

□ File No.: PS/00162/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On April 21, 2020, the Director of the Spanish Agency for  
Data Protection agrees to initiate investigative actions in relation to the  
carrying out a sociological survey through telephone calls and its possible  
recording for which the Center for Sociological Research (CIS) is responsible,  
in case such facts indicate signs of infringement in the field  
competence of the Spanish Data Protection Agency.

SECOND: The General Subdirectorate for Data Inspection proceeded to carry out  
of previous investigative actions to clarify the facts,  
requesting information on the CIS STUDY N° 3279. SPECIAL BAROMETER OF  
APRIL 2020, having knowledge of the following extremes:

The CIS states that its functions are attributed by Law 39/1995, of 19  
December, Organization of the Center for Sociological Research, and the Royal  
Decree 1214/1997, of July 18, on the organization of the Research Center  
Sociological. Article 3 of Law 39/1995 provides that "The functions of the Center  
of Sociological Research: (...) c) conducting studies that provide  
diagnoses of situations and social issues and serve as a guide for  
public authorities in their normative and executive initiatives." The same function  
attributes article 3.c) of Royal Decree 1214/1997.

For its part, the Opinion Barometer is a statistical operation included in the  
Annual program of the National Statistical Plan 2017-2020, approved by the Royal

Decree 308/2020, of February 11, with the statistical operation number 7927.

It establishes said rule with respect to said operation:

“7927 Opinion Barometers

Organisms that intervene MPCM.

Works to be carried out in 2020:

Direction and coordination.

Design and elaboration of the questionnaire and the sample.

Data collection on a monthly basis (except in August) generally  
in the first fortnight of the month.

Coding, recording, tabulation and validation.

Dissemination of preliminary results around 15 days after completion of the

Recording of data on electronic media, in the case of barometers with  
political indicators, in accordance with the provisions of Law 39/1995, of 19

December, Organization of the Sociological Research Center.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/20

Incorporation of the detailed results in the technical documentation and signings  
of microdata in the Data Bank of the Sociological Research Center for  
its dissemination within a maximum period of three months after the recording of the  
information in electronic format.

The CIS exposes in relation to the information requirements of the Inspection what

Next:

“As a consequence of the pandemic situation derived from COVID-19, the Center

of Sociological Research (hereinafter, CIS), has been affected in the way conducting your surveys. During the state of alarm, but also in General for as long as the health crisis continues, the CIS You cannot continue to carry out your surveys in person, both for security of the pollsters as well as for the safety of the respondents, as well as for the mobility limitations and social distancing imposed. As a consequence of all this, the CIS has found in the telephone interviews the only solution, both to logistical level as well as at the level of sociological quality.

This type of survey, fully recognized in the regulations, requires a series of elements, including the telephone numbers of the individuals to be surveyed. In some cases those numbers can be randomly generated, in other cases they must be obtained organized by province anonymously. He adds that by not being able have the necessary technical means to carry them out and not be able to do himself the surveys and before the urgency of obtaining sociological studies on the pandemic and the measures adopted, basically at the request of the Delegated authority of the state of alarm, the Minister of Health, the CIS opted for outsource the conduct of your surveys.”

The CIS declares that within the framework of the contract under study, no transfer was made to the company that carried out the study any personal data, nor did it give to the CIS no personal data collected. The purpose of the contract was to carry out a study by phone. For this, the company had its technical means and randomly generated phone numbers, and once the survey was done communicated to the CIS the results of the already anonymized study, did not provide any data of a personal nature. For all these reasons, the CIS considered that there was no data processing, since neither gave nor received personal data. points out that the company was told to apply the following:

'

- "In the event that the personnel, on behalf of the successful bidder, who in the development of carrying out their activity in the managing entity of the contract was aware of information related to treatment activities that the managing entity of the contract carried out in the development of its activity, it must follow at all times the indications that are so indicated, showing the due reserve on the information of which he was aware and must maintain a duty of secrecy with respect to it.

- "Likewise, it is subject to national and European Union regulations regarding Data Protection".

Regarding the instructions given to the person in charge of the treatment, he has stated that has not determined the purposes or means of the processing of personal data, but

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/20

solely from the anonymized statistical results that he commissioned from the aforementioned company obtain by studying research. The CIS established the number of people to interview (not who specifically) and the sample design based on sociodemographic profiles that the people to be interviewed must meet.

The technical conditions established for the telephone survey were the following:

- a. National scope.
- b. Universe: Spanish population and over 18 years of age.

Field Date: End of March / Beginning of April

- a. Methodology: Telephone interview through the CATI System (delivery to the CIS of the

anonymized ASCII or SPSS file).

b. BBDD: Fixed telephones in homes and mobile telephones with records generated randomly. About 50/50% will be done on phones fixed/mobile.

c. Sample: 3,000 surveys.

d. Sample distribution: Proportional to the population of each Community Autonomous and population size. The strata were formed by the crossing of the 17 autonomous communities, with the size of habitat, divided into 7 categories: less than or equal to 2,000 inhabitants; from 2,001 to 10,000; from 10,001 to 50,000; from 50,001 to 100,000; from 100,001 to 400,000; from 400,001 to 1,000,000, and more than 1,000,000 inhabitants. The selection of municipalities will be totally random keeping the mentioned sampling distribution parameters.

and. Quotas: Cross-sex quotas will be covered with 6 age brackets.

F. Questionnaire: The questionnaire will last 15 minutes with questions closed. In some of them the option of "Other answers" is contemplated in open.

Regarding the work carried out by the contracted company, according to the Information provided is as follows:

The system used temporarily stores the following data for each call (interview): the personal identification data (telephone number and first name of the interviewee), sociodemographic data (zip code, age and sex of the interviewee), the research data (the answers to the questions posed) and the generated audio.

The CIS states that "The personal data of an identifying nature processed (until their anonymization) have been the telephone number (once a person has answered the phone and agreed to participate in the survey) and first name (without

surnames) of the person answering the questions asked during the survey.

The purpose of treating the given name data is exclusively to favor a treatment

\*\*\*COMPANY.1

cordial and comfortable between the interviewer and the interviewee.

unknown if said first name is real and if it really corresponds to the owner of

the phone line being called.

In order to carry out quality control in the process of collecting information

in the field work, the information validation methods are applied

prescribed in article B.7.2.3 of Annex B of the UNE-ISO 20252:2019 standard

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/20

Market, social and opinion research, including Insights and data analytics –

Vocabulary and service requirements. This validation method consists of

monitoring of the interviews through remote listening that allows the

real-time validation or audio recording that enables validation with

after conducting an interview. This validation seeks to verify

that the interviews have actually been carried out, that the answers provided by the

person interviewed respond to the required sociodemographic profile, that the

interviewer asks the questions correctly according to the instructions

methodologies of the research study and that the interviewer records the

answers correctly (truth and completeness).

Once the field work is finished (in the collection of information through the

telephone interviews), the information obtained is applied a process of

anonymization by means of which the telephone numbers in which conducted the interviews. This is a process of absolute deletion and not dissociation, since once the telephone numbers are erased it is impossible identify the people who responded, nor associate their answers with any information that identifies them individually.

From this point on, the contracted company only processes anonymous data for the performance of statistical analyzes and preparation of tables of results. Thus, at CIS only provides aggregated statistical data without any information that allows individual identification of the people who responded to the survey.

The recordings are kept only for the time necessary to perform the validation explained above and until the results are delivered to the CIS. The purpose of keeping the recordings is to allow, in the event that said company or the CIS detects any incident or error in the results, it can be contrast the information obtained with its source (the interviews).

The term of conservation of personal data (telephone number and recording in audio of the interview) meets the criteria established in the Code of Conduct CODIM (Code of Conduct for the processing of personal data by Market Research organizations, approved by Resolution of the Director of the Spanish Data Protection Agency with file number CT/0005/2017 and to which said company is adhered), which establishes with a period maximum of 6 months.” In this regard, he points out that, in the specific case of this study, the aforementioned company proceeded to its suppression after the publication of the results on April 15, 2020.

Regarding the script used by the company in the calls, it is as follows:

“INFORMATION SUBJECT TO STATISTICAL SECRET (Law 12/89, of May 9, of the Public Statistical Function) Survey included in the National Statistical Plan

2017-2020 approved by Royal Decree 410/2016, of October 31.

Good afternoon days. I am----- from (company name). We are making a survey for the Center for Sociological Research on topics of interest

Usually by telecommuting. For this reason we request your collaboration and

We thank you in advance. This phone has been randomly selected by random methods. We guarantee the absolute anonymity and secrecy of your answers in the strictest compliance with the laws on statistical secrecy and

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/20

personal data protection." The script used in the surveys and included in the questionnaire published, was prepared by the contracted company from the model used by the CIS in its face-to-face surveys, to adapt it to your way of telephone surveys.

The CIS declares that the contracting of the study has been carried out by procedure of emergency, in accordance with the provisions of article 120 of Law 9/2017, of 8 November, Public Sector Contracts. Within the framework of this type of processing, article 37.1 of Law 9/2017, of November 8, establishes that may carry out a contract that is not subject to the usual formal nature of the public contracts, even being able to make a verbal contract." That is why for what the CIS understood was that it was not necessary to formalize any aspect, thus not only data protection regulations were formalized, but neither was formalization of any other type was carried out, beyond requesting four bids for choose the most advantageous. Since the formal processing of the



contracts in ordinary processing, the CIS did not prepare prior to the execution the usual annexes, and therefore, neither the data protection.

It refers, in this sense, to the provisions of Royal Decree-Law 7/2020, of March 12, adopting urgent measures to respond to the economic impact of the COVID-19, which, in its article 16, establishes the following: “1. The adoption of any type of direct or indirect measure by public sector entities to dealing with COVID-19 will justify the need to act immediately, Article 120 of Law 9/2017, of November 8, on Contracts is applicable.

of the Public Sector, which transposes into the Spanish legal system the Directives of the European Parliament and of the Council 2014/23/UE and 2014/24/UE, of 26 February 2014.

2. In accordance with the provision established in the previous paragraph, all contracts to be held by public sector entities to meet the needs arising from the protection of people and other measures adopted by the Council of Ministers to deal with COVID-19, it will be applicable emergency processing.

The CIS points out that, of the proposals received, a copy of which it provides, the one from the company \*\*\*EMPRESA.1 for being the most advantageous to carry out the field work of the “Special Barometer April 2020: coronavirus COVID-19” through a survey CATI phone. The estimated reasons for the award were its lower price and best time for delivery of the data file (sooner), under the same conditions techniques. In addition, the adherence of the company \*\*\*EMPRESA.1 to the Code of Conduct for the treatment of personal data by organizations of Market, Social, Opinion and Data Analysis Research, approved by the Committee for Supervision and Follow-up of the CODIM, Code type registered in the Agency Spanish Data Protection. A certificate of adhesion of the aforementioned is provided

company to said type code.

On the date of May 20, 2020, on the Sector Contracting Platform

Public appears the Announcement of formalization of contract with file number

2020/16 whose contracting entity is the Presidency of the Research Center

Sociological and whose Purpose is "Special Barometers on the measures adopted

regarding COVID19". From this announcement follows, among other things, the following

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/20

information: That the contract for conducting opinion polling services

for the tender of special barometers on the measures adopted

Regarding COVID19, it was awarded to \*\*\*EMPRESA.1. The date of agreement

The award date is May 8, 2020 and the contract formalization date is May 11, 2020.

May 2020.

The CIS has provided the administrative document formalizing the contract of

"Special barometers on the measures adopted regarding COVID-19". In

Said document does not include the stipulations required by article 28.3 of the RGPD.

THIRD: On April 16, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the CIS, for the alleged

infringement of Article 28 of the RGPD, typified in Article 83.4.a) of the RGPD,

declaring that the sanction that could correspond would be a warning, without

prejudice to the result of the investigation.

FOURTH: Notified of the aforementioned initiation agreement, the CIS presented on April 30, 2021

brief of allegations in which he requests the file of the sanctioning procedure,

basing its request on the allegations that are summarized below

continuation:

On March 14, 2020, the State of alarm is declared in Spain through the Real Decree 463/2020, of March 14, declaring the state of alarm for the management of the health crisis situation caused by COVID-19, due to a “an unprecedented health crisis of enormous magnitude.” Because of this and with of an urgent nature, in order to comply with the obligations of the Center for Sociological Research (hereinafter CIS) collected in Law 39/1995, of 19 December, on the organization of the CIS and in Royal Decree 1214/1997, of July 18 relative to the realization of periodic surveys that allow the knowledge of the Spanish public opinion, this is forced to radically suspend, both for safety of the interviewers as well as for the safety of the respondents the realization of surveys in person, having to carry them out during this situation Exceptionally over the phone.

In this way, given the urgency for the fulfillment of the duties that have been assigned by the aforementioned legislation, the CIS chose to outsource The Monthly Barometer for April was exceptional. Furthermore, in this context, the Minister of Health, delegated authority of the State of alarm, sent a letter to the CIS requesting carrying out studies to be able to have, as soon as possible, the relevant sociological information.

Taking advantage of the exceptional procedures allowed by the legal framework, the The processing of the contract was carried out through article 120 of Law 9/2017, of 8 of November, of Contracts of the Public Sector, by which they are transposed to the Spanish legal system the Directives of the European Parliament and of the Council 2014/23/UE and 2014/24/UE, of February 26, 2014 and in accordance with article 37.1 of the same Law, which establishes that a contract cannot be carried out

subject to the usual formal nature of public contracts, and may even be made  
a verbal contract.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/20

In the same way, Royal Decree-Law 7/2020, of March 12, which adopts  
urgent measures to respond to the economic impact of COVID-19, said the  
possible application of emergency processing to those cases in which  
take measures directly or indirectly related to the pandemic.

In this way, within the strictly legal framework and in an extremely  
complicated for Spain, the CIS requested four urgent offers to choose the most  
advantageous and made the emergency contract without all the formalities required in  
periods of normality and whose procedures, as is well known, last for  
quite a few more days than were available at the time.

The winning company offered all the guarantees of quality and especially of  
protection of personal data, since this company complies with the Code  
Code of Conduct CODIM (Code of Conduct for the processing of personal data  
staff by organizations of Market Research, Social, Opinion and  
Data Analysis) approved by Resolution of the Director of the Spanish Agency for  
Data Protection with file number CT/0005/2017). This fact is  
especially relevant, since, being a Code endorsed by the Spanish Agency for  
Data Protection, any Administration must take it for granted that the company  
corresponding is compliant in the field of data protection. which I know  
evidenced by the fact that there has been no breach of protection

of data in the execution of the contract.

The CIS understood that, in this exceptional situation, having no obligation not even to formalize a written contract, he was not obliged to introduce the clauses of data protection that usually appear in all Specifications of clauses (PCAP), since such specifications are not even drawn up. of having carried out a usual procedure, said Bidding Document had been prepared, and had included the pertinent clauses, since in the formalization documents it is unusual to include such clauses.

For all the above, the alleged non-compliance alleged by the Agency is not a breach of material content, as evidenced by the subscription by the awardee of the CODIM Code of Conduct, but it would be, in its case and in other conditions, a defect of formal character. In this sense, it is considered that it is appropriate to speak of the existence of a defect of a formal nature, which may give rise to a warning, when an emergency procedure is carried out that does not require any formalization, and that, therefore, does not require specifications. This approach actually could suppose the eventual warning to all those departments or organizations that processed emergency contracts in that period of time, that none of them elaborated specifications, having even done so, some of them, of verb form. The requirement of this formalization is totally contrary to the spirit of a rule that allows contracting even verbally. Consequently, if consider that this obligation does not exist in emergency contracts, as maintains the CIS, no warning would proceed.

The existence of a possible obligation to formalize a clause of protection of data in an emergency contract, which does not require formalization, is a criterion of interpretable character and, therefore, the only thing it should give rise to, in its case, is a Resolution or regulations in this regard by that Agency, applicable to all by

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/20

the same, and not a warning to a specific managerial center when this criterion of performance has been widespread.

FIFTH: On 03/11/2021, a resolution proposal was issued in the sense

Next:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with warning to SOCIOLOGICAL RESEARCH CENTER, with NIF Q2802464D, for an infringement of Article 28 of the RGPD, typified in Article 83.4 of the RGPD."

SIXTH: Once notified of the aforementioned initiation agreement, the investigated entity submitted a written of allegations on 11/12/2021 in which he requests that the withdrawal of the sanction be assessed proposal, basing your request on the considerations set out below briefly:

FIRST. - The CIS did not incur in any data custody violation personal, adopting all real and effective guarantees. It only did not include clause in the contract, which could be considered a formal error. Also I don't know the rights of citizens were violated since measures were adopted specific as the choice of the winning company, attached to the Code of CODIM Conduct (Code of Conduct for the processing of personal data staff by organizations of Market Research, Social, Opinion and Data Analysis) certified by the Spanish Data Protection Agency itself, which provided guarantees and security regarding strict compliance with the regulations

protection of personal data, which is precisely the purpose of all

the formal obligations contained in the regulations.

SECOND. - The Sociological Research Center has all its actions

adapted to the data protection regulations and keeps all its

processing activities in the Record of Processing Activities, as well as the

corresponding risk analysis, as determined by the RGPD and the Organic Law

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

digital rights. In this sense, the CIS makes a permanent and ongoing effort

of continuous improvement to comply with the provisions of the regulations for the protection of

data and in the instructions indicated by the Spanish Agency for Data Protection

being in permanent communication with the Data Protection Delegate of the

Ministry of the Presidency, Relations with the Courts and Democratic Memory.

THIRD. – The CIS has adopted specific measures to verify the inclusion of the

data protection clauses in all its contracts. Attached as an example are

annexes that were included in contracts, of a similar nature to the one that is the object of

this writing, executed with the company \*\*\*EMPRESA.2 for the realization of 4

studies: 2 barometers and two studies on the consumer confidence index.

Provides a copy of an annex dated May 20, 2021 containing

stipulations relating to the order of treatment.

#### PROVEN FACTS

FIRST: It is clear from the file that the Opinion Barometer is a

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

statistical operation included in the annual program of the National Statistical Plan 2017-2020, approved by Royal Decree 308/2020, of February 11, with the number of statistical operation 7927, with the following content:

“7927 Opinion Barometers

Organisms that intervene MPCM.

Works to be carried out in 2020:

Direction and coordination.

Design and elaboration of the questionnaire and the sample.

Data collection on a monthly basis (except in August) generally in the first fortnight of the month.

Coding, recording, tabulation and validation.

Dissemination of preliminary results around 15 days after completion of the

Recording of data on electronic media, in the case of barometers with political indicators, in accordance with the provisions of Law 39/1995, of 19 December, Organization of the Sociological Research Center.

Incorporation of the detailed results in the technical documentation and signings of microdata in the Data Bank of the Sociological Research Center for its dissemination within a maximum period of three months after the recording of the information in electronic format.

SECOND: The CIS has informed that, in order to carry out the special barometer of opinion April 2020, proceeded to outsource the conduct of the surveys due to the pandemic situation and not being able to count on the necessary technical means to take her over the phone. Recruitment was carried out by the procedure of in accordance with the provisions of Law 9/2017, requesting four bids for choose the most advantageous.

The CIS states that, of the proposals received, a copy of which it provides, the



of the company \*\*\*EMPRESA.1 for being the most advantageous to carry out the work of field of the "Special Barometer April 2020: coronavirus COVID-19" through CATI telephone survey. The estimated reasons for the award were their lower price and better delivery time for the data file (sooner), in the same technical conditions. In addition, the adherence of the company was valued

\*\*\* COMPANY.1 to the Code of Conduct for the processing of personal data staff by organizations of Market Research, Social, Opinion and the Data Analysis, approved by the CODIM Supervision and Follow-up Committee, Type code registered with the Spanish Data Protection Agency. It is contributed certificate of adherence of the aforementioned company to said type code.

THIRD: The technical conditions established by the CIS for the survey telephone were the following:

- a. National scope.
- b. Universe: Spanish population and over 18 years of age.

Field Date: End of March / Beginning of April

- a. Methodology: Telephone interview through the CATI System (delivery to the CIS of the anonymized ASCII or SPSS file).
- b. BBDD: Fixed telephones in homes and mobile telephones with records generated randomly. About 50/50% will be done on phones

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

10/20

fixed/mobile.

- c. Sample: 3,000 surveys.

d. Sample distribution: Proportional to the population of each Community

Autonomous and population size. The strata were formed by the crossing of the

17 autonomous communities, with the size of habitat, divided into 7

categories: less than or equal to 2,000 inhabitants; from 2,001 to 10,000; from 10,001 to

50,000; from 50,001 to 100,000; from 100,001 to 400,000; from 400,001 to 1,000,000, and

more than 1,000,000 inhabitants. The selection of municipalities will be totally

random keeping the mentioned sampling distribution parameters.

and. Quotas: Cross-sex quotas will be covered with 6 age brackets.

F. Questionnaire: The questionnaire will last 15 minutes with questions

closed. In some of them the option of "Other answers" is contemplated in

open.

FOURTH: It is stated that on May 20, 2020, it appears, on the Platform of

Contracting of the Public Sector, the announcement of formalization of contract with number

of file 2020/16 being the contracting entity the Presidency of the Center of

Sociological Research and its object "Special barometers on the measures

adopted regarding COVID19" and the successful bidder \*\*\* COMPANY.1 in said announcement

May 8, 2020 appears as the award date and as the date of

Formalization of the contract on May 11, 2020.

The file contains the administrative document formalizing the contract of

"Special barometers on the measures adopted regarding COVID-19". In

Said document does not include the stipulations required by article 28.3 of the RGPD.

FIFTH: Regarding the work carried out by the contracted company, according to

the information provided is as follows:

The system used temporarily stores the following data for each call

(interview): the personal identification data (telephone number and first name of the

interviewee), sociodemographic data (zip code, age and sex of the

interviewee), the research data (the answers to the questions posed)

and the generated audio.

In order to carry out quality control in the process of collecting information

in the field work, the information validation methods are applied

prescribed in article B.7.2.3 of Annex B of the UNE-ISO 20252:2019 standard

Market, social and opinion research, including Insights and data analytics –

Vocabulary and service requirements. This validation method consists of

monitoring of the interviews through remote listening that allows the

real-time validation or audio recording that enables validation with

after conducting an interview. This validation seeks to verify

that the interviews have actually been carried out, that the answers provided by the

person interviewed respond to the required sociodemographic profile, that the

interviewer asks the questions correctly according to the instructions

methodologies of the research study and that the interviewer records the

answers correctly (truth and completeness).

Once the field work is finished (in the collection of information through the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

11/20

telephone interviews), the information obtained is applied a process of

anonymization by means of which the telephone numbers in which

conducted the interviews. This is a process of absolute deletion and not

dissociation, since once the telephone numbers are erased it is impossible

identify the people who responded, nor associate their answers with any

information that identifies them individually.

From this point on, the contracted company only processes anonymous data for the performance of statistical analyzes and preparation of tables of results. Thus, at CIS only provides aggregated statistical data without any information that allows individual identification of the people who responded to the survey.

The recordings are kept only for the time necessary to perform the validation explained above and until the results are delivered to the CIS. The purpose of keeping the recordings is to allow, in the event that said company or the CIS detects any incident or error in the results, it can be contrast the information obtained with its source (the interviews).

The term of conservation of personal data (telephone number and recording in audio of the interview) meets the criteria established in the Code of Conduct CODIM (Code of Conduct for the processing of personal data by Market Research organizations, approved by Resolution of the Director of the Spanish Data Protection Agency with file number CT/0005/2017 and to which said company is adhered), which establishes with a period maximum of 6 months. The CIS has stated that, in the specific case of this study, the aforementioned company proceeded to its suppression after the publication of the results on April 15, 2020.

Regarding the script used by the company in the calls, it is as follows:

“INFORMATION SUBJECT TO STATISTICAL SECRET (Law 12/89, of May 9, of the Public Statistical Function) Survey included in the National Statistical Plan 2017-2020 approved by Royal Decree 410/2016, of October 31.

Good afternoon days. I am----- from (company name). We are doing a survey for the Center for Sociological Research on topics of interest

Usually by telecommuting. For this reason we request your collaboration and

We thank you in advance. This phone has been randomly selected by random methods. We guarantee the absolute anonymity and secrecy of your answers in the strictest compliance with the laws on statistical secrecy and personal data protection." The CIS has reported that the script used in the surveys and included in the published questionnaire, was prepared by the company hired from the model used by the CIS in its face-to-face surveys, to adapt it to the way you conduct telephone surveys.

## FOUNDATIONS OF LAW

Yo

The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27,

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

12/20

2016, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data and for which Directive 95/46/CE (General Data Protection Regulation, in hereinafter RGPD) and in articles 47 and 48.1 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights (hereinafter LOPDGDD).

II

Article 4 of the RGP, under the heading "Definitions", provides the following:

“1) «personal data»: any 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;

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".

7) "responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of treatment; whether the law of the Union or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the Specific criteria for their appointment may be established by Union Law. or of the Member States.

In this case, the following information relating to people is treated identified or identifiable: landline or mobile phone number, first name, voice, postal code, population, province, age, gender and answers to the questions raised, although an anonymization process is subsequently carried out.

This treatment is carried out by a company contracted by the CIS to carry out the operations that it cannot carry out due to the lack, as it states, of the means technicians and is carried out on behalf of said entity as stated in the script contributed, in which the participants in the survey are informed as follows

"We are conducting a survey for the Center for Sociological Research."

The CIS, on the other hand, is the legitimate entity to carry out said treatment, in accordance with the provisions of article 6.1.e) of the RGPD in relation to the provisions in article 25 of the LOPDGDD, article 3 of its regulatory law, according to which “The functions of the Center for Sociological Research are: (...) c) carrying out studies that provide diagnoses on situations and social issues and serve of orientation to the public authorities in their normative and executive initiatives” and the Royal Decree 308/2020, of February 11, which approves the Annual Plan Program National Statistics 2017-2020.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

13/20

Likewise, the file shows that the CIS has determined, at least, the following aspects:

- a. National scope.
- b. Universe: Spanish population and over 18 years of age.

Field Date: End of March / Beginning of April

- a. Methodology: Telephone interview through the CATI System (delivery to the CIS of the anonymized ASCII or SPSS file).
- b. BBDD: Fixed telephones in homes and mobile telephones with records generated randomly. About 50/50% will be done on phones fixed/mobile.
- c. Sample: 3,000 surveys.
- d. Sample distribution: Proportional to the population of each Community

Autonomous and population size. The strata were formed by the crossing of the

17 autonomous communities, with the size of habitat, divided into 7

categories: less than or equal to 2,000 inhabitants; from 2,001 to 10,000; from 10,001 to 50,000; from 50,001 to 100,000; from 100,001 to 400,000; from 400,001 to 1,000,000, and more than 1,000,000 inhabitants. The selection of municipalities will be totally random keeping the mentioned sampling distribution parameters.

and. Quotas: Cross-sex quotas will be covered with 6 age brackets.

F. Questionnaire: The questionnaire will last 15 minutes with questions closed. In some of them the option of "Other answers" is contemplated in open.

Consequently, the CIS, the entity authorized to carry out the barometers of opinion in accordance with the aforementioned regulations, determines the purpose of the treatment that entrusts to a third party: to carry out one of its functions (the barometer special April) that the CIS could not carry out by itself; determines also, the means to be used: interview through the CATI system, the scope, the dates in which the treatment must be carried out, the sampling distribution, etc., thus responding to the definition of responsible contained in article 4.7 of the RGD.

The aforementioned article 4 of the RGD also defines, in its eighth number, the "manager of the treatment" or "in charge" as "the natural or legal person, public authority, service or other body that processes personal data on behalf of the person responsible for the treatment".

Article 28 of the RGD under the title "Data Processor" provides that:

"1. When a treatment is going to be carried out on behalf of a person in charge of the treatment, this will only choose a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so that the treatment is in accordance with the requirements of this Regulation and guarantees the protection of the rights of the interested party.



(...)

3. The treatment by the person in charge will be governed by a contract or other legal act with under the law of the Union or of the Member States, binding the person in charge with respect to the person in charge and establish the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

14/20

obligations and rights of the controller. Said contract or legal act shall stipulate, in particular, that the person in charge:

a)

personal data only following

will try

instructions

documentation of the person in charge, including with respect to transfers of personal data to a third country or an international organization, unless

is obliged to do so by virtue of the Law of the Union or of the States

members that apply to the person in charge; in such a case, the person in charge will inform the responsible for that legal requirement prior to treatment, unless such Right prohibits it for important reasons of public interest;

b) will guarantee that the persons authorized to process personal data

have undertaken to respect confidentiality or are subject to a

confidentiality obligation of a statutory nature;

c)

d)

and)

take all necessary measures in accordance with article 32;

will respect the conditions indicated in sections 2 and 4 to resort to another

treatment manager;

will assist the person in charge, taking into account the nature of the treatment, through

appropriate technical and organizational measures, whenever possible, to

that it can fulfill its obligation to respond to requests that

have as their object the exercise of the rights of the interested parties established

in chapter III;

F)

will help the person in charge to guarantee the fulfillment of the obligations

established in articles 32 to 36, taking into account the nature of the

processing and information available to the processor;

g) at the choice of the person in charge, will delete or return all personal data

once the provision of treatment services ends, and will delete the

existing copies unless data retention is required

personal under the law of the Union or of the Member States;

i)

will make available to the person in charge all the information necessary to

demonstrate compliance with the obligations set forth in this

article, as well as to allow and contribute to the performance of audits,

including inspections, by the controller or another authorized auditor

by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform

immediately to the controller if, in his opinion, an instruction violates this

Regulation or other provisions on data protection of the Union or of the member states.

4. When a person in charge of the treatment resorts to another person in charge to carry out certain treatment activities on behalf of the person in charge, will be imposed on this other manager, by contract or other legal act established in accordance with the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

15/20

Law of the Union or of the Member States, the same obligations of data protection than those stipulated in the contract or other legal act between the responsible and the person in charge referred to in section 3, in particular the provision of sufficient guarantees of application of appropriate technical and organizational measures so that the treatment is in accordance with the provisions of this Regulation. If that other processor breaches its data protection obligations, the initial processor will remain fully accountable to the controller treatment with regard to the fulfillment of the obligations of the other duty manager.

(...)

9. The contract or other legal act referred to in sections 3 and 4 shall be recorded by written, including in electronic format.

From the documentation in the file it can be deduced that the CIS, given the pandemic situation and the impossibility of carrying out by itself before the absence of technical means the study referred to in this procedure, decided to go to outsourcing by requesting 4 proposals, selecting the

that it considered most advantageous, taking into account for this, among other reasons, the adherence of the company that had provided it to the Code of Conduct for the processing of personal data by research organizations

Market, Social, Opinion and Data Analysis, approved by the Committee of Supervision and Follow-up of the CODIM, Code type registered in the Spanish Agency of Data Protection.

The contracting was carried out by the emergency procedure, which allows the verbal contracting, formalizing the contract on May 11, 2020. The formalization document does not contain the stipulations required by article 28.3 of the RGPD, nor has any other binding document been provided for the in charge with respect to the person in charge that contains them.

The CIS alleges that it has availed itself of the exceptional procedures allowed by the legal framework, carrying out the processing of the contract through article 120 of Law 9/2017, of November 8, on Public Sector Contracts and in accordance with the article 37.1 of the same Law, which establishes that a

contracting not subject to the usual formal nature of public contracts, being able to even make a verbal hiring. He also alleges that he understood that, in this exceptional situation, not having the obligation to even formalize a contract for writing, it was not obliged to introduce the data protection clauses that

They usually appear in all Administrative Clauses Documents (PCAP), since neither such specifications are not even made. If normal processing has been carried out, said Specification had been drawn up, and the pertinent clauses had been included, either that it is not customary to include such clauses in formalization documents. It states, also, that the non-inclusion of the clause in the contract could be considered a form error.

This Agency cannot share such arguments. The RGPD does not regulate in its article

28, no exception to the obligation to formalize the contract or act in writing

legally binding for the person in charge with respect to the person in charge. On the other hand, of the same way in which it is pointed out that such clauses appear in all the specifications of administrative clauses, and that if a usual procedure had been carried out

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

16/20

would appear in it, since in the formalization documents it is not usual include such clauses, the required specifications could have been included by article 28.3 of the RGPD in any other document, provided that the same be binding.

Nor can the absence of the contract referred to in article 28.3 of the RGPD as a mere error of form. Article 28.9 of the same rule imposes the obligation to conclude a written contract, when no other act is in force legally binding, so its absence constitutes an infringement of the RGPD. In this meaning of the LOPDGDD in its article 73 entitled, "Infringements considered serious", considers as such in its letter k) the following:

"k) Entrust the processing of data to a third party without the prior formalization of a contract or other written legal act with the content required by article 28.3 of the Regulation (EU) 2016/679".

The CIS alleges that the winning company offered all the guarantees of quality and especially, of personal data protection, since this company complies with the Code of Conduct CODIM (Code of Conduct for the treatment personal data by Market Research organizations, Social,

of Opinion and Data Analysis) approved by Resolution of the Director of the Spanish Data Protection Agency. Considers that they were not violated rights of citizens since the choice of the winning company, ascribed to the aforementioned code, provided guarantees and security regarding strict compliance of the personal data protection regulations, which is precisely the purpose of all the formal obligations contained in the regulations.

This Agency cannot share said allegation either. adherence to this code, published by the AEPD on its website <https://www.aepd.es/es/documento/ct-organizations-research-markets.pdf>, regardless of whether it has been approved in accordance with the data protection regulations prior to the RGPD, without has not yet produced its conversion to the code of conduct regulated in the RGPD in the terms required under the same, does not exclude the obligation to formalize the corresponding contract or legal act that binds the person in charge with respect to the responsible, as required by article 28.3 of said regulation. In this sense, Article 28.5 of the RGPD provides that "The adhesion of the person in charge of the treatment to an approved code of conduct under article 40 or a mechanism of certification approved under article 42 may be used as an element for demonstrate the existence of sufficient guarantees referred to in sections 1 and 4 of this article." Said precept does not allow to consider that adherence to a code of conduct exempts the person responsible for complying with the obligations provided for in number 3 of article 28, since it refers expressly to the guarantees referred to in numbers 1 and 4 of the aforementioned article 28.

It should be noted here that the RGPD not only requires the formalization of a contract with the specifications of article 28.3, but requires, in article 28.1, that the person in charge choose a person in charge that offers sufficient guarantees to apply appropriate technical and organizational measures so that the treatment is

in accordance with the requirements of the RGPD and guarantees the protection of the rights of the users.

interested. It is in this sense that adherence to a code of

code of conduct, which, on the other hand, must have been approved in accordance with the provisions

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

17/20

in article 40 of the RGPD, but such adhesion in no case replaces the celebration of the

contract referred to in article 28.3.

Insofar as the CIS has adopted specific measures to verify the inclusion of

the data protection clauses in all your contracts, attaching as an example

the annexes included in contracts of a similar nature, does not justify the fact that in the case

object of this file is not fulfilled the obligation set forth in the

article 28.3. In the same way, with regard to the adaptation of its

actions to the data protection regulations keeping updated all

your processing activities in the Record of Processing Activities and keeping

carried out the corresponding risk analysis, do not justify such non-compliance either.

In any case, all these actions alleged by the CIS are not the object of this

procedure, so it is not appropriate to rule on whether they give due

compliance with the provisions of the RGPD and the LOPDGDD.

.

Consequently, in accordance with the exposed evidence, the aforementioned facts

represent a violation of the provisions of article 28.3 of the RGPD, typified as

infringement in section 4.a) of article 83 of the RGPD, which under the rubric

"General conditions for the imposition of administrative fines", establishes the

Next:

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

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

For the purposes of the limitation period, the LOPDGDD in its article 73 k), "Infringements considered serious", states the following:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

k) Entrust the processing of data to a third party without the prior formalization of a contract or other written legal act with the content required by article 28.3 of the Regulation (EU) 2016/679".

III

In the event that there is an infringement of the provisions of the RGPD, between the corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, article 58.2 of said Regulation contemplates the following:

"2 Each supervisory authority shall have all of the following corrective powers listed below:

C/ Jorge Juan, 6



28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

18/20

(...)

b) send a warning to any controller or processor when

treatment operations have violated the provisions of this

Regulation". (correction of errors in Regulation (EU) 2016/679, DOUE number

74, of March 4, 2021

(...)

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

(...)

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each

particular case;"

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine or

warning.

IV

Notwithstanding what is stated in the previous Legal Foundations, article 83.7

of the RGPD provides that, without prejudice to the corrective powers of the authorities of

control under Article 58(2), each Member State may establish

rules on whether and to what extent administrative fines can be imposed on

public authorities and bodies established in that Member State.

The LOPDGDD in its article 77, Regime applicable to certain categories of responsible or in charge of the treatment, establishes the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law.

h) Public sector foundations.

l) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are

sufficient evidence for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for the treatment that

had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions

of the autonomous communities the actions carried out and the resolutions issued

under this article.

6. When the competent authority is the Spanish Data Protection Agency,

this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional authority for the protection of data will be, in terms of the publicity of these resolutions, to what your specific regulations”.

It is not possible to attend to what was requested by the CIS in the sense that the withdrawal of the proposed sanction, since non-compliance with the provided for in article 28.3 of the RGPD in the contracting of the special barometer of opinion April 2020.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE RESEARCH CENTER entity

SOCIOLOGICAL, with NIF Q2802464D, for the violation of article 28.3 of the RGPD typified in article 83.4 of the RGPD, a sanction of warning.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

20/20

SECOND: NOTIFY this resolution to the entity CENTRO DE SOCIOLOGICAL RESEARCH.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of 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 art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the 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

938-231221

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)