

□ File No.: EXP202102522

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On February 4, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against CORON ISLAND  
SLU (hereinafter the claimed party). Notified of the start agreement and after analyzing  
the allegations presented, on April 4, 2022 the proposal for  
resolution transcribed below:

<<

File number: EXP202102522

## PROPOSED RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant party) dated August 25,  
2021 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against CORON ISLAND SLU with NIF B67031344 (hereinafter,  
the claimed party). The grounds on which the claim is based are as follows:

The complaining party states that after consuming in a restaurant owned by the  
claimed party, requested the issuance of an invoice in his name, requesting the  
in charge of the data of your telephone number that, being information not necessary  
for the issuance of the invoice, refused to provide it, subjecting the claimed party to its

emission, to the fact of facilitating the data of your telephone number.

And, provide a copy of the simplified invoice issued and the claims sheet where the claimed party states that it requests said information to issue the invoice, as it is a requirement of your computer system to create the user in your database.

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

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the

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actions carried out to adapt to the requirements set forth 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 (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of making available, understanding rejected in accordance with the provisions of art. 43.2 of the LPACAP on October 11, 2021, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of informative, a copy was sent by mail that was reliably notified in dated October 26, 2021. In said notification, he was reminded of his obligation to communicate electronically with the Administration, and they were informed of the means

of access to said notifications, reiterating that, in the future, you would be notified exclusively by electronic means.

No response has been received to this transfer letter.

THIRD: On November 25, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On February 4, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written

<< that society is

pleadings in which, in summary, it stated:

committed to Data Protection and has established procedures for the Treatment of personal data. The company has not established any protocol, procedure or instruction involving the request for the telephone number mobile for the issuance of the simplified invoice. Those in charge of managing of simplified invoice issuance do not request the telephone number, since in the CRM box They record a generic number that is enabled for it. Given the tense situation, waiter who served the complaining client could not remember this number, whose insertion is required for the computer program to issue the invoice, and therefore made the mistake of requesting the data that the program requested in order to finish and deliver the claimed invoice. It is very important to note that this party, and specifically its workers in charge of data processing,

They scrupulously comply with the principle of "data minimization", regulated in the

General Data Protection Regulation; that is, technical measures are applied and organizational measures to ensure that the data they contain is processed. are only necessary for each of the specific purposes of the treatment, specifically to write invoices; reducing, the extent of treatment, limiting the period of conservation and its accessibility to what is necessary.

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By virtue of the foregoing, only the personal data to be processed is collected, that is, that is, those that are strictly necessary for the treatment, in this case the elaboration of bills. The data is only collected when it is going to be processed, for Therefore, data is not collected to be used later; moreover, they collect only after express request of the clients. The personal information of users or clients is only used for the purpose for which it was collected, that is, to prepare the requested invoice, but not for any other purpose.

Indicate that the company has exhaustive control tools in place so as not to violate the right of users, and in no case is information transferred to third parties, guaranteeing at all times that the collection and processing of data it is done in accordance with the regulations and respecting the principle of minimization. Here there has only been a human error of someone who did not know how to prepare an invoice duly, but the data of the client (...). As previously indicated,

This restaurant has implemented a measure that includes data minimization for the preparation of invoices, and there being no intentionality or bad faith to use these data subsequently, the nature, context and

and the purpose of processing the data in question.

In the case at hand, there has only been one injured party because in the usual treatment

This data is not requested with clients because those responsible for issuing

invoices already know how to open a customer file without the phone number.

Logically, as has already been stated, there has been no intentionality at all, which

which is also proven by the fact that the personal data has not been processed for

any. The act was committed by a worker, who due to the urgency and

organized scandal considered that the best thing was to make the invoice urgently

simplified without waiting for the person in charge of said realization. The greater abundance

requested personal data (telephone) has the category of identified not especially

protected and that has not been used or treated beyond opening the file to the client.

In the case that concerns us there has not been a continuous character, since it has been a

isolated and special case; the data collected cannot benefit society or

It can be useful for the restoration activity carried out by the company. Finally,

emphasize that it was the tense situation generated that caused the extraordinary events

occurred and that have ended up being the subject of this file>>.

Likewise, it requests that this file be archived and that the party not be sanctioned.

claimed, or subsidiarily, that other corrective measures be applied less

harmful.

SIXTH: On February 23, 2022, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous actions, as well as the documents provided by the claimed party.

SEVENTH: Attached as an annex is a list of documents in the

process.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

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## PROVEN FACTS

FIRST: It is accredited that a person in charge of the claimed party requested the claimant his telephone number for the issuance of the corresponding invoice, as it is information that was not necessary refused to provide it, subjecting the claimed party to its emission, to the fact of facilitating the data of your telephone number.

SECOND: In the claim sheet provided by the claimant, it is credited in the statement made by the claimed party that said data is requested to issue the invoice, as it is a requirement of your computer system to create the user in your database.

## FOUNDATIONS OF LAW

Yo

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

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

## II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

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paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not

deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of

scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provided for in section 1 and able to demonstrate it ("proactive responsibility")."

### III

In the present case, it is considered proven that the defendant, as recognizes in the claim form, and in the allegations made to the Agreement of Home requested the complaining party's telephone number to prepare the corresponding invoice.

The documentation in the file offers clear indications that the party claimed violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPDGDD, duty of confidentiality, materialized in that the personal data that are required to issue the invoice are excessive for the intended purposes.

Royal Decree 1619/2012, of November 30, approving the Regulation by which billing obligations are regulated (BOE no. 289, of 1/12/2012), includes in its article 6 the content of the invoice: <<All invoices and their copies contain the data or requirements listed below>>.

These requirements include, among others, the name and tax identification number, but not so the data of the telephone number.



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For its part, article 5.1.c) of the RGPD establishes the principles relating to the treatment, indicating in this regard that: "Personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")".

Also Recital 39 states: "...Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed.

In accordance with the principle of data minimization, data must be collected data that is adequate, relevant, and limited, that is, not excessive in relation to with the specific and legitimate purpose for which they were obtained and collected. On the other hand, the relevance in the processing of personal data prevents the treatment of those that are not necessary for the purpose that justifies the treatment, and the treatment of excessive data must be restricted or proceed to their removal.

In its defense, the respondent entity alleges that it has not established any protocol, procedure or instruction involving the request of the mobile telephone number for the issuance of the simplified invoice. Those in charge of carrying out the emission management of simplified invoice do not request the telephone number, since in the CRM box they record a generic number that is enabled for it.

The waiter who served the complaining client could not remember this number, whose insertion is required for the computer program to issue the invoice, and therefore made the mistake of requesting the data that the program requested in order to

finish and deliver the claimed invoice.

Well, in the present case, the fact of requesting the data of the telephone number of the complaining party is excessive for the purpose for which it was intended. Not having legitimate basis for it. The known facts could be constitutive of a infringement, attributable to the claimed party, for violation of article 5.1.c) of the RGD, where it provides that the personal data processed by the person in charge will be: “adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”)”.

IV

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGD that, under the heading “General conditions for the imposition of administrative fines”, states:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

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a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe

after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

v

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

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"

SAW

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. For the purpose of determine the administrative fine to be imposed, the provisions of the article 83, section 2 of the RGPD, which states:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;

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- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", establishes:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of

personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party".

In order to specify the amount of the penalty to be imposed on the person claimed for violation

of article 83.5 a) of the RGPD, it is essential to examine and assess whether the

circumstances described in article 83.2 of the RGPD for which the company is responsible.

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claimed party, the following aggravating factors are considered concurrent:

The obvious link between the data controller and data processing (article 83.2k, of the RGPD in relation to article 76.2b, of the LOPDGDD).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and set it at the amount of €2,000 for the infringement of article 5.1.c) of the RGPD.

7th

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In such a case, this Agency may require the person in charge to adapt the processing of personal data carried out in accordance with data protection regulations in accordance with what is indicated in the preceding Legal Basis.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, being able to motivate such conduct the opening of a subsequent administrative procedure sanctioning

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

CORON ISLAND SLU, with NIF B67031344, for an infraction of Article 5.1.c) of the

RGPD, typified in Article 83.5 a) of the RGPD, with a fine of 2,000 euros (two thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, informs that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same. With the application of this reduction, the penalty would be established at 1,600 euros (one thousand six hundred euros) and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, must do so effective by depositing it in restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the entity banking CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause, for [www.aepd.es](http://www.aepd.es)

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voluntary payment, reduction of the amount of the sanction. Also, you must send the proof of entry to the General Subdirectorate of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.

so that within TEN DAYS you can allege whatever you consider in your defense and

present the documents and information that it considers pertinent, in accordance with

Article 89.2 of the LPACAP.

BBB

INSPECTOR/INSTRUCTOR

EXHIBIT

File index EXP202102522

08/25/2021 Claim from A.A.A.

09/30/2021 Claim transfer to CORON ISLAND SLU

10/11/2021 Reiteration to CORON ISLAND SLU

11/25/2021 Communication to A.A.A.

02/07/2022 A. opening to CORON ISLAND SLU

02/09/2022 Info. Complainant to A.A.A.

02/22/2022 Allegations of CORON ISLAND, S.L.

02/23/2022 Notice p. tests to CORON ISLAND SLU

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SECOND: On April 9, 2022, the claimed party has proceeded to pay

the sanction in the amount of 1600 euros making use of the reduction foreseen in the

motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via

against the sanction, in relation to the facts referred to in the

resolution proposal.

FOUNDATIONS OF LAW

Yo

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

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law



Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

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II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

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

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

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

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

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202102522, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to CORON ISLAND SLU.

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

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

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

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