

□ File No.: PS/00123/2022

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Dated August 11, 2020, by the Director of the Spanish Agency  
of Data Protection, a resolution was issued in the sanctioning procedure number  
PS/00134/2019, followed up against RESIDENTIAL ESTABLISHMENTS OF  
ELDERS OF \*\*\* LOCALITY.1 (hereinafter, the claimed party). in bliss  
resolution, in addition to directing a warning, the following was required:

"THIRD:

#### RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY

\*\*\*LOCALIDAD.1 must prove in compliance with article 58.2.d) of the RGPD the  
measures implemented so that the personal data of job offers or  
job boards are not visible when their purpose has been fulfilled, term of  
exposure and blocking of data."

SECOND: The resolution of the sanctioning procedure was notified  
irrefutably on August 26, 2020 to the respondent, as evidenced  
accredited in the file.

THIRD: This Agency has not received any writing on the measures  
implemented by the claimed party, they were requested again in two  
occasions so that, within a month, they could accredit before this Agency having  
adopted the appropriate corrective measures, in accordance with what was agreed in the aforementioned  
Resolution.

These requirements were collected by the person in charge on October 7,

2020 and November 22, 2021, as stated in the Notific@ certificates that

they work in the file.

FOURTH: Against the aforementioned resolution, in which the adoption of measures is required,

There is no ordinary administrative appeal due to the expiration of the deadlines

established for it. Likewise, the interested party has not stated his intention to

file a contentious-administrative appeal, nor is this Agency aware that

the same has been filed and a precautionary suspension of the

resolution.

FIFTH: On March 21, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the

GDPR.

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SIXTH: The aforementioned initial agreement was collected by the person in charge on the 28th of

March 2022, as stated in the Notific@ certificate in the file.

SEVENTH: Dated May 10, 2022 and entry registration number

\*\*\*REGISTRATION.1, the party complained against submits a written statement of allegations to the agreement of

beginning in which it states that among the measures adopted are the double control of

the documents sent for publication and the anonymization of the data that must be

published. In addition, it affirms that the anomaly that occurred is a punctual, isolated and

unique and that once detected, action was taken immediately to solve the problem.

EIGHTH: On May 31, 2022, a resolution proposal was formulated

proposing that the Director of the Spanish Data Protection Agency

impose a sanction of warning to the claimed party.

NINTH: Dated June 16, 2022 and entry registration number

\*\*\*REGISTRATION.2, the party complained against submits a brief of arguments to the proposal for

resolution in which it states that the temporary employment list \*\*\*LISTA.1 continues

published with the personal data of its members duly obfuscated in

Therefore, since there was no subsequent call with the same characteristics,

is suitable for making temporary contracts to its members and therefore, in

compliance with the regulations in force regarding the assignment of personnel not

permanent and transparency, its publicity must be guaranteed. Thus, in addition to the

previously alleged measures (double control of the documents sent to

publication and anonymization of the data to be published), the part

claimed has implemented the measure consisting of reviewing which lists and bags of

temporary employment must be unpublished, resulting from this analysis that, in

In particular, the employment list \*\*\*LIST.1 must continue to be published.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: The resolution of the sanctioning procedure and the requirements for the

compliance with the measures imposed therein indicated in the antecedent

third party were notified electronically, in accordance with the provisions of article 43

of the LPACAP. Said resolution became firm and executive by the course of the

deadlines for filing the appeals indicated therein.

SECOND: The respondent did not send any response to this Agency that

prove compliance with the measures imposed before the order was issued.

agreement to initiate this sanctioning procedure.

THIRD: The notification of the agreement to initiate this procedure

sanctioning was carried out electronically through the Notific@ system, being

collected by the person in charge on March 28, 2022.

FOURTH: The respondent party has submitted arguments to the agreement to initiate this

sanctioning procedure collected in the seventh antecedent.

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FIFTH: The notification of the proposed resolution was sent electronically to

through the Notific@ system, being collected by the person in charge on June 8,

2022.

SIXTH: The party complained against has submitted arguments to the proposed resolution

of this sanctioning procedure collected in the ninth antecedent.

FOUNDATIONS OF LAW

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Competition

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.”

Arguments to the proposed resolution

II

In response to the allegations presented by the entity claimed to the proposal  
resolution, the following should be noted.

The request to adopt measures was notified on August 26, 2020.

Likewise, the adoption of corrective measures was requested twice and

Finally, it was agreed to start this sanctioning procedure on March 21  
of 2022, without until that date a reply had been received from the party  
claimed. The communication of the measures during the instruction of this  
procedure does not affect the existence of the proven facts constituting the  
infringement.

As regards the measures communicated in the allegations, by this  
Agency acknowledges receipt of the same, without this declaration implying any  
pronouncement on the regularity or legality of the measures adopted.

You are warned about the provisions of article 5.2 of the RGPD, which establishes the principle  
of proactive responsibility when it states that “The data controller will be  
responsible for compliance with the provisions of article 1 and capable of demonstrating it”.

This principle refers to the obligation that falls on the person responsible for the  
treatment not only of designing, implementing and observing the legal, technical and  
and adequate organizational so that the processing of data is in accordance with the

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regulations, but to remain actively vigilant throughout the entire life cycle treatment so that compliance is correct, being also capable of prove it.

### III

unfulfilled mandate

In accordance with the available evidence, it is considered that the party claimed failed to comply with the resolution of the Spanish Agency for Data Protection with regarding the measures imposed on him.

Therefore, the facts described in the "Proven Facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the article 58.2.d) of the RGPD, which provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed 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 specified manner and within a specified period;"

Typification and qualification of the infraction

### IV

This infringement is typified in article 83.6 of the RGPD, which stipulates the following:

"Failure to comply with the resolutions of the control authority pursuant to article 58, paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, opting for the highest amount.”

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

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Imputed sanction

Article 83.7 of the RGPD provides the following:

“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 organizations public authorities established in that Member State.”

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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:

(...)

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

(...)

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

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.

(...)

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."

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF

\*\*\*LOCALIDAD.1, with NIF Q8350062I, for a violation of Article 58.2 of the RGPD,

typified in Article 83.6 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to ESTABLISHMENTS

HOMES FOR THE ELDERLY IN \*\*\*LOCALITY.1.

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

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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.

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