

□ File No.: EXP202104693

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter the claimant) on 11/04/2021 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against ESTUDIO INMOBILIARIO SAN ISIDRO, S.L.U with NIF B87912846 (in  
forward the claimed). The reasons on which the claim is based are the following:

- Which employees of the defendant have appeared at the domicile of the  
claimant to promote its rental or sales services in connection with a  
property owned by his father.
- The affected person has questioned them about the origin of the information and its  
connection with said house, since, in it, there is no type of information  
personal, neither his father nor his (in the mailbox, only the number and letter of his  
housing), and it is not for sale either. The company ended up admitting that its source is  
the INGLOBALY (QUALITY-PROVIDER S.A.) website
- The claimant considers that the data was obtained in accordance with the  
illegally, as well as appearing at his home to find out more information about  
its connection with the house that has aroused your interest.

It is provided:

- Claims form before the OMIC, completed by the affected party on  
11/02/2021 and stamped by the company. Said sheet states that, according to the  
ESTUDIO workers, they ask the neighbors about the relatives so that they  
provide the data.

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

December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), on 11/19/2021 the claim was transferred to the party claimed, so that it proceeds to its analysis and informs this Agency within the term of one month, of the actions carried out to adapt to the foreseen requirements in the data protection regulations.

The transfer, which was carried out in accordance with the norms established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) by means of electronic notification, It was not collected by the person in charge, within the period of making it available, being understood rejected in accordance with the provisions of art. 43.2 of the LPACAP in dated 11/30/2021, as stated in the certificate in the file.

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Although the notification was validly made by electronic means, considering that the procedure has been carried out in accordance with the provisions of article 41.5 of the LPACAP, for informational purposes, a copy was sent by postal mail that was notified reliably as of 12/15/2021. In said notification, he was reminded of his obligation to interact electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, from now on, you will be would notify exclusively by electronic means.

Transferred the claim to QUALITY-PROVIDER S.A. (hereinafter QUALITY), dated 11/19/2021 and reiterated on 12/01/2021, is received at this Agency

response brief on 01/26/2022 stating his representative that:

On the one hand, it considers that "the Agency is incompetent to process this claim, which is being managed with an inadequate procedure. Alleges that the recent Directive (EU) 2019/1937 of October 23, 2019, regarding the protection of people who report violations of Union Law (they cite art.

2.1.a subparagraph x and letter J of Annex Part 1), has modified, among others, the GDPR, and that creates a different conflict resolution and administrative simplification system, rendering the LOPDGDD obsolete, which should have been adapted to such a change.

Any procedure related to data protection must be carried out, in its own way.

see, in accordance with the procedure imposed by the Directive". They cite the URL of your complaint mailbox, \*\*\*URL.1 (which is written only in Catalan).

They request the AEPD to be inhibited.

Article 2.1.a) and x) of the aforementioned Directive establishes:

"Article 2. Scope of material application

1. This Directive establishes common minimum standards for the protection of persons who report the following violations of the law of the Union:

a) Violations that fall within the scope of application of the acts of the Union listed in the Annex relating to the following areas:

(...)

x) protection of privacy and personal data, and security of networks and information systems

Annex Part I in its letter J), details:

"J. Article 2, paragraph 1, letter a) subparagraph x) – Protection of privacy and personal data, and security of networks and information systems:

i) Directive 2002/58/EC of the European Parliament and of the Council, of July 12

of 2002, regarding the processing of personal data and the protection of the privacy in the electronic communications sector (Directive on the privacy and electronic communications) (OJ L 201 of 31.7.2002, p. 37)

ii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data and by which repeals Directive 95/46/EC (General Data Protection Regulation) (DO L 119 of 4.5.2016, p. 1)"

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If your request to the AEPD is rejected, the representative states that it is not

Provide a photocopy of the claimant's DNI for the purpose of being able to

identify it, preventing them from reliably knowing which natural or legal person

it is, and, therefore, know what data it is. They require a contribution from said

information. They cite paragraphs of article 12, and that, if they cannot know the identity

of the applicant, they cannot comply with your request.

It is verified that the Directive does not apply in this case: its article 4. Scope

of personal application specifies that it will be applied to the complainants who work in the

private or public sector and who have obtained information about violations in a

labor context, raised by workers, shareholders, etc., labor relations already

completed or not yet started - type of complaint that the LOPDGDD addresses in its art.

24.

THIRD: On 02/04/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

Information requests were made to ESTUDIO and QUALITY on dates 03/01/2022 and 04/01/2022, this Agency receives written responses from both the claimed as from QUALITY on 04/18/2022.

- The representative of QUALITY reiterates the incompetence of the AEPD according to the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019, regarding the protection of persons who report violations of the Union Law. They cite art again. 2.1.a subparagraph x and Annex Part 1 letter J and replied to the transfer and the reference back to your whistleblowing channel \*\*\*URL.1.

However, in the event that this claim is dismissed, formulate the following statements about the required information:

It reiterates "the impossibility of providing information related to this file all whenever the claimant does not provide a photocopy of the national identity document to the effects of being able to identify it, which prevents knowing and reliably identifying which natural or legal person is involved and, therefore, prevents knowing what data is treats".

It refers "that article 12.2 of Regulation (EU) 2016/679 (RGPD) itself, imposes a disclaimer in my favor for not attending to the request of the interested person regarding their rights derived from the GDPR. In

In this sense, article 12.2 of the GDPR stipulates that the data controller shall not  
may refuse to act at the request of the interested party in order to exercise their rights in

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under articles 15 to 22, unless you can demonstrate that you are not in a position  
to identify the interested party.

Likewise, article 12.6 of Regulation (EU) 2016/679 states that, when  
the person responsible for the treatment has reasonable doubts regarding the identity of the  
natural person requesting or claiming, may request that he provide the information  
additional information necessary to confirm the identity of the interested party.

In addition, "he comes to formulate a request for accreditation and identification of the person  
claimant, requesting this Agency to request the contribution of the photocopy  
of your national identity document, transferring it to this party with the  
in order to know and prove the identity of the person interested in the file above  
referenced, as this party has certain doubts about the identity of the claimant".

It alludes that "the origin of requesting supporting documentation from the applicant  
when there is a real impossibility of proving the identity of the claimant also

It is imposed and has been endorsed by the Agency to which I am writing. Between  
others, in the procedure of the AEPD no. E/9130/2018, the Agency filed a pro-  
sanctioning procedure considering that the person responsible for the treatment acted ad-  
duly requesting a copy of the DNI to be able to meet the request, based on the articles  
Articles 12.1, 12.2 and 12.6 of the GDPR relating to the method of exercising the rights  
data of the interested party

In said proceeding, the Agency concluded that the defendant's position (the which had required ID of the applicant and who refused to provide it) had been adjusted in his response, as it is the exercise of a very personal right, not considering that there had been any infringement of the current regulations for the protection of data, as occurs in the present case. And it is that in the forms themselves of the Spanish Agency for Data Protection, a section can be seen in the second page, whose wording states:

“It will be necessary to provide a photocopy of the D.N.I. or equivalent document that accredits redact the identity and be considered valid by law, in those cases in which the person responsible has doubts about his identity. In the event that action is taken through re-legal presentation must also be provided, DNI and document accrediting the re-presentation of the representative.

- The defendant provides the following documentation:

- Response to the request.

Invoice of 09/24/2021 of QUALITY with ESTUDIO LA ALHÓNDIGA, S.L. (in successive ESTUDIO LA ALHÓNDIGA) of a quarterly bonus of 2,400 consultations in the period: 09/24/2021 to 12/23/2021.

Copy of the claim sheet submitted by the claimant

The defendant explains his relationship with the company ESTUDIO LA ALHÓNDIGA in C/ \*\*\*ADDRESS.1 28904 GETAFE, \*\*\*ADDRESS.3 (Spain):

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“One of the joint administrators of the second (D. B.B.B. with D.N.I. \*\*\*NIF.1)

He was a worker of the first between January and June 2018 prior to the opening of his agency of which he is an administrator. As a partner (we share brand although are two franchised and independent companies) and former employee of the claimed we reached a private and verbal agreement between both companies that consists in the fact that each year one of the companies hires the services of QUALITY and we share access to your program. Hence, the invoice that we attach is name of the company ESTUDIO LA ALHÓNDIGA and not of the defendant.”

The defendant explains his way of contacting most of the Homeowners in the areas where they work:

“Every day (and every month we spend once) the advisers go door to door in each portal delivering the Tecnocasa magazine (totally free magazine that accepts most of the neighbors). In the case in question, not finding in the house on street \*\*\*ADDRESS.2, Getafe no one for several months consecutive times when asking several neighbors about its ownership, they told us comment that the owner who appears in the registry (we always take a note simple prior information to verify who owns it) had already died and that the other owner that appears in the record is in (...). that they had a daughter called C.C.C. and that he lived near Calle \*\*\*ADDRESS.3 in Getafe.

Later, having the name of the daughter (provided by several neighbors) and the surnames of both parents we agreed to the QUALITY PROVIDER program S.A. and a match appeared in the name and surname with a nearby house to the location that the neighbors of the farm had previously given us and, in that moment, we proceed to try to contact this person to verify if she could be related to the house on \*\*\*ADDRESS.2 Street and, if applicable, offer you our services in case they might be of interest to you.

Your data has never been nor is it in our database,



Well, from the first moment she told us that she did not give us authorization to do so.

The respondent's representative explains the timing of the claim

filed by the claimant: "Previously call the office telephone number (when

we contacted her in person she was given a card with the office details

to be able to verify how we had managed to reach it) and tells us that

You want to go to it to make a claim.

Once in the office, they try to explain how to get to it, they

shows that your data does not appear in our database because we do not have your

authorization and she decides to proceed to claim anyway."

It has not been possible to obtain from the representatives the legal basis for the

treatment carried out by both companies claimed from the data of the

living place.

Through diligence, the following documentation has been incorporated:

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- Privacy policy of QUALITY (INGLOBALY), the claimed and

TECNOHOUSE

- Legal notice of QUALITY (INGLOBALY) and TECNOCASA

It has been verified that the Privacy Policy of QUALITY is the one provided

in the complaint mailbox \*\*\*URL.1 according to Directive (EU) 2019/1937.

The one of the claimed franchisee refers to the companies that make up the networks in

franchise of the brands TECNOCASA, TECNORETE (real estate brokerage) and

KIRON (financial intermediation), as well as their respective companies

franchisors, FRANCHISING IBÉRICO TECNOCASA, S.A. (Tecnocasa/Tecnorete), and IBERO KIRON FRANCHISING, S.L.U.(Kiron) who will act, where appropriate, as RESPONSIBLE FOR THE TREATMENT of the personal data that is provided once they actually carry out treatment tasks. information sharing among the aforementioned subjects, it becomes mandatory to carry out activities of intermediation through the aforementioned franchise networks, otherwise, the provision of services could be deficient and/or impossible.

TECNOCASA's is the same Privacy Policy referred to in the previous franchisee.

FIFTH: On 01/25/2023, the Director of the Spanish Agency for the Protection of Datos agreed to initiate disciplinary proceedings against the defendant, for the alleged infringement of article 6.1 of the GDPR, typified in article 83.5.a) of the aforementioned GDPR.

SIXTH: Notified of the initiation agreement, the claimant at the time of this resolution has not submitted a written statement of allegations, so the following applies indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in its section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise pronouncement about the responsibility accused, for which reason a Resolution is issued.

SEVENTH: Of the actions carried out in this procedure, have been the following accredited:

#### PROVEN FACTS

FIRST. On 11/04/2021, the claimant's letter was entered in the AEPD in which states that employees of the defendant have appeared at the domicile of the claimant to promote its rental or sales services in connection with the

property owned by his father; The claimant questioned said action since it did not

there is no information, neither from her father nor from her, related to the property; he

The defendant ended up admitting that its source is the INGLOBALY website and considers that the obtaining the data has been carried out illegally.

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SECOND. The claimant has provided a claim form before the OMIC, Office Municipal Consumer of Getafe, dated 11/02/2022, in which the manifestations of the above fact.

THIRD. The defendant, in writing dated 04/25/2022, has provided Invoice No.

\*\*\*INVOICE.1 dated 09/24/202125, issued by Quality Provider, S.A. to

STUDIO LA ALHONDIGA, S.L. as a quarterly Bonus 2400 consultations per amount of 96.80 for the period 09/24/2021 to 12/23/2021

FOURTH: The defendant has stated his relationship with ESTUDIO LA ALHONDIGA, S.L. stating that: "One of the joint administrators of the second (D.

B.B.B. with D.N.I. \*\*\*NIF.1) was a worker of the first between January and June 2018

prior to the opening of his agency of which he is an administrator. as a partner

(we share a brand even though they are two independent franchised companies) and

former employee of the defendant we reached a private and verbal agreement between both

companies which consists in that each year one of the companies hires the services

of QUALITY and we share access to their program. From there to the invoice that

attached is in the name of the company ESTUDIO LA ALHÓNDIGA and not of the

reclaimed."

Likewise, it has indicated its way of proceeding in this case: "...In the case in question, not finding anyone in the house on \*\*\*ADDRESS.2 street, in Getafe for several consecutive months by asking for the property of the same to several neighbors, they tell us that the owner who appears in the registry (we took always a simple previous informative note to verify who owns it) and had died and that the other owner that appears in the registry is (...). that these They had a daughter named C.C.C. and who lived near \*\*\*ADDRESS.3 Street, of Getafe.

Later, having the name of the daughter (provided by several neighbors) and the surnames of both parents we agreed to the QUALITY PROVIDER program S.A. and a match appeared in the name and surname with a nearby house to the location that the neighbors of the farm had previously given us and, in that moment, we proceed to try to contact this person to verify if she could be related to the house on \*\*\*ADDRESS.2 Street, and, if applicable, offer you our services in case they might be of interest to you.

(...)"

## FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

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Likewise, article 63.2 of the LOPDGDD determines that:

"The

procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, for the regulatory provisions dictated in its development and, as soon as they are not contradict, on a subsidiary basis, by the general rules on the administrative procedures."

Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations, in its article 64 "Initiation agreement in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of any actions that exist in this regard, and the interested parties will be notified, Understanding in any case as such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may correspond, without prejudice to what results from the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with

express indication of the recusal regime of the same.

d) Competent body for the resolution of the procedure and norm that attributes such jurisdiction, indicating the possibility that the alleged responsible can voluntarily acknowledge his responsibility, with the effects provided for in article 85.

e) Measures of a provisional nature that have been agreed by the body competent to initiate the disciplinary procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to make allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the established term on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise pronouncement about the responsibility accused.

3. Exceptionally, when at the time of issuing the initiation agreement there are not enough elements for the initial qualification of the facts that motivate the initiation of the procedure, said qualification may be carried out in one phase through the preparation of a Statement of Objections, which must be notified to the interested".

In application of the previous precept and taking into account that no made allegations to the initiation agreement, it is appropriate to resolve the procedure initiated.

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The facts denounced materialize in the treatment of the data of the claimant illegitimately, considering that obtaining them has been carried out illegally, which could violate the regulations regarding Personal data protection.

Article 58 of the GDPR, Powers, states:

"2. Each supervisory authority shall have all the following powers corrections listed below:

(...)

i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, according to the circumstances of each particular case;

(...)"

Article 6, Legality of the treatment, of the GDPR in its section 1, establishes that:

"1. Processing will only be lawful if at least one of the following is fulfilled conditions:

a) the interested party gave his consent for the processing of his data personal for one or more specific purposes;

b) the processing is necessary for the performance of a contract in which the interested party or for the application at the request of this of measures pre-contractual;

c) the processing is necessary for compliance with a legal obligation applicable to the data controller;

d) the processing is necessary to protect vital interests of the data subject or of another physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible of the treatment;

f) the processing is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that such interests are not overridden by the interests or the rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions”.

On the other hand, article 4 of the GDPR, Definitions, in its sections 1, 2 and 11, notes that:

“1) “personal data” means any information about an identified natural person or identifiable (“the data subject”); Any identifiable natural person shall be considered person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number,

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location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

“2) “processing”: any operation or set of operations carried out on personal data or sets of personal data, either by procedures



automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;

"11) "consent of the interested party": any manifestation of free will, specific, informed and unequivocal for which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him."

It should be noted that data processing requires the existence of a database

IV.

law that legitimizes it.

In accordance with article 6.1 of the GDPR, in addition to consent,

There are other possible bases that legitimize the processing of data without the need for have the authorization of its owner, in particular, when necessary for the execution of a contract in which the affected party is a party or for the application, upon request of this, of pre-contractual measures, or when necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that such interests do not prevail over the interests or rights and fundamental freedoms of the data subject that require the protection of such data. He treatment is also considered lawful when necessary for the fulfillment of a legal obligation applicable to the data controller, to protect interests of the data subject or of another natural person or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment.

The defendant has indicated that they accessed the personal data through through Quality and they proceeded to contact to verify if the claimant had

relation to the property but that your data has not been and is not in your database data. However, it should be noted that treatment is any operation performed on personal data, whether by automated procedures or not, and access to the same constitutes a treatment and there is no record that the claimed was accredited for it.

In the present case, there is no accredited basis of legitimation of any of the provided for in article 6.1 of the GDPR for the processing of personal data of the claimant. In case you could allege the existence of a legitimate interest of art. 6.1.e) GDPR, the defendant has not provided a weighting of interests to prove it.

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The infringement attributed to the defendant is typified in the

Article 83.5 a) of the GDPR, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the terms of the Articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the one with the highest amount".

The LOPDGDD in its article 71, Violations, states that: "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

And in its article 72, it considers for the purposes of prescription, which are: "Infractions considered very serious:

1. Based on what is established in article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particular, the following:

(...)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.

(...)

In order to establish the administrative fine that should be imposed, the

observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which

point out:

SAW

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

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall 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 as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

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d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

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

treatment;

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

remedy the breach and mitigate the potential adverse effects of the breach;

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

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

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

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

previously ordered against the person in charge or in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to 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 the financial benefits obtained or the losses avoided, direct or indirectly, through the infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the offence.

e) The existence of a merger process by absorption after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested."

data.

- In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of a fine to be imposed in the present case for the offense typified in the Article 83.5.a) and Article 6.1 of the GDPR for which the defendant is held responsible, in

In an initial assessment, the following factors are considered concurrent:

They are aggravating circumstances:

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- The nature, seriousness and duration of the infringement, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered. The facts revealed affect a basic principle

regarding the processing of personal data, such as legitimacy,

that the norm penalizes with the greatest seriousness; as for the damages

caused, we must not forget that we are facing a fundamental right

that the GDPR seeks to protect natural persons with regard to the

processing of your personal data, in view of the risks that may arise

create such treatment. And as for the number of people affected, although there is only

a claim should take into account the number of interested parties

potentially affected, since on many occasions the offense adopts

«systemic» connotations and, therefore, can affect, even in different

moments, to other interested parties who have not submitted claims or reports

to the control authority (article 83.2.a) of the GDPR).

- The activity of the allegedly infringing entity is linked to the

processing of personal data of both clients and third parties

(article 76.2.b) of the LOPDGDD in relation to article 83.2.k).

- The intent or negligence in the offence. The conduct of the

claimed suffers from a "serious" lack of diligence; is part of the diligence

that it is required and that it is inherent to its activity, that the defendant verifies that has the legitimacy that it claims to exhibit and that effectively enables it to treat the data of its owner (article 83.2, b) of the GDPR).

The corrective powers that the GDPR attributes to the AEPD as authority of control are listed in article 58.2, sections a) to j).

## VII

Article 83.5 of the GDPR establishes a sanction of an administrative fine (article 58.2.i) for the conducts that are typified therein, without prejudice to the fact that, as provided Article 83.2 of the GDPR, administrative fines may be imposed together with other corrective measures provided for in article 58.2 of the GDPR.

Having confirmed the infringement, it is appropriate to impose on the person responsible the adoption of appropriate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may “d) order the controller or processor that the processing operations are comply with the provisions of this Regulation, where appropriate, in a a certain way and within a specified period of time.

In the present case, the defendant is required so that within a period of one month from the notification of this resolution:

- Accredited the adoption of measures so that they do not occur again incidents such as the one that gave rise to the disciplinary procedure: the use of personal data without concurring any legitimizing basis of the collected

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in article 6.1 of the GDPR and that the treatments carried out comply with the provisions of this Regulation.

It is noted that not meeting the requirement can be considered as a administrative offense in accordance with the provisions of the GDPR, classified as infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ESTUDIO INMOBILIARIO SAN ISIDRO, S.L.U, with NIF B87912846, for a violation of article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR, a fine of €5,000 (five thousand euros).

SECOND: REQUEST ESTUDIO INMOBILIARIO SAN ISIDRO, S.L.U., so that, within a month from the notification of this resolution, accredit the adoption of measures so that incidents such as the one that gave rise to the disciplinary procedure: the use of personal data without attending legitimizing basis any of those included in article 6.1 of the GDPR.

THIRD: NOTIFY this resolution to ESTUDIO INMOBILIARIO SAN ISIDRO, S.L.U.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,



of December 17, by means of its income, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted IBAN number: XXXX-XXXX-XXXX-XXXX-XXXX-XXXX (BIC/SWIFT Code: XXXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its collection in executive period.

Once the notification has been received and once executed, if the execution date is between the 1st and 15th of each month, both inclusive, the deadline for making the voluntary payment will be until the 20th day of the following or immediately following business month, and if is between the 16th and the last day of each month, both inclusive, the term of the Payment will be until the 5th of the second following or immediate business month.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once the interested parties have been notified.

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Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, interested parties may optionally file an appeal for reversal before the Director of the Spanish Data Protection Agency within a period of one month 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 for in article 46.1 of the referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be temporarily suspended in administrative proceedings

If the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, presenting it to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within a period of two months from the day following the notification of this resolution, would terminate the injunction suspension

Electronic record of  
through the

Mar Spain Marti

Director of the Spanish Data Protection Agency

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