 File No.: EXP202102257

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claiming party) dated August 30, 2021

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the HEALTH SERVICE OF THE BALEARIC ISLANDS (IB-

SALUT) with NIF Q0719003F (hereinafter, the claimed party). The reasons on which

The claim is based on the following:

The claimant states that the Health Service of the Balearic Islands obliges all

who enters the islands to fill in the "Digital Sanitary Control Form (Fcs)

for Documentary Control in Ports and Airports in the Balearic Islands" and

considers that it does not comply with the principle of data minimization since they are not

adequate, relevant or limited to what is necessary in relation to the purposes for which

that are treated.

The document appears in the link: https://viajarabaleares.ibsalut.es/formulario/?

locale=en

Likewise, it questions the validity of the information on the legal basis cited

for the processing of personal data, hosted on the website:

https://www.ibsalut.es//es/informacion-sobre-el-tratamiento-dedatos-personales.

On the other hand, it shows its disagreement with the purposes of the treatment that is

They cite "guaranteeing the provision of ordinary or extraordinary services in order to

guarantee the sanitary control of the entry of passengers in ports and airports

of the Balearic Islands and with statistical uses and health research". It understands that the

statistical purposes and guaranteeing the provision of services (without indicating what they are) are not

can be understood as encompassed within the possible qualification derived from the

health emergency.

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

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

forward LOPDGDD), said claim was transferred to the claimed party, for

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

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on September 23, 2021

as stated in the acknowledgment of receipt in the file.

On November 1, 2021, this Agency received a written response to the

transfer of the claim presented by the claimant party 1 indicating, in summary,

the context in which the adoption of this measure is framed; the organism

responsible for determining the purposes and means of personal data processing

related to the sanitary control of ports and airports; that the criteria in

that was based for the definition of the purposes of the processing of personal data

carried out during the sanitary control in the ports and airports of the Islands

The Balearic Islands were those established by the Ministry of Health of the Government of Spain

and the creation of a new treatment activity in its registry under the title "Control passenger toilet in ports and airports of the Balearic Islands"; the legal basis of treatment (articles 6.1.c) and 6.1.e) of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD)), the data collected for the purpose of to comply with the principle of data minimization; the way in which it is facilitated treatment information "Health control of passengers in ports and airports de las Illes Balears" to the interested parties, expresses the claimed part that is provided in two layers: a first one in the footer of the FCS, and a second one in the direction of Internet https://www.ibsalut.es/es/informacion-sobre-eltratamiento-de-datos-personal.

THIRD: On November 30, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: The General Sub-Directorate of Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and of the powers granted in article 58.1 of the GDPR, and of in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

To carry out the pertinent checks, the current FCS has been accessed with dated August 3, 2021 and to the information on personal data linked by this with the title "IB-SALUT PORTAL POLICY 19 APRIL 2021").

The FCS published on August 3, 2021 has the following description of the purpose of the treatment: "Your personal data will be processed for the purposes surveillance and sanitary control of the COVID-19 pandemic, to guarantee the provision of ordinary or extraordinary services in order to ensure control

health of the entry of passengers in the ports and airports of the Balearic Islands

and for statistical and health research purposes.”

The IB-Salut portal policy of April 19, 2021 expressed the following in

relation to the purpose: "Your personal data will be processed for surveillance and

health control due to the pandemic caused by COVID-19, guarantee the provision of

of ordinary or extraordinary services in order to guarantee sanitary control

of the entry of passengers in the ports and airports of the Balearic Islands and with uses

statistics and health research.

The Registry of Treatment Activities of the General Directorate of the Information Service

Salud de las Islas Baleares contains, in relation to the purpose of the treatment

"Sanitary control of passengers in ports and airports of the Balearic Islands" the

following text:

“Purpose of the treatment

Health surveillance and control due to the pandemic caused by COVID-19

Guarantee the provision of ordinary or extraordinary services in order to

guarantee the sanitary control of the entry of passengers in ports and airports

from the Balearic Islands

Statistical uses and health research”

On the legal basis of the treatment

The FCS published on August 3, 2021 does not have information on the basis

legal treatment. However, it does contain a link (“if you want more

information on the use of your personal data, click here") to the portal policy

IB-Salut, which in its version of April 19, 2021 stated the following:

"Personal data will be processed by the Health Service of the Illes

Balearic Islands and incorporated into the treatment activity "Sanitary control of passengers in

ports and airports of the Balearic Islands".

The processing of your data is necessary for compliance with a legal obligation

applicable to the controller and for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers vested in the

responsible for the treatment (Royal Decree 926/2020 of October 25, by which

declares a state of alarm to contain the spread of infections caused

by SARSCoV-2, Royal Decree-Law 23/2020, of June 23, which approves

measures in the field of energy and in other areas for economic reactivation,

Resolution of November 11, 2020, of the General Directorate of Public Health,

regarding the sanitary controls to be carried out at the points of entry into Spain).

Notwithstanding the foregoing, in its Response to the Transfer the defendant adds that

"From the date on which IB-Salut registered the treatment "Sanitary control of

passengers in ports and airports of the Balearic Islands", new Regulations and/or

Assumptions that enable such treatment has entered into force [...], which has not been

updated or included in the IB-Salut RAT."

Thus, it states that it will be corrected and indicates that the correct information is:

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"Art. 6.1.e), the treatment is necessary for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers vested in the

responsible for the treatment.

- Art. 9.1.i), the treatment of special categories for reasons of interest

essential public in the field of public health.

- Art. 9.1.g), processing is necessary for reasons of public interest

essential.

- Art. 9.1.h) the treatment is necessary for preventive medicine purposes.

Referencing the correct regulations that enable the legal basis of treatment:

Law 14/1986, of April 25, General Health

Law 33/2011, of October 4, General Public Health.

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- Resolution of November 11, 2020, of the General Directorate of Health

Public, related to the sanitary controls to be carried out at the points of entry

from Spain. The sanitary control form in paper format contemplated in

the same, may be used exceptionally and for a period of

one month.

- Decree 21/2020, of December 14, of the President of the Balearic Islands, by

that limitations are established on the entry into the Balearic Islands of people

from the rest of the autonomous communities and the cities of Ceuta

and Melilla, as a consequence of the declaration of the state of alarm and to

deal with the health emergency situation caused by COVID-19

- Resolution of the Minister of Health and Consumption of March 18, 2021 by

which establishes specific sanitary measures to provide safety in the

access to the Balearic Islands for residents or visitors for any reason

justified.

- Resolution of June 4, 2021, of the General Directorate of Public Health,
regarding the sanitary controls to be carried out at the points of entry of
Spain, under the provisions of the first article of Royal Decree-
Law 8/2021, of May 4 and the provisions of article 52 of the Law
33/2011, of October 4, General Public Health.
- Decree 33/2021, of April 9, of the President of the Balearic Islands, by which
temporary and exceptional measures are established for reasons of public health
for the containment of COVID-19 in all the Balearic Islands, under the protection of the
declaration of the state of alarm, and modification of Decree 21/2020, of
December 14, of the President of the Balearic Islands, establishing
Limitations on the entry into the Balearic Islands of people from the rest
of autonomous communities and the cities of Ceuta and Melilla, such as
consequence of the declaration of the state of alarm and to deal with the
health emergency situation caused by COVID-19.
- Royal Decree-Law 8/2021, of May 4, adopting measures
urgent in the sanitary, social and jurisdictional order, to be applied after the
expiration of the validity of the state of alarm declared by the Royal Decree
926/2020, of October 25, declaring the state of alarm for
contain the spread of infections caused by SARS-CoV-2.
- Resolution of June 4, 2021, of the General Directorate of Public Health,
regarding the sanitary controls to be carried out at the points of entry of
Spain.
- Resolution of June 8, 2021, of the General Directorate of Public Health,
by which the one of June 4, 2021, related to the controls is modified
health services to be carried out at the points of entry into Spain, under the protection of the

contemplated in the first article of Royal Decree-Law 8/2021, of May 4

and what is established in article 52 of Law 33/2011, of October 4,

General of Public Health.

- Agreement of the Governing Council of June 28, 2021 by which the

establish exceptional conditions for the organization, reservation and sale of

organized trips to groups of people, in the Balearic Islands, to prevent and

contain the pandemic caused by COVID-19 throughout the month of July

2021 and the effectiveness of the measures contained in the

Agreement of the Governing Council of June 18, 2021 by which the

establish the health alert levels that must be applied in each

of the islands

- Agreement of the Governing Council of September 8, 2021 by which the

establishes the exceptional control measure for the entry of people into the

Illes Balears coming from the rest of the autonomous communities and from the

cities of Ceuta and Melilla, to prevent and contain the pandemic caused

by COVID-19 until October 31, 2021 (hereinafter,

"Agreement of the Governing Council of September 8, 2021")"

As has been verified, the Registry of Treatment Activities of the Directorate

General of the Health Service of the Balearic Islands, in relation to the legal basis

of the treatment "Sanitary control of passengers in ports and airports of the Illes

Balearic Islands" currently includes the text described by the claimed party in its response

to the transfer of the claim.

FIFTH: On June 14, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of article 13 of the GDPR, typified in article 83.5 of the

GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

the LPACAP, the claimed party submitted a pleading in which, in summary,

stated the following:

1.- First of all, they show their disagreement with the need to refer

to the articles of the RGPD of the legal bases that legitimize the aforementioned treatment to the

understand that said need is not included in the applicable regulations,

RGPD and LOPDGDD, nor in the interpretative guides of the AEPD.

2.- Below and in relation to the validity of the regulations referenced in the

notice made available to users on the legal basis of the treatment, the part

The defendant affirms that it took as a reference the legal basis of the treatment “SpTH Spain

Travel Health”, carried out by the General Directorate of Public Health (Subdirectorate

Ministry of Foreign Health of the MSBS), determining that the legality of the treatment

"Sanitary control of passengers in ports and airports of the Balearic Islands" was the

same as that determined by the MSBS. and that, in any case, he understands that it is about

a formal error that at no time could have caused a situation of

material misinformation to the interested parties that causes harm or harm to them,

while it has always been complying with the essential principles of the

applicable regulations on data protection and, specifically, article 13

GDPR.

3.- Lastly, it insists that, in the event that it could be considered that

produced an infringement, this would not have affected the rights and freedoms

Of the interested. He bases said statement on the following points: a) the consideration that it cannot be considered that there is an infringement material enough of the right to information of the affected party for not providing all the information required by articles 13 and 14 of the GDPR; b) there has not been a continuity in time of the same while the claimed party considers that made its best efforts to implement measures to alleviate such

situation and correct such hypothetical regulatory deficiencies as soon as possible possible; c) there has been no intention on his part; d) considers that there has been no damage.

He concludes his statement of allegations by requesting that the absence of administrative responsibility or, failing that, proceed to the mere warning, given the nature of the present infraction, the lack of continuity in the time of the itself and the implementation of measures to alleviate the existing situation, the absence intentionality and non-irrogation of material or psychological damages or harm to the interested.

SEVENTH: On August 1, 2022, a resolution proposal was formulated, proposing to penalize the party claimed by a breach of article 13 of the GDPR.

In said motion for a resolution, a response was given to the allegations raised against the initiation agreement, indicating the following:

1.- In relation to the statement regarding the unnecessaryness of referring to the

articles of the GDPR of the legal bases that legitimize the treatment, this Agency does not can share said opinion and this because of the reading of section 1.c) of the Article 13 of the GDPR can only be made the unequivocal interpretation of the will of the legislator that those affected clearly know both the purposes of the processing as the legal basis thereof. Legal basis that, to be lawful, must rely, necessarily, on any of the sections of article 6 of the GDPR.

2.- Regarding your second allegation, we proceed to clarify, firstly, that the adaptation to current regulations of the procedure established by the Management Department of Public Health (General Subdirectorate of Foreign Health of the MSBS) is not object of this procedure and that, therefore, its assessment does not proceed here.

On the other hand, neither can the consideration be accepted as a mere formal error without consequences of making information available to those affected incomplete or erroneous in terms of the regulatory references applicable to the treatment of your personal data. And this because it supposes a clear defenselessness that makes it difficult, if it does not prevent said persons from knowing the reasons that allow them to consider lawful the processing of your personal data affecting one of your rights fundamental.

3.- In conclusion, we can only disagree with the statement made by the party claimed on the lack of affectation to the rights and freedoms of the interested party: it has been produced a violation of the right to information required in article 13 of the GDPR for not having made available to those affected the correct information and update of the legal basis for the processing of your personal data. the existence and prolongation in time of said infraction has been not only proven but also recognized by the claimed party.

In relation to the lack of intent on the part claimed, suffice it to say that it is not requires a special intention to break the rule in this type of offences; is

sufficient to verify non-compliance without there being a reason, force majeure or other

similar nature, can positively exclude guilt.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

EIGHTH: On August 8, 2022, the claimed party submits a written

allegations against the proposed resolution in which, in summary, the

following considerations:

1.- In its first allegation, the defendant emphasizes that, in the Form of

Sanitary Control ("FCS"), the interested parties were informed using the mechanism

of information in two layers provided for in article 11 of Organic Law 3/2018 of

Data Protection and Guarantee of Digital Rights ("LOPDGDD"). Considers

proven that the first and second information layers, in their versions of April 19

of 2021, incorporated both the purposes of the treatment and the legal basis thereof.

Likewise, it reiterates its conviction that the obligation contained in the

GDPR consists simply of informing about the purpose and legal basis of the

treatment, without it being necessary to expressly mention the GDPR, nor

cite the numerical reference of the corresponding section and article in each case (in

In this case, article 6 sections c) and e)).

2.- Regarding the possible defenselessness of the interested parties in relation to their right to

information, the one claimed reiterates what has already been said throughout the procedure, recog-

noting that, indeed, the regulations initially referenced in the policy of the

IB-SALUT portal was not the one in force at that time. However, you also understand

It is also important to take into account that the purpose of the regulatory provisions

erroneously cited was the same as that of those that should have been cited, trying to

It is only an out-of-date in relation to the standard in force at the moment.

of the facts considering therefore that what exists is a merely for-

wrong, not material, with which no defenselessness was caused to the interested parties.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The Digital Sanitary Control Form (Fcs) for Documentary Control

in Ports and Airports in the Balearic Islands published on August 3, 2021

did not have information on the legal basis of the treatment, its content being

literally the following:

Your personal data will be processed for the purposes of surveillance and control.

of the COVID-19 pandemic, to guarantee the provision of

ordinary or extraordinary services in order to ensure sanitary control

of the entry of passengers in the ports and airports of the Balearic Islands and

for statistical and health research purposes.

However, it did contain a link (“if you want more information about using

your personal data, click here") to the IB-Salut portal policy, which in its version

of April 19, 2021 stated the following:

"Personal data will be processed by the Health Service of the

Illes Balears and incorporated into the treatment activity "Sanitary control of

passengers in ports and airports of the Balearic Islands".

The processing of your data is necessary for the fulfillment of a
legal obligation applicable to the data controller and for compliance
of a mission carried out in the public interest or in the exercise of public powers
conferred on the data controller (Royal Decree 926/2020 of 25 December
October, by which the state of alarm is declared to contain the
spread of infections caused by SARSCoV-2, Royal Decree-law
23/2020, of June 23, which approves energy measures
and in other areas for the economic reactivation, Resolution of 11
November 2020, of the General Directorate of Public Health, regarding the
health checks to be carried out at points of entry into Spain).

SECOND: Currently, the Registry of Information Treatment Activities
General Directorate of the Health Service of the Balearic Islands, in relation to the database
legal treatment "Sanitary control of passengers in ports and airports of the
Illes Balears" includes the text described by the claimed party in which it is made
express reference to both article 6 of the GDPR as the basis for the legality of the
treatment, as well as the sectoral regulations that are applicable.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the RGPD grants to each authority of
control and as established in articles 47 and 48.1 of the LOPDGDD, it is
competent to initiate and resolve this procedure the Director of the Agency
Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures
processed by the Spanish Data Protection Agency will be governed by the provisions
in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

In response to the allegations raised, it is appropriate to make the following considerations:

1.- In relation to the first of your allegations, we proceed to point out that it cannot be estimated. As has been collected throughout the procedure and as indicates the claimed party, even though the FCS did not initially collect the basis of legitimation for the treatment, it did contain a link that referred to the policy of the IB-Salut portal in which several sections were cited generically of article 6 of the GDPR, without specifying which of them were applicable to the case specifically of the FCS nor did it include the normative provisions that so provided.

In this sense, it is insisted that the mere generic reference to the bases of the treatment that was included in the IB-Salut portal policy cannot be considered as complete information, especially taking into account that the regulations that are referenced as founding the applicability of said legitimizing bases

It was not in force at the time of the facts. The principles of transparency and legal certainty that govern the actions of public administrations, as well as the obligation to comply with the principle of transparency provided in art. 5.1.a) of the GDPR necessarily require that, when the processing is based on any of the legal bases provided for in art. 6.1.c) and 6.1.e) of the GDPR

(fulfillment of a legal obligation or fulfillment of a mission carried out in

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

treatment) the citizen is indicated clearly and precisely what is the norm

legal enabling law regarding said treatment (within the meaning of art. 8 of the

LOPDGDD).

It has been made clear in this file and acknowledged by the party

claimed that this was not the situation in which we found ourselves. just as i know

reflects, in fact, in the response given by the claimed party itself to the requirement

of this Agency carried out during the previous investigation actions, in which

not only recognized the non-compliance that is the subject of this file, but also reflected

also in your proposal the necessary reference to the exception applicable in this case

to be able to process special categories of data, such as health data (article

9.2 of the GDPR).

The Agency's approach in this regard has been demonstrated in numerous

occasions (the various Guides published by the AEPD to facilitate

understanding and compliance with sectoral regulations, such as the guide

for data controllers or that relating to compliance with the duty to inform).

The information provided must be complete and comprehensive of all

obligations essentially generated by virtue of articles 13 and 14 of the GDPR

but also, as is logical, of the principles that govern the regulations for the protection of

data being especially relevant for our purposes, that of responsibility

proactive.

2.- Regarding the possible defenselessness of the interested parties in relation to their right to

information, this Agency can only reiterate what has already been said throughout the procedure.

to: ignorance of the applicable and enabling regulations for the treatment of data

personal data in general, and in particular, those of a special nature such as data

related to health, cannot be considered more than a reason for defenselessness of the

citizen, since it prevents him from defending himself against possible abuse, as well as

conscious and voluntary compliance with the mandates to which he may be subjected,

as the possible exercise of the rights derived from the treatment in question.

II

When personal data is collected directly from the interested party, the information

It must be provided at the same time that data collection takes place. He

Article 13 of the GDPR details this information in the following terms:

"1. When personal data relating to him or her is obtained from an interested party, the

responsible for the treatment, at the time they are obtained, will provide you with

all the information listed below:

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

representative;

b) the contact details of the data protection officer, if applicable;

c) the purposes of the processing for which the personal data is intended 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 categories of recipients of 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 of

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

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

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

to the fact that they have been lent.

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

treatment will provide the interested party, at the time the data is obtained

personal data, 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 term;

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

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

of their 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

at 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 control 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 providing

such data;

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

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, information

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the person responsible for the treatment plans the subsequent processing of data

personal information for a purpose other than that for which it was collected, will provide the

data subject, prior to said further processing, information about that other purpose

and any additional information relevant under section 2.

4. The provisions of sections 1, 2 and 3 will not be applicable when and in the

to the extent that the interested party already has the information".

In accordance with these regulations, the duty to inform corresponds to the person responsible for the

processing of personal data.

In this case, the claimed party did not adequately inform the legal basis of the

treatment. As reflected above, the information provided in the second

layer, not respecting also the recommendations given by this Agency, did not

any reference to the GDPR, referring generically to several of the bases

included in its article 6.1, without specifying which would be applicable to concrete

data processing derived from the completion of the FCS, nor allude to the reasons

that would allow the treatment of data of a special nature such as the data of

health. Likewise, it should be noted that the regulations that it did include were not

in force at the time of the facts.

IV.

Based on the available evidence, it is considered that the party

claimed has informed deficiently of the legal basis of the treatment of the

data that was going to be carried out when those affected completed the FCS.

Known facts are considered to constitute an infringement, attributable to the

claimed party, for violation of article 13 of the GDPR.

This offense is typified in article 83.5.b) of the GDPR, which under the

section "General conditions for the imposition of administrative fines" provides

the next:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

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

total annual global business volume of the previous financial year, opting for

the highest amount:

(…)

b) the rights of the interested parties in accordance with articles 12 to 22;(…)".

For the purposes of the limitation period, article 74 of the LOPDGDD indicates:

"Article 74. Offenses considered minor.

The remaining infractions of a nature are considered minor and will prescribe after one year.

merely formal of the articles mentioned in sections 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to

information of the affected party for not providing all the information required by articles 13

and 14 of Regulation (EU) 2016/679”.

V

Article 83 "General conditions for the imposition of administrative fines" of the

GDPR in its section 7 establishes:

"Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and bodies

public establishments established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of

responsible or in charge of the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

(…)

c) The General State Administration, the Administrations of the communities

autonomous entities and the entities that make up the Local Administration.

(…)

2. When the managers or managers listed in section 1 commit

any of the offenses 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

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense 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, if any.

(…)

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."

SAW

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the

proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE THE HEALTH SERVICE OF THE BALEARIC ISLANDS (IB-SALUT), with NIF Q0719003F, for a violation of article 13 of the GDPR, typified in the Article 83.5 of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to HEALTH SERVICE OF THE BALEARIC ISLANDS (IB-SALUT).

THIRD: COMMUNICATE this resolution to the Ombudsman, in

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 the interested parties have been notified.

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

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

Interested parties may optionally file an appeal for reversal before the

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

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

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

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

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-

web/], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

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