

□ File No.: PS/00499/2022

RESOLUTION OF SANCTIONING 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 claiming party) dated October 27,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against MARKETING ACCOMMODATION SOLUTIONS FZ,
L.L.C. with fiscal identifier 45000501 (hereinafter, the claimed party). The motives
on which the claim is based are the following:

Through the Airbnb online platform, the claimant contacted the entity
owner of an apartment in Barcelona, MARKETING ACCOMMODATION
SOLUTIONS FZ, L.L.C. (**URL.1), with the purpose of staying there for a few days with
his companions. Said entity had enabled a web page / app to make the
online check-in, a mandatory procedure to formalize the delivery of the keys to the
apartment. To carry out the online check-in, the seven people who were going to
to stay in the apartment they had to fill out a form with the post office,
telephone numbers and addresses, as well as send photos of your D.N.I. for the two
faces and selfies of each of them.

After the stay, specifically on October 23, 2021, the claimant
contacted the person responsible for the treatment to indicate that the data that
are requested to make the reservation are excessive, protest because there is no option to
to deny consent for the sending of offers and products, and ask
what data of yours they have, which have been obtained following the authorization and which have
assigned and to whom.

The answer they gave it, on October 25, 2021, was that the only data that they have of the claimant are those that they provided to Airbnb: name, surname, number of phone and email. Likewise, it is indicated that the purpose of the check-in that did is to comply with the regional regulation that obliges to communicate such data to the Register of Travelers maintained by the Catalan police (the Mossos d'Esquadra), since Once the data is uploaded to the platform, it is dumped into the website of the Mossos d'Esquadra, in such a way that when they are transferred to them, They disappear from your platform. They also indicate that "we have not transferred your data because we have never had them nor do we want them, nor do we need them. can rest assured, we do not send any type of advertising to clients nor do we bells."

The claimant considers the response very generic.

Attach the complaining party:

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a) Email that was sent to you from ***EMAIL.1 to check-in online, which contains the following information on data processing:

"Your information has just been entered into the database. We inform you that the data provided will only be used to fulfill reservations, as well as to keep you updated with our news, promotions and offers.

Also, we would like to inform you that the company stores the personal information that you provided with your last reservation, in order to manage your future reservations with the best comfort for you and your family. All the data you have given us

provided are kept secure and will not be transferred to third parties, except in the cases in which we make a reservation or have to fulfill an obligation legal.

In any case, if you do not wish to receive our news, offers and promotions, do not

Feel free to contact us by email: ***EMAIL.1

Finally, we inform you that according to the new regulation, you can exercise your rights of access, rectification, opposition, cancellation or elimination and limitation of data; as well as request not to be subject to individualized decisions or the delivery of your data through the right of portability, following the steps below:

- In person at the company's offices.
- Via email with a scanned copy of your passport or ID

sent to email: ***EMAIL.1”

b) Exchange of emails between the complaining party and the claimed party between October 23, 2021 and October 25, 2021.

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SECOND: The Agency's General Subdirectorate for Data Inspection sent to the party complained of writing dated December 1, 2021 in which:

- It is requested that within a month, report the name or the entity that has appointed as his representative and his domicile in the Union or, indicate the reasons why for which such designation is not necessary, since the claimed party does not is established in the Union and the Agency does not know who is its representative in the Union in accordance with Article 27 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR).
- The claim is transferred to proceed with its analysis and report to this Agency, within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations, in accordance with the

Article 65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD).

- It is required so that within a period of one month it sends the following to the Agency information:

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1. Justification of the legal basis supposedly chosen to collect and process the "selfie" images of the users, as well as a copy of their documents identification, taking into account that the order establishing the obligation (the Order IRP/418/2010, of August 5, on the obligation of registration and communication to the General Directorate of the Police for people staying in establishments lodging located in Catalonia) does not include said information among the data to provide to the Catalan police.
2. Confirmation that the information collected is not being processed after its supposed communication to the Catalan police.
3. Confirmation that customers' personal data is not being used with advertising or other purposes.
4. Report on the measures adopted to adapt its "Privacy Policy" to the article 13 of the RGPD, so that it reflects the previous points. Indicate dates of implementation and controls carried out to verify its effectiveness.
5. The decision adopted regarding this claim.
6. The postal address of the representative of the controller in the Union European.

7. Any other that you consider relevant.

The aforementioned letter, whose notification was made in accordance with the rules established in Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP) by mail international postal service, was returned due to missing delivery.

THIRD: On January 27, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative 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:

On July 29, 2022, it is verified in whois records that the domain

***URL.1 is registered by the registrar 10DENCEHISPAHARD S.L.

Dated July 29, 2022, it is verified in the privacy policy of ***URL.1

the identification data of the person responsible for the page, corresponding to

MARKETING ACCOMMODATION SOLUTIONS FZ-LLC and consists of:

“MARKETING ACCOMMODATION SOLUTIONS FZ-LLC, with identifier

fiscal

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45000501 and address at: Business Park, PO Box 10055, Ras Al Khaimah

UAE[...]"

On July 29, 2022, a request for information is sent to

10DENCEHISPAHARD S.L., regarding identification and contact data, including

name, surnames or company name, DNI/CIF and postal address, of the holder of the

following domain, as well as whoever has contracted your accommodation: ***URL.1.

On August 2, 2022, 10DENCEHISPAHARD S.L. send this Agency the data

identification and contact details of the owner of the website ***URL.1, these being the following:

Company: MARKETING ACCOMMODATION SOLUTIONS FZ-LLC

NIF: 784119887490316

Name: B.B.B.

Position: Manager

Address: Business Park, PO 10055

ZIP Code: I

Location: Ras Al Khaimah

Country: United Arab Emirates

Email: ***EMAIL.2

Phone: +***PHONE.1

On July 29, 2022, a request for information is sent to MARKETING

ACCOMMODATION SOLUTIONS FZ-LLC relating to:

1. Justification of the legal basis supposedly chosen to collect and

process the "selfie" images of the users, as well as a copy of their documents

identification, taking into account that the order establishing the obligation (the Order

IRP/418/2010, of August 5, on the obligation of registration and communication to the

General Directorate of the Police for people staying in establishments

lodging located in Catalonia, which is attached to this request) does not

includes said information among the data to be provided to the Catalan police.

2. Screenshots of the app that your entity uses with the complete process that

follow their clients to provide data such as the copy of documents of

identification and a "selfie" as a prerequisite for entering the apartment.

3. Screenshots of your systems showing all the data that

They have about 100 users including the claimant.

4. Documentation that proves the geographical location where the data of your clients is processed.

customers.

5. Screenshots of your systems showing all transmissions or

data communications made from 100 users, including the claimant, with

the details of which recipients have been sent.

6. Screenshots of their systems where it is stated that the data of the claimant

have been deleted after being sent to the Catalan police and where the date is also stated

of elimination.

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7. Detailed description of the system used to send the data of your

clients to the Catalan police indicating the types of data sent, instant

precise in that they are sent since they are received from their clients and if the data

at some point they pass through systems under their responsibility or not. If

the data does not pass at any time through systems under your responsibility indicate

the identification and contact details, including postal address, of whoever is the

responsible for those systems and provide a copy of the contracts signed between your entity and

said person in charge, and that include the field of data protection.

8. Report on the measures adopted to adapt its "Privacy Policy" to the article 13 of the GDPR. Indicate implementation dates and controls carried out to check its effectiveness.

9. The postal address of the representative of the controller in the Union European.

10. Any other that you consider relevant.

The aforementioned letter, whose notification was made in accordance with the rules established in Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP) by mail international postal service, was returned due to missing delivery.

On September 13, 2022, it is verified that in Order IRP/418/2010, of August 5, on the obligation of registration and communication to the General Directorate of the Police of people who stay in lodging establishments located in Catalonia, consists of:

“[...]

Article 2

documentary record

Any person who stays in the establishments included in the scope application of this Order, you must register. For this purpose it must fill in, as a minimum, the information specified as mandatory in the model of annex 1 of this Order.

[...]

Article 3

Communication of data by telematic means to the General Directorate of the Police.

The establishments included in the scope of application of this Order

must notify the General Directorate of Police of the department

competent in matters of public security the information contained in the

Annex 2 of this Order. [...]

Article 4

Communication of data by other means

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When for special reasons duly motivated, the establishments

cannot carry out communication through telematic means

mentioned, the information in annex 2 must be sent to the dependencies

police officers of the squad boys through any of the

following systems:

[...]

APPENDIX 2

Data of the information that must be communicated to the General Directorate of the

Police

Establishment data

CIF/NIF

Property name

Address

Municipality

Province

Data of the hosted person

Document number

Document type

Expedition date

Name

Surnames

Sex (F=female / M=male)

Date of birth (date format: YYYYMMDD)

Nationality (country name)

Date of entry into the establishment (date format: YYYYMMDD)

[...]"

On September 13, 2022, it is verified that in Order IRP/418/2010, of

August 5, on the obligation of registration and communication to the General Directorate of

the Police of people who stay in lodging establishments

located in Catalonia, there is a form in its Annex 1 with the data of "Num.

identity document", "Type of document", "Date of issue (if stated)",

name and surname, sex, date of birth, nationality, date of entry,

address, telephone number, expected days of stay and signature, all of them related to the

people staying

FIFTH: On September 27, 2022, the Director of the Spanish Agency

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

for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the

GDPR, and for the alleged infringement of article 13, typified in article 83.5.b) of the

GDPR.

SIXTH: The aforementioned initiation agreement, the notification of which was carried out in accordance with the

norms established in Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter, LPACAP)

by international postal mail, it was returned due to non-delivery. Hence

the notification was made, in accordance with article 44 of the LPACAP, by

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means of announcement published in the Official State Gazette dated December 27

2022. It has been verified that no allegation has been received from the party

claimed.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility,

may be considered a resolution proposal.

In the present case, the agreement to initiate the sanctioning file determined the

facts in which the accusation was specified, the infringement of the GDPR attributed to the

party claimed and the sanction that could be imposed. Therefore, taking into

consideration that the claimed party has not made allegations to the settlement agreement

start of the file and in accordance with the provisions of article 64.2.f) of the LPACAP,

the aforementioned start-up agreement is considered in the present case as a proposal for resolution.

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: Dated October 6, 2021, from the email ***EMAIL.1,

An email was sent to the complaining party with the following content:

“With Apartments2be Online Check-in you will enjoy before your stay! fill the necessary data to stay and avoid waiting. It is a simple process that it will take few minutes.

MAKE YOUR CHECK-IN

We remind you that you must check-in online before your arrival. For this, you

We recommend that you have at hand the data and identity documents of all accommodation occupants. It is mandatory to formalize the delivery of keys of your accommodation.

(...)

Apartments2be

(...)

SBAM0460 Service Block Al Jazirah Al Hamra , Al Hamra Industrial Zone- FZ,

United Arab Emirates

Your information has just been entered into the database. We inform you that the data provided will only be used to fulfill reservations, as well as to keep you updated with our news, promotions and offers.

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Also, we would like to inform you that the company stores the personal information that you provided with your last reservation, in order to manage your future reservations with the best comfort for you and your family. All the data you have given us provided are kept secure and will not be transferred to third parties, except in the

cases in which we make a reservation or have to fulfill an obligation

legal.

In any case, if you do not wish to receive our news, offers and promotions, do not

Feel free to contact us by email: ***EMAIL.1

Finally, we inform you that according to the new regulation, you can exercise your

rights of access, rectification, opposition, cancellation or elimination and limitation of

data; as well as request not to be subject to individualized decisions or the delivery of

your data through the right of portability, following the steps below:

- In person at the company's offices.

- Via email with a scanned copy of your passport or ID

sent to email: ***EMAIL.1”

SECOND: On October 23, 2021, the complaining party sent an email

***EMAIL.1 containing:

"Recently I have been asked for authorization to process and transfer my data

personal as well as that of the 6 people who accompanied me in relation to a

reservation I made of an apartment in Barcelona. In addition to being excessive (we had

to send copies of our IDs, fill out a long form and take selfies), not

They gave me the option to deny consent for them to send me their offers and

other products.

In accordance with the provisions of said authorization and with the regulations for the protection of

data I would like to know what data they have about me, what they have obtained by following this

authorization and which ones have been ceded and to whom.[...]"

On October 25, 2021, the booking department of apartments2be, from the

address ***EMAIL.1, sent an email to the complaining party in which

responded to the aforementioned email, indicating:

“Thank you for your email, the only data we have about you is what you

provided Airbnb with: your first and last name, a phone number, and the email you received

Airbnb did when you created your account and that the messages arrive in your inbox

airbnb messages

The register of travelers they made is mandatory in Catalonia, it cannot be accessed

to accommodation in Catalonia of whatever type it is without first carrying out a registration of

travelers, there are individuals who do it by hand by filling out a piece of paper and making a

photo of the client's ID that they then print and send in pdf format to the mossos, but

In this way, in our opinion, it does make customer data be in

our hands and suffer traceability, which is why we use the telematic mode,

you uploaded your data to a platform that makes a dump on the website of the

Mossos de Esquadra, practically you send them directly, we just

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We validate an image that we see (we cannot print, download, or copy)

to verify that it is correct, because it is our responsibility to collect all

this data, once the data is transferred to you directly, it disappears

and only they have them.

The police are not required to tell you the purpose for which they collect data from

Travellers.

We have not given your data because we have never had it or

we want, nor do we need them. you can rest assured, we do not send any type of

advertise to clients or campaigns”

THIRD: On October 27, 2021, the claimant filed a

claim before the Spanish Data Protection Agency for understanding that the

data required in the online check-in are excessive and considering that the

The response that has been given on October 25, 2021 is very generic.

FOURTH: It is accredited that the person in charge of the web page ***URL.1 is the claimed part.

FIFTH: The Spanish Agency for Data Protection has legally notified

the party claimed the agreement to open this disciplinary proceeding,

but it has not presented allegations or evidence that contradict the facts denounced.

FUNDAMENTALS OF LAW

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

control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure Spanish Data Protection.

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

Article 3.2 of the GDPR states that "This Regulation applies to the treatment of personal data of data subjects who are in the Union by a controller or processor not established in the Union, when the activities of treatment are related to:

a) the offer of goods or services to said interested parties in the Union, regardless of whether they are required to pay,

b) the control of their behavior, to the extent that this takes place in the Union”

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In the present case, the claimed party, although not established in the Union,

offers a vacation rental service within the same, so

that the Agency is competent to process this file.

II

Every data controller must respect the principles contained in article

5 of the GDPR. We will highlight article 5.1.c) of the GDPR which establishes that:

"1. Personal data will be

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization");"

It must be clarified that this article does not limit the excess of data, but the need. Is

In other words, the personal data will be "adequate, pertinent and limited to the need"

for which they were collected, in such a way that if the objective pursued can

achieved without excessive data processing, this should be done at all

case.

Similarly, recital 39 of the GDPR indicates that: "Personal data only

should be processed if the purpose of the processing cannot reasonably be achieved by

other media." Therefore, only the data that is "adequate,

relevant and not excessive in relation to the purpose for which they are obtained or processed”.

The categories of data selected for processing must be the

strictly necessary to achieve the stated objective and the person responsible for the

treatment must strictly limit the collection of data to that information that

is directly related to the specific purpose that is intended to be achieved.

In this case, the claimed party processes various data

personal information such as name, surname, telephone number, email address

email, postal address, image of the D.N.I. on both sides.

And not all of them are necessary to provide the apartment rental service

vacation or to comply with the obligation to register people who

stay in accommodation establishments in Catalonia required by article 2 of

Order IRP/418/2010, of August 5, on the obligation of registration and communication

to the General Directorate of Police of the people staying in the

lodging establishments located in Catalonia.

It is in Annex I of the aforementioned Order where the data that is necessary to

such registration: identity document number, type of document, date of

issuance of the same (if stated), surnames, name, sex, nationality, date of

entry, address, telephone number and expected days of stay.

From the documentation in the file there is evidence that the party

claimed has violated article 5.1.c) of the GDPR, having demanded the image of the

ID on both sides, in order to be able to obtain the keys to the accommodation

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that they have reserved, since such data is not necessary for the treatment carried out by

the claimed part.

On the other hand, it should be noted that, although the complaining party indicated that the party

claimed also demanded a selfie of the people who were going to stay in the apartment, this point has not been properly tested.

II

In the present case, the defendant party has not presented allegations or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence that is available and that has not been distorted during the disciplinary procedure, it is considered that the party claimed has processed data that was excessive as it was not necessary for the purpose for which they were treated.

In view of the foregoing, the facts imply a violation of what is established in the Article 5.1.c) of the GDPR, which implies the commission of an offense classified in the Article 83.5, section a) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides that:

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:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Offenses considered very serious.

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

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

IV.

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"1. Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this Regulations indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive.

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

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

b) intentionality or negligence in the infraction;

- c) any measure taken by the person in charge or in charge of the treatment to settle 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, habi- gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;
- e) any previous infringement committed by the controller or processor;
- 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

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particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to 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.”

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"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 data processing.
personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission
of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the
violation, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to
alternative conflict resolution mechanisms, in those cases in which
there are controversies between those and any interested party."

Taking into account the precepts transcribed, for the purpose of setting the amount of the sanction of
fine to be imposed in the present case for the infraction typified in article 83.5.a)
of the GDPR, it is appropriate to graduate it in accordance with the following circumstances:

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As aggravating factors:

- In the activity of the claimed party, it is essential to process personal data.

personal character of the people who stay in their holiday apartments

(article 76.2.b) of the LOPDGDD in relation to article 83.2.k) of the GDPR).

- The intent or negligence in the infringement, since the claimed party was fully aware of the procedure implemented (article 83.2.b) of the GDPR).

Connected with the degree of diligence that the data controller is obliged to to deploy in compliance with the obligations imposed by the regulations of data protection, the Judgment of the National Court of 17 of 10

of 2007 (rec. 63/2006), which, after alluding to the fact that the entities in which the development of its activity involves continuous processing of customer data and

third parties must observe an adequate level of diligence, specified that "(...) the

The Supreme Court has understood that there is imprudence whenever

disregards a legal duty of care, that is, when the offender does not behave

with the due diligence. And in assessing the degree of diligence, consideration must be

especially the professionalism or not of the subject, and there is no doubt that, in the case

now examined, when the appellant's activity is of constant and abundant

handling of personal data must insist on rigor and exquisite care

for complying with the legal provisions in this regard" (article 83.2.b) of the GDPR).

The agreement to initiate this disciplinary procedure indicated that "The amount of

the corresponding fine, without prejudice to what results from the instruction of the

procedure, is €50,000 (fifty thousand euros)."

However, in view of the fact that it has not been proven that the claimed party requires a selfie

of the people who are going to stay in their apartments at the time of check-in

online, as well as by the balance of the circumstances contemplated, with respect to the

offense committed by violating the provisions of article 5.1.c) of the GDPR, a

fine of €25,000 (twenty-five thousand euros).

V

Article 13 of the GDPR regulates the information that must be provided to the interested party when the data is collected directly from it, establishing the following:

"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;

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- 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

provide 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.”

The information sent by the claimed party to the persons who have carried out the

reservation of one of your holiday apartments is as follows:

“Your information has just been entered into the database. We inform you that the

data provided will only be used to fulfill reservations, as well as to

keep you updated with our news, promotions and offers.

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Also, we would like to inform you that the company stores the personal information that you provided with your last reservation, in order to manage your future reservations with the best comfort for you and your family. All the data you have given us provided are kept secure and will not be transferred to third parties, except in the cases in which we make a reservation or have to fulfill an obligation legal.

In any case, if you do not wish to receive our news, offers and promotions, do not feel free to contact us by email: hello@***URL.1

Finally, we inform you that according to the new regulation, you can exercise your rights of access, rectification, opposition, cancellation or elimination and limitation of data; as well as request not to be subject to individualized decisions or the delivery of your data through the right of portability, following the steps below:

- In person at the company's offices.
- Via email with a scanned copy of your passport or ID

sent to email: ***EMAIL.1”

Therefore, the claimed party does not send the interested parties all the information required

Article 13 of the GDPR, specifically it would be necessary to send them:

- The identity and contact details of the person in charge and, where appropriate, their representative.
- The contact details of the data protection officer, if applicable.

- The legal basis of data processing.
- The recipients or categories of recipients of personal data, in their case.
- The period during which the personal data will be kept or, when it is not possible, the criteria used to determine this term.
- The right to file a claim with a control authority.
- 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 provide such data.

Furthermore, the "Privacy Policy" of the claimed party states what following:

"MARKETING ACCOMMODATION SOLUTIONS FZ-LLC, with fiscal identifier 45000501 and address at: Business Park, PO Box 10055, Ras Al Khaimah UAE, no C / Jorge Juan, 6 28001 – Madrid
www.aepd.es
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can assume no responsibility derived from the incorrect, inappropriate or illicit information appearing on the web pages of: ***URL.1

That MARKETING ACCOMMODATION SOLUTIONS FZ-LLC is registered in the UAE Business Registry

With the limits established by law, MARKETING ACCOMMODATION SOLUTIONS FZ-LLC does not assume any responsibility derived from the lack of veracity, integrity, updating and accuracy of the data or information contained in your

websites.

The contents and information do not bind MARKETING ACCOMMODATION SOLUTIONS FZ-LLC nor do they constitute opinions, advice or legal advice of any kind because it is merely a service offered for informational purposes and informative.

The Internet pages of MARKETING ACCOMMODATION SOLUTIONS FZ-LLC may contain links (links) to other pages of third parties that MARKETING ACCOMMODATION SOLUTIONS FZ-LLC. can't control. Therefore, MARKETING ACCOMMODATION SOLUTIONS FZ-LLC cannot assume responsibilities for the content that may appear on third party pages.

The texts, images, sounds, animations, software and other content included in this website are the exclusive property of MARKETING ACCOMMODATION SOLUTIONS FZ-LLC or its licensors. any act of transmission, distribution, assignment, reproduction, storage or communication total or partial public, must have the express consent of MARKETING ACCOMMODATION SOLUTIONS FZ-LLC Likewise, to access some of the services that MARKETING ACCOMMODATION SOLUTIONS FZ-LLC offers through of the website, you must provide some personal data. In compliance with the provisions of Regulation (EU) 2016/679 of the Parliament European Union and of the Council, of April 27, 2016, regarding the protection of persons with regard to the processing of personal data and the free movement of these data we inform you that, by completing these forms, your personal data will be incorporated and will be processed in the MARKETING ACCOMMODATION SOLUTIONS FZ-LLC files in order to be able to provide and offer our services as well as to inform you of improvements from the website.

We also inform you that you will have the possibility at all times to exercise the rights of access, rectification, cancellation, opposition, limitation and portability of your personal data, free of charge by email to: ***EMAIL.3”

That is, the privacy policy of the claimed party is not adapted to what established in article 13 of the GDPR, since the following information would need to be included:

- The identity and contact details of the person in charge and, where appropriate, their representative.
- The contact details of the data protection officer, if applicable.

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- The legal basis of data processing.
- The recipients or categories of recipients of personal data, in their case.
- The period during which the personal data will be kept or, when it is not possible, the criteria used to determine this term.
- The right to file a claim with a control authority.
- 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 provide such data.

From the documentation in the file there is evidence that the party claimed has violated article 13 of the GDPR, by not having sent to the people who have made the reservation of one of their holiday apartments all the

information required by the aforementioned precept, nor has its policy of privacy to what is established in the aforementioned article.

SAW

In the present case, the defendant party has not presented allegations or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence that is available and that has not been distorted during the disciplinary procedure, it is considered that the party claimed has not complied with the obligation to send the interested party all the information which includes article 13 of the GDPR.

In view of the foregoing, the facts imply a violation of what is established in the Article 13 of the GDPR, which implies the commission of an offense classified in the Article 83.5, section b) of the GDPR, which under the heading "General conditions for the imposition of administrative fines" provides that:

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;"

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

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For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Offenses considered very serious.

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this organic law."

VII

For the purposes of setting the amount of the fine to be imposed in this case for the infringement typified in article 83.5.b) of the GDPR, it is necessary to graduate it according to with the following circumstances:

As aggravating factors:

- In the activity of the claimed party, it is essential to process personal data.

personal character of the people who stay in their holiday apartments

(article 76.2.b) of the LOPDGDD in relation to article 83.2.k) of the GDPR).

- The intent or negligence in the infringement, since the claimed party is

fully aware of its privacy policy. Connected with the degree of

diligence that the person responsible for the treatment is obliged to deploy in the

compliance with the obligations imposed by the data protection regulations

the Judgment of the National Court of 10/17/2007 (rec.

63/2006), which, after alluding to the fact that the entities in which the development of their

This activity involves continuous processing of customer data and third parties must observe an adequate level of diligence, specified that "(...) the Supreme Court has understood that imprudence exists whenever a legal duty is neglected of care, that is, when the offender does not behave with the required diligence. AND In assessing the degree of diligence, special consideration must be given to the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the activity of the appellant is constant and abundant handling of data from personal character must be insisted on the rigor and exquisite care to adjust to the legal precautions in this regard" (article 83.2.b) of the GDPR).

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The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13 of the GDPR, it allows setting a fine of €50,000 (fifty thousand euros).

VIII

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 MARKETING ACCOMMODATION SOLUTIONS FZ, L.L.C.,

with fiscal identifier 45000501, for the infraction:

- From article 5.1.c) of the GDPR, typified in article 83.5.a) of the GDPR, a fine of TWENTY-FIVE THOUSAND EUROS (€25,000).

- From article 13 of the GDPR, typified in article 83.5.b) of the GDPR, a fine of FIFTY THOUSAND EUROS (€50,000).

SECOND: NOTIFY this resolution to MARKETING ACCOMMODATION SOLUTIONS FZ, L.L.C.

THIRD: Warn the penalized person that they must make the imposed sanction effective

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

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

Common of 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, by means of its income, indicating the NIF of the sanctioned and the number

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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

XXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

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

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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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