entrusted by its regulatory regulations- is fully accredited

that from the electronic address of the claimant -***EMAIL.1- were provided to

the claimed party several documents that contained personal data that

concerned.

Furthermore, the reality of the processing of the personal data of the

claim made by INMARAN is accredited by an undoubted fact: The

The claimed party prepared the personal income tax return for the 2019 financial year of the claimant. Such

so, in order to be able to present it, he insistently requested an account number

banking, because the result was favorable to her, and it is precisely the service provided

for its elaboration the one that the claimed party intends to collect when sending the mail

email of 07/01/2020 of the cause of this sanctioning file.

Thus, INMARÁN, in its capacity as data controller

claims of the claimant was obliged to comply with the principle of transparency

and, therefore, to provide you with the information that is mandatory in accordance with the

article 13 GDPR.

In addition, by virtue of the principle of proactive responsibility (article 5.2 RGPD), the

claimed was obliged to have implemented the necessary measures to be

in a position to demonstrate that it complied with the obligations imposed by the RGPD: in

this particular case have informed the claimant about the processing of their data

according to article 13, a precept that describes an obligation to

minima.

The agreement to open the sanctioning procedure for an alleged infringement of the

Article 13 of the RGPD was notified to INMARAN in legal form, granting it a term

to formulate allegations and provide the evidence that it deems appropriate in its

defending. However, the respondent did not make allegations in her defense nor did she provide

document of any kind showing that he had informed the claimant

as required by the GDPR. All this, without prejudice to the information included in

all the emails you exchanged with her.

Agreed by the instructor of the procedure the opening of a test phase,

INMARAN also did not respond to the request for evidence, despite being notified

opportunely.

Thus, the only information on record that the respondent party

provided to the claimant is the one included at the bottom of all emails

emails that INMARAN sent to the claimant:

“In accordance with the provisions of Organic Law 15/1999, on the Protection of

Personal data Inmarán Asesores, S.L., domiciled in Calle

Santiago Ramón y Cajal, 63 -28939- Arroyomolinos (Madrid), informs you that the

data that you have provided us will be part of a data file of

personal nature, responsibility of said entity, in order to manage

the communications that could be maintained with the staff of the same. In the

assuming that you wish to exercise the rights that assist you of access,

rectification, cancellation and opposition send a written communication to Grupo

They will send to the indicated address (...) including a copy of their National Document

of identity (...)".

That clause, in addition to mentioning the Organic Law 15/1999, repealed, and

no to the RGPD, which is effective from 05/25/2018 -almost two years before

events occurred-, it only provides the identity of the person responsible for the

treatment (INMARÁN), your contact data and the possibility that the owner of the

data exercise before it the rights of access, rectification, cancellation and opposition.

In its informative clause, INMARÁN omits the information related to the legal basis

of the treatment of the data that is collected and the purposes of the treatment (letter c, of the

article 13.1 GDPR); the possibility of presenting a claim before the authority of

control (letter d, of article 13.2.); the duration of the treatment or, where appropriate,

of the criteria to determine its duration (letter a, of article 13.2); yes the

communication of the data is a legal or contractual requirement and the consequences of

not provide them (letter e, of article 13.2) They are not mentioned in that clause either

informative the recipients or categories of recipients of personal data, if

there were (letter e, of article 13.1); the existence, if any, of decisions

automated, including profiling, referred to in article 22,

sections 1 and 4, (section f, of article 13.2.) or if treatment is planned

subsequent use of the data for purposes other than those communicated.

We must warn, regarding the informative legend that INMARAN included at the bottom

of the emails exchanged with the claimant, which is indicated therein

that

that the data will be treated with “

could maintain with the staff of the same.” (emphasis ours)

the purpose of managing communications

Well, that stipulation cannot mistakenly lead to the conclusion that the

complained about the purpose of the treatment. This, because of the tenor of that

information, the treatment of the data that INMARAN collected from the claimant

would have to be limited to communications between the staff of the agency

INMARÁN and the claimant. In such a way that if the purpose of the treatment is the

indicated in the INMARAN clause – “manage the communications that could

maintain with the staff of the same" - the treatment should have been limited to

the contact details of the claimant, in particular her email address or, at

sumo, also to the home address.

However, the aforementioned stipulation does not inform of the purpose pursued by the

treatment of the remaining personal data, other than the address

electronic or postal, which he obtained from the claimant, such as the NIF, NIE or number

identifier that you have provided, or of the remaining personal data to which

He agreed and that they allowed him to prepare the 2019 personal income tax return for the claimant.

Lastly, it should be added, given the debate that exists between the parties

claimant and respondent about whether or not there was a contract of

provision of services for the preparation of the claimant's statement regarding

to personal income tax for the year 2019, that the document of the Working Group of article 29 of

11/29/2017, “Guidelines on Transparency under Regulation 2016/679”,

that pursues a correct interpretation of the provisions of the RGPD regarding the

principle of transparency, remember that the transparency requirements apply

regardless of the legitimizing basis of the treatment and throughout the cycle of

the life of the treatment and that, in accordance with article 5.2 of the RGPD, the person in charge of the

processing must always be able to demonstrate that the personal data is processed

transparently in relation to the interested party.

Having been proven that the claimant sent from her email

***EMAIL.1 to INMARAN, at the request of this entity, attached documents with data

personal matters concerning him; data that the respondent processed in order to prepare the

2019 income tax return of the claimant and, since the claimed omitted from

substantially the obligation to inform the claimant in the terms established

by article 13 of the RGPD, it is considered accredited that INMARAN violated that precept

of the RGPD, infringement typified in article 83.5.b) of the RGPD that provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, choosing the highest amount:

a) (...)

b) the rights of the interested parties according to articles 12 to 22; (...)”

For prescription purposes, the LOPDGDD qualifies this conduct in article 72.1.h) of

very serious infraction and sets a three-year statute of limitations for it. the precept

has:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) (...)

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this organic law."

(...)"

v

fine sanction

The corrective powers attributed to the AEPD as control authority are determined

in article 58.2 of the RGPD, sections a) to j). Among them, the precept mentions the

power to impose an administrative fine in accordance with article 83 of the RGPD

(article 58.2. i) and the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period (article 58.2.

d). In parallel, it should be noted that article 83.2 of the RGPD establishes that the

sanction of administrative fine of article 58.2.i) is compatible with the measure

corrective action provided for in article 58.2.d) of the RGPD.

In the present case, it is considered opportune to sanction INMARAN for the infraction of the

article 13 of the RGPD for which it is responsible, with the imposition of a fine

administrative provision provided for in article 58.2.i)

Article 83 of the RGPD, “General conditions for the imposition of fines

administrative", it says in its section 1 that the control authority will guarantee that the

Imposition of fines for infractions of this Regulation indicated in the

sections 4, 5 and 6, complies, in each individual case, with the principles of effectiveness,

proportionality and dissuasive character.

The principle of proportionality implies a correlation between the infraction and the sanction,

with interdiction of unnecessary or excessive measures, so that it will have to be

suitable for achieving the ends that justify it. Article 83.2. of the RGPD details the

technique to follow to achieve such adequacy between the sanction and the infraction committed

through a list of criteria or factors to graduate the amount of the penalty. The

section 2 of article 83 of the RGPD establishes:

“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 a fine

administration 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 that

have suffered;

b) intentionality or negligence in the infringement;

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 under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

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

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

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

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, directly or

indirectly, through the infringement."

With regard to section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"two. 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) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party."

In the case that concerns us, the concurrence is seen as aggravating

the following circumstances:

-Section b) of article 83.2. GDPR: "the intention or negligence of the

infringement". The actions of the respondent suffer from a serious lack of diligence due to

how much two years after the RGPD is of effective application still does not

reference nor does the new regulation apply.

-Section k) of article 83.2 RGPD in relation to article 76.2.b) of the

LOPDGDD: "The link between the offender's activity and the performance of

processing of personal data". The activity carried out by the claimed entity

is inevitably linked to the processing of personal data.

The concurrence is appreciated as a mitigating factor of the following graduation factor of the

penalty amount:

-Section a) of article 83.2 RGPD, which refers to the "seriousness (...) of the infringement,

taking into account the nature, scope or purpose of the processing operation

concerned, as well as the number of interested parties affected and the level of damage and harm he has suffered." It is taken into consideration for this purpose that the infringement of which the defendant is held responsible cannot be classified as serious, not from the

perspective of the offending type considered in the abstract but from the point of view of that no other damage is derived from the infringement other than having deprived the interested party of the mandatory information, that the purpose of the processing operation was respond to a request for advice addressed by the defendant and that, according to all the indications, the treatment carried out by the claimed party has adhered to that purpose.

This being the case, taking into account the criteria of article 83.1. and 83.2 of the RGPD, it is agreed impose on the person claimed for the infringement of article 13 of the RGPD a sanction of fine amounting to 2,000 euros.

SAW

Corrective measure

Being accredited in this sanctioning procedure that INMARAN violated the article 13 of the RGPD, it is agreed to adopt against that claimed party the measure corrective action provided for in article 58.2.d) of the RGPD, a provision that prevents each control authority may “order the controller or processor to processing operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a certain period specified…".

For this reason, under article 58.2.d), INMARAN is ordered to adopt all the

measures that are essential to ensure proper compliance with the

obligation to inform the interested parties from whom personal data is collected, in

the time of collection, under the terms of article 13 of the RGPD.

The imposition of this measure is compatible with the imposition of a fine

administrative (article 83.2 of the RGPD).

The entity claimed must prove that it has adopted the appropriate measures in the

period of one month from the time the sanctioning resolution was enforced.

You are informed that, according to article 83.6 of the RGPD, the breach of the

resolutions of the control authority adopted in accordance with article 58.2. of the

RGPD constitutes an autonomous infringement, which will lead to the opening of the

corresponding sanctioning file for said infraction, for which a

sanction of a fine of up to 20,000,000 euros maximum or, in the case of a

company, of an amount equivalent to 4% of the total global annual turnover

of the previous financial year, opting for the highest amount.

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

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE INMARAN ASESORES, S.L., with NIF B85508232, for a

infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine

€2,000 (two thousand euros)

SECOND: ORDER INMARAN ASESORES, S.L., with NIF B85508232, which, in

in accordance with article 58.2.d) of the RGPD, appropriate, within a period of one month

computed since this resolution was enforceable, to adopt all the

measures that are essential to guarantee that it reports in the terms

provided for in article 13 of the RGPD to the interested parties from whom data is collected

personal, at the time of collection.

THIRD: NOTIFY this resolution to INMARAN ASESORES, S.L.

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

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

Article 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in article 68 of the General Collection Regulation,

approved by Royal Decree 939/2005, of July 29, in relation to article 62 of

Law 58/2003, of December 17, through its entry, indicating the NIF of the

sanctioned and the number of the procedure that appears in the heading of this

document, in restricted account number ES00 0000 0000 0000 0000 0000, open to

name of the Spanish Agency for Data Protection in the bank

CAIXABANK, S.A.. Otherwise, it will be collected in the period

executive.

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 article 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

the fourth additional provision of Law 29/1998, of July 13, 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 article 90.3 a) of the LPACAP,

The firm resolution may be provisionally suspended 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 records provided for in article 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-050522

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es