

□ File No.: PS/00400/2021

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On April 29, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against ECOZONO Y  
CULTURE, S.L. (hereinafter, the claimed party), through the Agreement that is  
transcribe:

<<

File No.: PS/00400/2021

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection and with  
based on the following

### FACTS

FIRST: Dated 05/15/2021 has entry in the Spanish Protection Agency  
of Data (AEPD), sent by the Catalan Authority for Data Protection, the  
claim made by A.A.A., with NIF \*\*\*NIF.1 (hereinafter the part  
claimant).

The claim is directed against ECOZONO Y CULTURA, S.L., with NIF B67508762  
(hereinafter, the claimed part or ECOZONO).

The claim is about the collection of personal data that the claimed party  
carried out through supposed surveys and on the information that it offers to the  
interested parties about the processing of their data.

The claimant has stated that ECOZONO, through third parties acting as pollsters and with whom it is linked by a commercial contract, collects data from people who agree to answer a survey when the true purpose of the survey collection of your data is to contact them later to sell them your products. He adds that they also request data from third parties with the promise to get a reward in return.

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2/17

Two photographs (documents 1 and 2) of a form with the following text printed on it:

-In the extreme left of the document header the anagrams of “SANNA” and “new culture” and below these questions:

"1. Do you consider yourself an environmentally friendly person?

2. What percentage of the products in your home are organic?

3. Have you heard of the O3?

4. Do you wish to receive communications by telephone?"

-In the extreme right of the document header some boxes preceded by the indications “Date”; “Dealer” and “Zone” that are completed in each of the documents, 1 and 2, with different information.

- Immediately below the mentioned text and throughout the entire heading,

this legend: “Responsible ECOZONO Y CULTURA, S.L.U. / Main purpose

manage the commercial relationship and the sending of information and commercial prospecting /

Legitimation. Consent of the interested party / Recipients: No data will be transferred to

third parties, unless express authorization or legal obligation / Rights: Access, rectify and delete the data, portability of the data, limitation or opposition to its treatment.

Transparency and the right not to be subject to automated decisions / In compliance with L 3/2018/ Additional information: For further information and detailed about our privacy policy, send an email to \*\*\*EMAIL.1”

(emphasis ours)

-The document has eight columns. The first three with the rubric “Name, “Population” and “Telephone”. Then four columns preceded by the numbers 1,2,3 and 4 (there are four questions in the questionnaire) and two more columns called “Comments” and “Signature”. The document is structured in lines, dedicating a line to collect data from each of the people surveyed.

Document 1:

In the boxes of the right header - "Date", "Dealer" and "Zone" - appears written “04/20/21”; “A.A.A.”; and “\*\*\*POPULATION.1”.

Data relating to eight people are collected, so only the first eight lines of the questionnaire.

The “Name” column contains the names of the eight people (without surnames); in the “Population” column, in all lines, “\*\*\*POPULATION.1”; in the column “telephone” a mobile number for each person.

The columns with the numbers 1 and 4 indicate in the eight lines “Yes”. The column with number 2 is written, depending on the line, the indications "Q" or "Q/E". The column with number 3 has, according to the lines of the questionnaire, the indications “G”, “B”, “Osm” and “Cnt”.

The “Comments” column includes, among others, the following: “Brita”; “Filter d`crixeta” and “Parella amb bebe”; "Partner"; “Baby then – chemicals”, Brita +bottle for baby”; “4 at home + dog”.

In the "Signature" column there is no signature, but they only appear, except for the first line which cannot be read, numeric data which could

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3/17

correspond to the age of the people about whom the information is concerned, respectively, from the second line, "35-40, 73; 30; 40; 38; 45, 55 + parents".

Document 2:

In the boxes of the right header - "Date", "Dealer" and "Zone" - it has been written, respectively, "04/22/21", "A.A.A.", and "\*\*\*\*POPULATION.1".

Data relating to eleven people are collected, so they are completed only the first eleven lines of the questionnaire.

In the "Name" column, the names of eleven people (without surnames) are written; in the "Population" column, in all lines, "\*\*\*\*POPULATION.1"; in the column "phone" contains a mobile number for each line.

The columns with the numbers 1 and 4 indicate in the eleven lines "Yes". The column with number 2 has in all the lines the indication "Q". The column with the number 3 It has, according to the lines, the indications "G", "F", "B", and "G/B".

The "Comments" column includes, among others, the following: "Baby man 2 weeks; Older woman, physically takes little care of herself; Osmosis filter; Osmosis; partner; partner; Couple +baby; not osmosis; Pitcher filters water +baby; Baby; Filter d'osmosis".

No signature appears in the "Signature" column, but only numerical data that could correspond to the age of the people about whom reverses the information, respectively, "41, 50; 38;35; 33; 32; 40; 52; 39; 38;40".

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), dated 06/07/2021, the claim was transferred to ECOZONO so that it proceeded to its analysis and inform this Agency within the term of one month of the actions carried out to adapt to the foreseen requirements in data protection regulations.

The notification was made by electronic means, as it is mandatory according to the Article 14.2.a) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter, LPACAP). was not picked up by the recipient within the period of making available, so the rejection on 06/18/2021, in accordance with the provisions of article 43.2 of the LPACAP, as stated in the file.

Although the notification made by electronic means was valid, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, informative title was sent to ECOZONO, through postal mail, a copy of the claim and the information request that was received by her on 07/02/2021.

On 07/23/2021, the AEPD received a letter from ECOZONO requesting that the Agency provide the identity of the claimant - a condition that it considers essential to be able to respond to the information that was requested - and that suspend the period of one month that was granted to evacuate the procedure until the AEPD does not communicate the identity of the claimant.

On 08/02/2021, the AEPD received the response from ECOZONO to the request informative, in which it responds to the following questions raised in the brief of informative request:

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"1. The decision made regarding this claim.

2. In the event of exercising the rights regulated in articles 15 to 22 of the

RGPD, accreditation of the response provided to the claimant.

3. Report on the causes that have motivated the incidence that has originated the claim.

4. Report on the measures adopted to prevent incidents from occurring similar, dates of implementation and controls carried out to verify their effectiveness.

5. Any other that you consider relevant."

-Regarding point 1, ECOZONO says that "it has decided that from now on and with immediately, a new quality procedure is implemented [...] Attached is the "new edition of the procedure", document called "INTERNAL PROTOCOL OF DATA PROCESSING" belonging to the Manual of Procedures of Ecozone and Culture, S.L."

-Regarding point 2, it says: "we have requested a clarification, in previous days, to know exactly where the dysfunction has occurred within the organization chart of our company.

-Regarding point 3, it says that "an internal analysis has been carried out to reveal the reasons for the non-application of the existing protocol to date. to lack to know your answer to the previous point and, together with the actions carried out, the consequent report will be published."

-Regarding point 4, it says that ECOZONO "will proceed accordingly once have all the documentation. Although and notwithstanding the company has already adopted among some of the measures, the reissue of the quality protocol

cited above, and the new consent record references "XXXX

CONSENT OF INTERESTED PARTIES ECOZONO Y CULTURA, S.L.,"

-In relation to point 5, it says to attach "the records pertaining to the measures of immediate action carried out when discovering the dysfunctions, as has been mentioned."

Provide the following documents:

1. The document named "XXXX ECOZONO Y CULTURA, S.L.," which bears the heading "Consent of the rights of the interested parties. Organic Law 3/2018 of PD and GDD 3/2018".

<< You (of legal age or your legal representative) ----- -

You provide us with all kinds of documentation related to your request with the purposes derived from our relationship

.  
Under the Organic Law on Data Protection and Guarantee of Rights Digitales 3/2018 [...] we use the information you provide us, to treat it with the purpose of providing the requested and required service with the aim of correspond to your request and related procedures.

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5/17

The data provided by you will be kept in a file, archive property of ECOZONO Y CULTURA, S.L., during our business relationship or time required in accordance with legislative obligations.

The data will be transferred to third parties in cases of necessity on our part with

in order to meet your request in addition to when there is a legal obligation. To

Once you/you can exercise the rights of access, rectification,

deletion/forgetting, opposition, portability and limitation as established by law

Organic of PD and GDD 3/2018.

Likewise,

I request your authorization to offer you products and services

related to those previously required, to retain you as a customer and to

exercise coordination with other professionals if necessary.

--- Yes, I explicitly and unequivocally accept and authorize the privacy policy

of [ECOZONE]

--- Yes, I explicitly and unequivocally authorize receiving information from all kinds of

products and services of [ECOZONO]

And now, having already informed you of our data protection policy,

We proceed to the survey and record the information you provide us:

1. Can you give me your name?

2. Population and contact telephone number:

3. Do you consider yourself a respectful person with the environment? If not-

4. What percentage of cleaning products in your home are ecological?

5. Have you heard of O3?

6. Do you wish to receive communications by telephone? Otherwise-

Signature:

In ----- to ---of -----of 20---

\*After sales service>>

2. The so-called "Manual of procedures. Internal protocol for treatment of

data". Of this document it is worth highlighting epigraphs 2 and 4 which, they say,

respectively:



"Scope". "This procedure applies to all components that are part of or are linked to the company ECOZONO Y CULTURA, SL Linked must obviously be understood as any requirement of preventive coordination, referring to personnel who interact simultaneously, in order to carry out the contracted services.

"Responsibilities". "In the present case, the company ECOZONO Y CULTURA, S.L., will assume the figure of responsible and at the same time in charge of Treatment of all components and linked to it.

THIRD: In accordance with article 65 of the LOPDGDD, dated 08/04/2021

It is agreed to admit the claim presented by the claimant for processing.

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6/17

The notification to the claimant of the admission agreement for processing, in accordance with the provisions of article 44 of the LPACAP, was done through electronic means.

In the file is the "Certification of impossibility of delivery" issued by the Post and Telegraph State Society, S.A. (Correos) that records the return to origin dated 08/18/2021, due to incorrect address, of the letter in the that the aforementioned agreement was transferred to him. The notification by edicts was made by means of an announcement published in the Notifications Supplement of the Official Gazette of the Status (BOE) of 08/27/2021, a copy of which is in the file.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679, of 27

of April, relative to the protection of natural persons with regard to treatment of personal data and the free circulation of these data and by which repeals Directive 95/46/EC (General Data Protection Regulation, in hereinafter RGPD), grants each control authority and according to what is established in the articles 47, 48.1, 64.2 and 68.1 of the 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

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>>)"

Article 6 of the RGPD under the heading "Legality of the treatment" specifies in its section 1 the cases in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

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

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

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7/17

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another Physical person.

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not override the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested is a child.

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

Article 4.2 of the RGPD, “Definitions”, establishes:

“For the purposes of this Regulation, the following shall be understood as:

[...] 2. "processing": any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;”

III

1. The documentation in the file shows that the party claimed, at through a distributor (“Dealer”) who acted on your behalf -identified as A.A.A.- collected on 04/20/2021 and 04/22/2021 personal data concerning nineteen people who were incorporated into two forms in which it is stated that she, ECOZONO, is responsible for the treatment and that the legitimacy of the treatment carried out is the consent of the interested parties (“Legitimation: Consent”)

In the two forms completed by the distributor A.A.A.

-whose

characteristics are detailed in the first fact of this agreement of initiation.

registered the data of nineteen people, eight in the form dated

04/20/2021 and eleven on 04/22/2021. Regarding each of the interested parties

The data collected was the first name, the mobile phone number, some

personal characteristic (except for who was registered in the first line of the

form dated 04/20/2022) and, in the box for signature, a figure of two

digits that could correspond to the age of the interested party. Furthermore, in both

forms and with respect to all interested parties, the response to each of the

the four questions they were asked. Question number four asks: “Do you want

receive communications by telephone?”

2. In accordance with the RGPD (article 5.1.a) the processing of personal data must be

“lawful, loyal and transparent” The principle of legality requires that the treatment be founded

in any of the legal bases related to article 6.1 of the RGPD.

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8/17

The ECOZONO form informs that the entity is responsible for the treatment and that the legal basis for the processing of the data collected therein is the consent. Now, the form itself alludes to the existence of a commercial relationship between ECOZONO and the interested parties. The form says: “/Purpose main manage the commercial relationship and the sending of information and prospecting commercial/Legitimation. Consent of the interested party/”. (The underlining is from the AEPD)

Furthermore, the document that ECOZONO has sent to this Agency with your response to the information request, called "XXXX CONSENT INTERESTED ECOZONO Y CULTURA, S.L.," which he says is a "reissue of the quality protocol", refers to the existence of a service relationship of service between the claimed and the interested parties.

Article 6.1 of the RGPD under the heading "Legality of the treatment" lists six circumstances in which the treatment is lawful, among which are the consent (paragraph a) and the treatment necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of pre-contractual measures (section, b).

In accordance with article 5.2 of the RGPD “The data controller shall be responsible compliance with the provisions of section 1 and capable of demonstrating it”. So that, the data controller bears the burden of proving that there is a basis law that protects the treatment of the data of nineteen people who collected through the forms whose copy is in the file. Furthermore, referring to consent, article 7 of the RGPD is pronounced in the same sense -

"conditions of consent" - which provides: "When the treatment is based on the consent of the interested party, the person in charge must be able to demonstrate that he consented to the processing of his personal data."

The RGPD requires that consent be express and defines it (article 4.11) as

"Any manifestation of will, free, specific, informed and unequivocal by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you; The validity of consent

requires that the manifestation of will have been preceded by the information to the

interested party (article 4.11). The principle of transparency obliges the controller to

inform the interested party from whom personal data is collected in the terms that

establishes the GDPR.

Recital 39 of the RGPD says on the matter:

"All processing of personal data must be lawful and fair. For natural persons

it must be absolutely clear that they are being collected, used, consulted or

otherwise treating personal data that concerns them, as well as the extent to which

that said data is or will be processed. The principle of transparency requires that all

information and communication regarding the processing of said data is easily

accessible and easy to understand, and that simple and clear language is used. Saying

principle refers in particular to the information of the interested parties on the identity

of the person in charge of the treatment and the purposes of the same and to the information added to

ensure fair and transparent treatment with respect to natural persons

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affected and their right to obtain confirmation and communication of the data

personal data that concern them that are subject to treatment. [...]"

Recital 60 of the RGPD adds that "The principles of fair treatment and transparent demand that the interested party be informed of the existence of the processing and its purposes. The data controller must provide the data subject with as much additional information as necessary to guarantee fair treatment and transparent, taking into account the specific circumstances and context in which personal data is processed. The interested party must also be informed of the existence of profiling and the consequences of such profiling.

If personal data is obtained from data subjects, they must also be informed whether they are obliged to provide them and the consequences if they do not. they did."

When the data is obtained directly from the interested party -as occurs in the course that concerns us - article 13 of the RGPD obliges those responsible for treatment to provide them "at the time the data is obtained" the information detailed in sections 1 and 2, provision that 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 applicable;
- 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 the 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

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10/17

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.”

It should be added that conducting surveys only involves collecting the opinion or the opinion that an individual has on a given issue and that in order to carry out carry out this operation, it is not essential to collect, or process in any other way, personal data. personal character. If in the course of a survey it is deemed necessary or it is decided to collect some personal information from the respondent (such as mobile phone number, name or age) it will be necessary to have your consent for this treatment, which which implies -in accordance with articles 7 and 5.2 of the RGPD- that the person in charge must be in a position to prove that he collected and obtained from the interested party the consent to that specific treatment. Also, having informed the interested party of the purpose of the treatment for which you grant your consent.

In the present case, in view of the form that ECOZONO used to collect data through pollsters, it is found that the claim was not limited to collect opinions or points of view of individuals, but rather collected and processed data personal for whose legality it is responsible.

The person claimed - who was served with the claim and the documents annexes to it, two photographs of your form with the personal data that is

collected on 04/20/2021 and 04/22/2021- has not provided any document, in any support, showing that each of the nineteen interested parties whose data were recorded in the ECOZONO forms had they consented to that treatment. Nor has she provided any document proving that between her and each of the nineteen people whose data is collected on two forms there was any previous contractual relationship in the framework of which and for whose execution it was necessary to process your personal data.

In short, the documentation in the file shows that ECOZONO collected the data of nineteen people and, despite the fact that she is responsible for the proof of the legality of the treatment carried out, has not demonstrated the existence of one or more legal bases that legitimize these treatments. Thus, his behavior could be constituting an infringement of article 6.1. of the GDPR.

The infringement of article 6.1 of the RGPD is typified in article 83 of the RGPD that, under the heading “General conditions for the imposition of fines administrative”, says:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

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11/17

of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5,6,7 and 9.”

The LOPDGDD, for the purposes of prescription, qualifies in its article 72.1.b) this infraction as very serious, provision that provides:

“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 in it 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 Regulation (EU) 2016/679.”

IV

Article 58.2 of the RGPD attributes various powers to the control authorities corrective measures, including (paragraph i) imposing an administrative fine in accordance with Article 83 of the Regulation. The amount of the fine that according to article 83.5 of the RGPD could be imposed on the claim for the infringement of article 6.1 of the RGPD whose responsibility is attributed to him, offense typified in section a) of that precept, ranges between 1 euro and 20,000,000 euros.

In determining the amount of the sanction that could be imposed,

In any case, the provisions of articles 83.1 and 83.2 of the RGPD must be observed.

According to article 83.1 “Each control authority will guarantee that the imposition of the administrative fines under this article for violations of the this Regulation indicated in paragraphs 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

Article 83.2 establishes: “Administrative fines will be imposed, based on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding the tax

of an administrative fine and its amount in each individual case will be

due 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;

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12/17

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 officer.

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 accordance with article 83.1 of the RGPD, the sanction of a fine that is imposed will be

always presided over by the principles of effectiveness, proportionality and character

deterrent. The principle of proportionality implies that there is a correlation between the

infraction and the sanction, with interdiction of unnecessary or excessive measures, of so that the measure applied must be suitable for achieving the purposes that the justified and must be adopted in such a way that there is as little interference as possible.

Article 83.2. of the RGPD, through a list of graduation criteria of the sanction, refers to the techniques to follow to achieve said adequacy between the sanction and the offense committed.

Without prejudice to the result of the instruction, the graduation factors of the amount of the fine described in article 83.2. of the RGPD whose concurrence is appreciated in Quality of aggravating circumstances in this phase of the procedure are the following:

-Circumstance of article 83.2.a), "the nature, seriousness and duration of the infraction, taking into account the nature, scope or purpose of the processing operation

C/ Jorge Juan, 6

28001 – Madrid

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13/17

concerned, as well as the number of affected parties and the level of damage and damages they have suffered;

Circumstance that in the case under examination has special relevance. By a

On the other hand, the documentation in the file proves that the number of

affected interested parties, whose personal data would have been processed with

infringement of article 6.1 of the RGPD, there have been nineteen. On the other hand, the real purpose of

the treatment operation is ignored, because in the form that the interviewer uses

to collect the data of the interested parties is mentioned as a purpose, in addition to the

sending commercial communications, attending to the fulfillment of a relationship

business of whose existence nothing is known.

More serious is the fact that the offending conduct - violation of article 6.1.

of the RGPD- for which the claimed party is responsible for its own nature

of the so-called permanent infractions, in which the consummation is projected

in time beyond the initial fact and extends, violating the regulations of

data protection, during the entire period of time in which the data is subject to

treatment. The sentences of the National Court of Justice are pronounced in this sense.

09/16/2008 (rec.488/2006) and the Supreme Court of 04/17/2002 (rec.466/2000) A

In this regard, we know that on April 20 and 22, 2021, a

processing of personal data that violated article 6.1 of the RGPD and that affected

nineteen people, but it is unknown whether this treatment has ceased and, if so, in

what date and what was the determining reason for ending the treatment.

-Circumstance of article 83.2.b), "the intention or negligence in the infringement;".

Our sanctioning Law governs the principle of culpability, which prevents imposing

sanctions based on the strict liability of the alleged offender. The presence

of the element of guilt in the broad sense, as a condition for the birth of

sanctioning responsibility, has been recognized by the Constitutional Court, among

others, in its STC 76/1999, in which it affirms that the administrative sanctions

participate in the same nature as the criminal ones, being one of the manifestations

of the ius puniendi of the State and that, as a requirement derived from the principles of

legal certainty and criminal legality enshrined in articles 9.3 and 25.1 of the C.E.,

its existence is essential to impose it. Law 40/2015 on the Legal Regime

of the Public Sector provides in article 28, under the heading "Responsibility",

states that "1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law

recognize capacity to act, affected groups, unions and entities without

legal personality and independent or autonomous estates, which result

responsible for them by way of fraud or negligence.”

In this case, both the documentation provided by the claimed party as his statements evidence a serious failure of due diligence in the compliance with the obligations imposed by the RGPD, in particular the principle of legality.

-Circumstance of article 83.2.d), “the degree of responsibility of the person in charge or of the in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;”

C/ Jorge Juan, 6

28001 – Madrid

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14/17

The infringement of the RGPD for which the claimed party is held responsible is a consequence of not having adopted the appropriate technical and organizational measures to achieve the effective application of the principles governing the processing of personal data at the time the means of treatment were determined. the form of collection of data demonstrates that the respondent had not foreseen the adoption of no measure aimed at being able to comply with the principle of legality. What's more, in the document that the respondent sent to this Agency with its response to the request for information, prior to the admission for processing of this claim, called "XXXX CONSENT OF INTERESTED PARTIES ECOZONO Y CULTURA, S.L.," which has qualified of "reissue of the aforementioned quality protocol", neither is the adoption of any appropriate organizational measures to be in a position to prove compliance with the principle of legality.

The existence of circumstances that mitigate responsibility is not appreciated.



In view of the foregoing, without prejudice to the result of the investigation, having assessed the circumstances described in article 83.2 of the RGPD that concur and in light of the principles of proportionality and dissuasive nature of the sanction, the amount of the fine that would proceed to impose the claimed for the infraction of the RGPD that was attributed is €6,000 (six thousand euros)

Therefore, in accordance with the foregoing, by the Director of the Agency  
Spanish Data Protection,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE TO ECOZONE AND CULTURE,

S.L., with NIF B67508762, for the alleged infringement of article 6.1 of the RGPD typified in article 83.5.a) of the RGPD.

SECOND: APPOINT B.B.B. and secretary to C.C.C., indicating that

any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its attached documentation, as well as the documents obtained and generated by the Subdirectorate General for Inspection of Data on the occasion of the information request prior to admission for processing of the claim.

FOURTH: THAT, for the purposes set forth in article 64.2 b) of the LPACAP, the sanction that could correspond would be a fine amounting to €6,000 (six thousand euros)

FIFTH: NOTIFY this agreement to ECOZONO Y CULTURA, S.L., with NIF B67508762, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the

header of this document.

C/ Jorge Juan, 6

28001 – Madrid

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15/17

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the penalty would be established at €4,800 (four thousand eight hundred euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €4,800 (four thousand eight hundred euros) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at €3,600 (three thousand six hundred euros)

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated previously (€4,800 or €3,600) you must make it effective by paying into the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency of Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, against this act there is no administrative appeal

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28001 – Madrid

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16/17

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Director of the Spanish Data Protection Agency

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SECOND: On May 11, 2022, the claimed party has proceeded to pay of the sanction in the amount of 3600 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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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

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure,

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17/17

except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00400/2021,

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ECOZONO Y CULTURA, S.L.

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

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