☐ Procedure No.: PS/00320/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following:

BACKGROUND

FIRST: Mr. A.A.A., on behalf of Mr. B.B.B. (hereinafter, the

claimant) dated April 16, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against Service of

Responsible Accommodation, S.L. with NIF B19517911 (hereinafter, the claimed).

The claimant states that, in March 2019, he became aware of the

existence of a claim brought against him for breach of contract

deposit allegedly held on July 10, 2018, in which the entity

denounced, assumed the status of his legal representative and signed the contract in

your name, without authorization or representation to do so. It is reported the

processing of the claimant's personal data without a legal basis.

Provides the deposit contract dated July 10, 2018.

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

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the

claims made before the Spanish Agency for Data Protection,

consisting of transferring them to the Data Protection Delegates designated by

those responsible or in charge of the treatment, for the purposes provided in article 37

of the aforementioned norm, or to these when they had not been designated, the transfer of the

claim presented by the claimant to the claimed, so that it proceeded to its

analysis and respond to this Agency within a month.

Within the framework of file E/03725/2020, by means of a document signed on June 5

of 2020, the claim was transferred to the respondent, requesting that, in the

within one month, submit the following information: 1. The decision adopted to

purpose of 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.

Thus, the claimed party was notified electronically on June 9,

2020, as evidenced by the certificate issued by the FNMT that works in the

proceedings.

After the term granted to the defendant without having responded to the

request for information, in accordance with the provisions of article 65.2 of the

LOPDGDD, the admission process agreement is signed on September 16 of this year

of this claim.

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THIRD: On October 8, 2020, the Director of the Spanish Agency for

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

alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5.a) of the

GDPR.

Said agreement was notified electronically on October 20, 2020 to

reclaimed.

FOURTH: Formal notification of the initiation agreement, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

on the content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: That the respondent assumed the status of legal representative of the

claimant and signed a deposit agreement on July 10, 2018 in his name and

consigning the personal data of the claimant, without authorization or

representation for it.

SECOND: It is stated in the deposit contract signed on July 10, 2018, that the

claimed acts as legal representative of the claimant, acted on behalf and

representation of the claimant, signing on his behalf and consigning the data

claimant's personal

THIRD: On October 8, 2020, this sanctioning procedure was initiated by the

alleged infringement of article 6.1) of the RGPD, being notified on October 20,

2020. Not having made allegations, the respondent, to the initial agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

II

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

and guarantee of digital rights, in its article 4.11 defines the consent of the

interested party as "any manifestation of free will, specific, informed and

unequivocal by which the interested party accepts, either by means of a declaration or a

clear affirmative action, the treatment of personal data that concerns you".

Article 6.1 of the RGPD establishes the following:

1. The treatment will only be lawful if at least one of the following is met

conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is 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 measures

pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions.

In this sense, article 6.1 of the RGPD, establishes that "in accordance with

the provisions of article 4.11 of Regulation (EU) 2016/679, means

consent of the affected party, any manifestation of free will, specific,

informed and unequivocal by which it accepts, either by means of a declaration or

a clear affirmative action, the processing of personal data that concerns you".

III

In accordance with the available evidence, it is considered that the

facts denounced, that is to say, that the defendant acted as legal representative of the

claimant, intervened in the name and on behalf of the claimant, signing on his behalf

name and consigning the personal data of the claimant, without any legitimation

on the part of the defendant, supposes an infraction to the principle of legitimacy in the

data processing.

This action supposes that it processed the personal data of the claimant (name,

surnames and D.N.I.), without having legitimacy for the treatment of the data of the

claimant, thereby violating art. 6 of the GDPR.

Well, with respect to the facts that are the subject of this claim,

We must emphasize that the defendant, despite the repeated requests he received from the

AEPD to explain the facts on which it deals, never responded or

provided any evidence that would allow estimating that the treatment of the data of the

claimant had been legitimate.

We refer in this regard to the request for information that the AEPD

addressed the claimant in the framework of E/03725/2020. Request whose receipt by him

It is proven (certificate issued by the FNMT) that it happened on June 9,

2020.

However, no response was received and on September 16,

this year it was agreed to admit the claim for processing. reminder that,

circumscribed to the violation of article 6.1. of the RGPD, is intended to highlight

manifest that the respondent has had ample opportunity to provide evidence or

documents that prove that, contrary to the statements and evidence

documents provided by the claimant, the processing of data that is subject to

valuation in the present case was adjusted to Law.

Likewise, the notification of the Agreement to Commence this procedure, which

was notified electronically on October 20, 2020, with no evidence of allegations

the same.

The lack of diligence displayed by the entity in complying with the

obligations imposed by the personal data protection regulations

it is therefore evident. Diligent compliance with the principle of legality in the treatment

of third-party data requires that the data controller be in a position

to prove it (principle of proactive responsibility)

In short, there is evidence in the file that the defendant dealt with the

personal data of the claimant without legitimacy to do so. The behavior described

violates article 6.1. of the RGPD and is subsumable in the sanctioning type of the article

83.5.a, of the RGPD.

IV

Article 72.1.b) of the LOPDGDD states that "according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

c) The processing of personal data without the concurrence of any of the conditions

of legality of the treatment in article 6 of Regulation (EU) 2016/679."

V

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

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 in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum.

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

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

- The lack of cooperation with the AEPD in order to remedy the infraction and

mitigate its effects (article 83.2.f, of the RGPD)

-Basic personal identifiers are affected (name,

surnames, address, D.N.I.) (article 83.2 g).

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

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE RESPONSIBLE ACCOMMODATION SERVICE, S.L., with

NIF B19517911, for an infringement of Article 6.1 of the RGPD, typified in Article

83.5 of the RGPD, a fine of 6,000 euros (six thousand euros).

SECOND: NOTIFY this resolution to the ACCOMMODATION SERVICE

RESPONSIBLE, S.L.

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

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

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

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

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

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

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

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