

□ File No.: EXP202206486

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 July 29, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against XASTRE DO PETO,
S.L. (hereinafter, the claimed party), through the transcribed Agreement:

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Procedure No.: PS/00310/2021 (EXP202206486)

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before
the entity, XASTRE DO PETO, S.L. with CIF.: B70353677, (hereinafter "the part
claimed"), based on the document presented by D. A.A.A., for the alleged violation
of the data protection regulations: Regulation (EU) 2016/679, of the Parliament
European Union and of the Council, of 04/27/16, regarding the Protection of Physical Persons
regarding the Processing of Personal Data and the Free Movement of
these Data (GDPR) and Organic Law 3/2018, of December 5, Protection of
Personal Data and Guarantee of Digital Rights (LOPDGDD), and attending to
the following:

FACTS

FIRST: On 09/04/21, a document submitted by
the complaining party, in which it indicated, among other things, that in the restaurant XASTRE DO
PETO, they left him, last 08/27/21, a form to fill out for questions

health authorities, without further information and in which they also indicated the possibility of

send you commercial communications

Along with the previous letter, the following documentation is provided:

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Photograph of a form to include the name, surname, ID, telephone number and

Signature. Said form has the title: "ORDER of April 14, 2021 by

which modifies the Order of February 25, 2021 establishing

the necessary actions for the implementation of the Hospitality Plan

of the Autonomous Community of Galicia (DOG No. 69-Bis):

SECOND: On 09/30/21, this Agency transferred the claim

to the claimed party to respond to it, in accordance with the

stipulated in article 65.4 of the LOPDGDD Law.

THIRD: On 11/09/21, the claimed entity presents in this Agency

written response to the request made, in which, among others, it is indicated:

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2/20

Regarding the decision adopted regarding this claim, the

The company has reviewed the action protocols implemented as a result of the

health regulations of the Xunta de Galicia and states the following:

1. On 04/15/2021, the XUNTA DE GALICIA published the "ORDER of 14

April 2021 by which the Order of February 25, 2021 by the

establishing the necessary actions for the implementation of the

Safe hospitality plan of the Autonomous Community of Galicia.

2. Among other obligations for hospitality establishments in the article Seventh bis, in section 2, it is indicated literally: "With the objective To facilitate contact tracing in case of positive cases of COVID-19, it is will keep a record of the clients of the dinner service that includes name and surnames, ID and telephone number; having the person responsible for establishing the obligation to guard the same for at least one month after the event, with contact information available to health authorities and complying with the data protection regulations of personal character". A copy of the Doga is attached.

3. It has been verified that the signage provided for the plan of Safe Hospitality of the Xunta de Galicia, which is attached to the present written. Said posters referred to the applicable legislation and the compliance with the regulations of the Xunta de Galicia in health matters.

4. In said regulations, it is indicated that the establishment is obliged to keep contact information for at least one month. The protocol followed in In this case, it is reserved in an envelope with the date of the corresponding day, the customer forms, to have available to the administration, for a period of 5 weeks, and if no requirement of the health authorities, destroy said information.

5. The data has not been processed by computer and has only been saved to make available to the health authorities, being subsequently destroyed.

6. The company has established a specific protocol in its manual of data protection referred to the issue of reservations, motivated precisely by the new obligations arising in terms of information to the adm. public.

7. Customers have been duly informed, both through the informative signs as at the time of delivery of the data sheet, indicating the rights that assist them in accordance with current legislation and warning them that the data is requested by imposition of the administration and that in any case, they can cancel the reservation without cost, in case they do not wish to cover them, since the premises comply with the regulations imposed to avoid being penalized by the administration.

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3/20

8. The data controller has not received any claim or requirement in relation to the rights that the client has of deletion, opposition, etc., so we do not understand what is the object of the claim to the Data Protection Agency, when the client, as is clear from his writing, he signed the consent, he does not claim for having received any commercial communication, but by the fact that he was provided with a "sheet, on which that she was asked to include her personal data and that of the diners that she accompanied, for health reasons related to COVID 19, without is provided for in no standard, something completely uncertain, as can be be checked against the attached legislation.

9. Because the AEPD has not identified the claimant, we cannot send the response provided to the claimant in the event of exercise of the rights, regulated in article 15. The company has had only one incidence in this sense with a client not knowing if this is the one who

make the claim.

For all these reasons, understanding that it could be the case that the claimant,

came from another autonomous community where this rule was not in

force, as it is a regional regulation, feels violated by having to

meet the data requirement, but, the local, has adhered exclusively

compliance with current legislation, which is why it is requested that

Prior to the appropriate procedures, this open file is resolved, with

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FOURTH: On 11/18/21, by the Director of the Spanish Agency for

Protection of Data, an agreement is issued to admit the processing of the claim

presented by the claimant, in accordance with article 65 of the LPDGDD Law, to the

assess possible rational indications of a violation of the rules in the field of

the powers of the Spanish Data Protection Agency.

FIFTH: On 01/19/22, this Agency made a request for

information to the Ministry of Health of the XUNTA de GALICIA, by virtue of the

powers of investigation granted to control authorities in article 58.1 of the

GDPR and in accordance with the provisions of Title VII, Chapter I, Section

second, of the LOPDGDD.

SIXTH: On 02/21/22, the Ministry of Health of the XUNTA de GALICIA,

sends this Agency a written response, in which, among other things, it indicates the

following:

1. Evolution of regional regulations in relation to the obligation to

customer registration in public access establishments with indication of the dates on which it has been found to be in force at all times until the present. Provide a copy of the regulations you refer to.

A. The first registration obligation was created based on what was included in the ORDER of April 14, 2021, which modifies the Order of February 25, 2021 by which the necessary actions are established for the implementation March of the Safe Hospitality Plan of the Autonomous Community of Galicia, C / Jorge Juan, 6

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4/20

I. Which indicated that a record of clients will be kept for the service of dinners.

The order was modified by successive orders that in some cases included the need to keep a record of clients or attendees to certain places, activities or events. They are listed below: ORDER of 25

June 2021 establishing specific prevention measures

as a consequence of the evolution of the epidemiological situation derived from COVID-19 in the Autonomous Community of Galicia. DOG Order No. 120-Bis of 2021/6/25 - Xunta de Galicia

I. Which indicated that a record of clients will be kept for:

to. Celebration of sports competitions with the public, activities in cinemas, theaters, auditoriums and similar spaces, as well as in outdoor venues and in other premises and establishments for public performances and Recreational activities.

b. Carrying out selection processes by public administrations and public sector entities.

c. Celebration of sporting events and other non-sporting activities organizations of an organized nature such as sports camps, camps sports and other similar activities.

d. Nightlife establishments (under the conditions established by order of the Ministry of Health that approves the leisure protocol night)

B. ORDER of July 22, 2021 extending and modifying the Order of June 25, 2021, establishing prevention measures as a consequence of the evolution of the epidemiological situation derived from COVID-19 in the Autonomous Community of Galicia, and amended the Order of July 1, 2021 approving the Protocol for the reactivation of nightlife in the context of the health crisis caused by COVID-19

Which indicates nightlife establishments (such as discos, pubs, cafes-show, nightclubs, as well as concert halls that carry out their activities in a similar way to the previous ones) must have a customer registry under the conditions established by the order of the Ministry of Health that approves the Leisure Protocol night.

C. ORDER of August 13, 2021 amending the Order of August 25, June 2021 establishing prevention measures such as consequence of the evolution of the epidemiological situation derived from the COVID-19 in the AC of Galicia and the requirement for the exhibition of documentation for access to certain establishments provided for in the

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5/20

itself and in the Order of July 1, 2021 approving the Protocol

for the reactivation of nightlife in the framework of the health crisis

caused by COVID-19, and is replaced by a transitory regulation.

I. Where the need to keep records of clients or attendees is interrupted.

D. ORDER of August 20, 2021, which extends and modifies the

Order of June 25, 2021 establishing prevention measures

as a consequence of the evolution of the epidemiological situation

derived from COVID-19 in the Autonomous Community of Galicia and remains

the suspension of the requirement of the exhibition of documentation for the

access to certain establishments provided for in the same and in the Order of

July 1, 2021 approving the protocol for the reactivation of the

nightlife in the context of the health crisis caused by COVID-19, and

It is replaced by a transitory and provisional regulation.

DOG Order No. 160-Bis of 2021/8/20 - Xunta de Galicia

I. Where the need to keep a register of clients or

assistants.

E. ORDER of September 14, 2021 approving the new Plan

of safe hospitality in the Autonomous Community of Galicia.

I. Where the registration of clients is included in those hospitality establishments that

who wish to obtain the “two cunchinas” category, which is one of the two levels in

function of the good practices carried out in the establishments and the

application of additional sanitary measures that promote more spaces

safe and offer all possible guarantees. Only the level is required

“una cunchiña”, which excludes said registration.

This possibility of keeping the record in the hospitality premises becomes given

that the Supreme Court endorses the implementation of the COVID passport and its

exhibition in restaurants and leisure establishments in Galicia to the

consider the appeal filed against the Order of August 20

of 2021, of the Contentious-Administrative Chamber of the Superior Court of

Justice of Galicia, and authorize or ratify the measure that is postulated.

F. ORDER of October 22, 2021 establishing security measures

specific prevention as a consequence of the evolution of the situation

epidemiological derived from COVID-19 in the Autonomous Community of

Galicia and the Order of September 14, 2021 is modified by which

approves the new Safe Hospitality Plan of the Autonomous Community of

Galicia.

I. Which indicates that registration is necessary in the following cases:

to. Carrying out selection processes by public administrations and

public sector entities.

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6/20

b. Celebration of sporting events and other non-sporting activities

organizations of an organized nature such as sports camps, camps

sports, sports schools and other similar activities.

c. Parties, festivals and other popular events.

G. ORDER of November 25, 2021, which extends and modifies the

Order of October 22, 2021, establishing security measures

specific prevention as a consequence of the evolution of the situation

epidemiological derived from COVID-19 in the Autonomous Community of

Galicia and the Order of September 14, 2021 is modified

I. By which the new Safe Hospitality Plan of the Community is approved

Autonomous of Galicia.

II. This plan does not include at any point the possibility of keeping a record of

customers and indicates the need to show the COVID certificate to

certain activities.

III. It also indicates "(...) it will not be possible to keep personal data or

create files with them; it is established that in no case will

processing operations on personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, diffusion or any other form of authorization of

access or other operation not permitted by current regulations."

In the following modifications registered to date, this

condition of not keeping records of attendees, clients, participants...

H. ORDER of December 29, 2021 establishing measures

qualified prevention authorities as a result of the evolution of the situation

epidemiological derived from COVID-19 in the Autonomous Community of

Galicia, and the Order of September 14, 2021 is modified by which

approves the new Safe Hospitality Plan of the Autonomous Community of

Galicia.

I. ORDER of January 3, 2022 amending the Order of January 14, September 2021 approving the new Safe Hospitality Plan of the Autonomous Community of Galicia.

J. ORDER of January 12, 2022 extending and modifying various orders establishing qualified measures of prevention as a result of the evolution of the epidemiological situation derived from COVID-19 in the Autonomous Community of Galicia

In all cases in which the need to keep a record was established, the conservation period is one month, after which they should be cancelled.

In addition, taking into account that the processing associated with the customer record to certain establishments is not valid as of November 26,

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7/20

2021, date of publication of the ORDER of November 25, 2021 by the amending the Order of September 14, 2021 approving the new Safe Hospitality Plan of the Autonomous Community of Galicia; any treatment or previous registration has ceased to be valid.

2. Purpose of the processing of personal data, legal basis on which support and motivation.

In all cases, the obligation to keep a record that include name and surname, ID and telephone number for the purpose of facilitate contact tracing for positive cases of COVID-19

The preamble to the orders indicates as legal basis:

"The measures adopted in this order have their normative foundation in article 26 of Law 14/1986, of April 25, general health; in the articles 27.2 and 54 of Law 33/2011, of October 4, general health public, and in articles 34 to 38.1 of Law 8/2008, of July 10, on health from Galicia.

In accordance with article 33 of Law 8/2008, of July 10, the holder of the Ministry of Health has the status of health authority, so it is competent to adopt specific preventive measures to make against the health risk derived from the existing epidemiological situation in the territory of the Autonomous Community of Galicia, with the urgency that the protection of public health demands.

By virtue of it, in application of the sixth point of the Agreement of the Consello of the Xunta de Galicia, of June 12, 2020, on prevention measures necessary to face the health crisis caused by COVID-19, once phase III of the Plan for the transition to a new normality, in its current wording, and in the condition of health authority, in accordance with article 33 of Law 8/2008, of July 10"

In each of the orders the particular motivation of said order is established. order, always linked to the evolution of the epidemiological situation and healthcare in the Autonomous Community of Galicia, which made it necessary for At that time, the regional health authorities adopted certain preventive measures aimed at containing the spread of infection and aimed at dealing with the health crisis derived from COVID-19.

It also indicates that "According to the sixth point of the Agreement of the Council of the Xunta de Galicia, of June 12, 2020, the preventive measures planned in it they will be subject to continuous monitoring and evaluation in order to guarantee their

adaptation to the evolution of the epidemiological and health situation. With this purpose may be subject to modification or deletion by agreement of the Council of the Xunta de Galicia, at the proposal of the competent council in health matter. It is also established that the owner of the Ministry competent in matters of health, as the health authority, may adopt the necessary measures for the application of the agreement and may

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8/20

establish, in accordance with the applicable regulations and in view of the evolution of the health situation, all those additional measures or complementary to those provided for in the agreement that are necessary.

Included in this authorization are those measures that are necessary to face the evolution of the health situation in all or in part of the territory of the Autonomous Community of Galicia and that modify or, in a timely manner and with a temporarily limited scope, imply the displacement of the application of the specific measures contained in the annex to said agreement.”

Lastly, the measures are supported by reports from the General Directorate of Public Health, in such a way that the adoption of the measures contained in the orders is determined by the evolution of the epidemiological situation and Autonomous Community and can adapt to said evolution in council s determined.

3. Details of the categories of personal data subject to processing and

assessment of compliance with the principle of data minimization.

The data processed has always been the minimum to be able to make the follow-up of possible contacts of a positive by the authority health, limiting itself to the essential identification data (name and surname, DNI) and contact (phone only).

These are the minimum essential data to: a) Contact a person in the event that there is an outbreak (the phone) or b) For the authority to health service can try to locate it by other means (relying on the state security forces and bodies, for example) in case there is any error in the registered telephone number (name, surname and ID).

4. Description of the process that allows the achievement of the intended purpose with indication, for each one of the participants in the same, of: 4.1.

Link with the treatment (responsible, co-responsible, manager, third, interested) of each participant. Details, where appropriate, of the contract or legal act that links the person in charge of the treatment with the person in charge of is in accordance with the provisions of article 28 of the GDPR. Each local or entity is responsible for preparing the corresponding record, so it is the data controller, based on article 6.1.c) of the GDPR (the processing is necessary for compliance with an applicable legal obligation to the data controller). After the publication of Law 8/2021, of 25 February, modification of Law 8/2008, of July 10, on Galician health; he section 1) of article 38 of the aforementioned Law 8/2008 establishes:

"1. In order to protect public health, health authorities regional and local authorities, within the scope of their powers, may adopt mandatory preventive measures when there is or is suspected reasonably the existence of an imminent and serious risk to the health of

the population. These measures may consist of: (...) k) The obligation to provision of data necessary for the control and containment of the risk to the

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9/20

public health in question and the registration of the data provided, in special data that allow the identification of people from places or assistants to activities or establishments that present a risk transmission of infectious diseases, in order that the health authorities can carry out their work of control and investigation epidemiology of outbreaks or situations of special risk to the health of the population. In any case, the data recorded will be strictly essential to fulfill said purpose of control and containment of the risk, personal data being treated with strict respect for the regulations on data protection. (...)”

Regarding the recipient of the data in case of communication by the responsible for the registry; within the processing activities of the System Público de Saúde, whose data controller is the Department of Health, there are 2: "Identification of users and professionals of the public health system" and "System for surveillance of health problems public".

It is in these treatments where personal data is incorporated communicated by the premises or entities in case they are required by the health authority.

They have the status of interested persons who came in a voluntarily to said premises, activities or events and gave their data if they wished to access, participate or consume in them.

We reiterate the voluntary nature of this act and it should be noted that the premises, activities or events for which registration was required have never been those in which essential activities are carried out (such as supermarkets, pharmacies, health centers, customer service offices public...) but catering, leisure or entertainment centers.

The legal act that supports the keeping of records and the communication to the health authority is the order of publication in the D.O.G. that forced to keep the registry and to comply with the provisions of the legislation for the protection of data to local

4.2. Description of the specific treatment carried out (registration, consultation, communication, deletion, etc.) each participant. Specification, if any, of the format in which you will store the personal data (digital / paper).

The treatment is registration, communication and deletion.

Notification to the health authority only occurred in the event of any cause that requires it, such as in the event of an outbreak and They would be removed within a month. The format was not specified. storage, which could be digital or on paper.

4.3. Procedure for communication of the registration data of each establishment to the health authorities: detail of the communication channel

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(postal, email, telephone, etc.) and the events that cause the shipment (specific frequency and/or at the request of the health authorities).

The data can only be communicated at the request of the authorities sanitary (territorial headquarters of the Ministry of Health or Directorate General of Public Health, who have recognized such a condition in the DECREE 136/2019, of October 10, which establishes the organic structure of Ministry of Health and in article 33 of Law 8/2008, of July 10, of health of Galicia). The communication will be made in the format that in that when the health authority decides and always within the framework of the investigation or monitoring of an epidemiological outbreak. has been guaranteed in In any case, compliance with current regulations on the protection of data.

5. Copy, where appropriate, of the favorable judicial resolutions and unfavorable decisions that had been issued in relation to the registration measure of customers. In all cases, the measures have been transferred to the judicial authority for its assessment, but in no case has authorization been requested for the register of clients when providing the Ministry of Health with a legal basis enough for it; established in Law 8/2008, of July 10, on the health of Galicia.

FUNDAMENTALS OF LAW

I-Competition

The Director of the Spanish Data Protection Agency, by virtue of the powers established in Article 58.2 of the GDPR and the LOPDGDD Law.

II.- Summary of the Facts:

According to the claimant, on 08/27/21, in a XASTRE DO hotel establishment PETO, S.L., asked him to fill out a form with the personal data of the diners (name, surname, ID, telephone number and signature). The form referenced the Order of April 14, 2021 of the Galician Ministry of Health -Order 14A- and the purpose of collecting the necessary information in compliance with the measures established as prevention of Covid-19.

According to the requested entity, it was a measure required by Order 14A and that the protocol for the custody of the information was to store it in an envelope with the date of the corresponding day the forms to be made available to the administration for a period of five weeks and that, in case of not acting

At the request of the authorities within said period, the information was destroyed.

For its part, the Ministry of Health of the XUNTA de GALICIA points out that the

The obligation to record these data was imposed for the first time with Order 14A whose entry into force occurred on 04/16/21 and expresses that the purpose of the treatment was to facilitate contact tracing in the event of positive cases of Covid-19. Likewise,

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11/20

points out that the treatment is based on the General Health Laws 14/1986, 33/2011 General Public Health, and 8/2018 Galician Health.

Specifically, he cites, in relation to the latter, article 38.1.k and the possibility that grants the health authority to dictate registration measures for the necessary data for the identification of those attending activities or establishments that present risk of transmission of contagious diseases and in terms of data

treated personal data (name, surname, ID, telephone number), states that they are

the essential data in response to a double motivation: to contact a

person in case of existence of outbreak (phone); so that the authority

may try to locate it by other means (relying on the forces and

state security bodies, for example) in case there is an error in the

Registered telephone number (name, surname and ID).

However, by means of DOG Order No. 155-Bis of 2021/8/13, of 08/13/21, the

ca the Order of 06/25/21, which establishes specific prevention measures

as a consequence of the evolution of the epidemiological situation derived from the CO-

VID-19 in the Autonomous Community of Galicia and the requirement of the exhibition is suspended.

documentation for access to certain establishments, and is replaced

by a transitory and provisional regulation and on 08/20/21 a new Order is issued in the

that the obligation to keep records of clients or assistants is maintained (Order

of DOG No. 160-Bis of 2021/8/20 - Xunta de Galicia ORDER of August 20,

2021).

III.- On the alleged illegal processing of personal data.

According to the above, when the claimed entity requests, on 08/27/21, the claimant

that provides you with the personal data of the diners based on the provisions of

the Order of the Ministry of Health of the XUNTA de GALICIA dated 06/14/21, its

mandatory was no longer in force as there was an Order dated 08/13/21 (DOG

Nº 155-Bis of 2021/8/13), by which, among others, the requirement of the exhibition was suspended.

Documentation for access to certain establishments.

In this sense, article 6.1.c GDPR establishes that:

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

conditions: c) the treatment is necessary for the fulfillment of a

legal obligation applicable to the data controller;

Therefore, the fact that the defendant requested the personal data of the claimant, based on a legal obligation that was no longer in force could be constituting an infringement of article 6.1 of the GDPR.

This infraction can be sanctioned with a fine of a maximum of €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 of greater value, in accordance with article 83.5.a) of the GDPR:

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12/20

In this regard, article 72.1.b) of the LOPDGDD considers it very serious, prescription purposes, "The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679."

The balance of the circumstances contemplated in article 83 of the GDPR, with regarding the infringement committed by violating the provisions of its article 6.1 GDPR, in relation to it allows an initial penalty of 2,500 euros (two thousand five hundred euro).

IV- About the alleged lack of information to customers about the treatment of your personal information:

Recital 61) of the GDPR establishes that: "Interested parties must be provided with information training on the processing of your personal data at the time it is obtained have of them (...)".

In this sense, article 12.1 of the GDPR establishes, regarding the requirements that must be

comply with the information that the data controller must make available to

interested parties, the following:

"1. The person in charge of the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any any communication pursuant to articles 15 to 22 and 34 relating to the treatment information, in a concise, transparent, intelligible and easily accessible form, with a slow clear and simple language, in particular any information directed specifically- mind a child The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by the interested party, The information may be provided orally provided that identity is proven. of the interested party by other means (...)"

And for its part, article 13 of the GDPR, details the information that must be provided to the interested when the data is collected directly from him, establishing that:

"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, facilitates will:

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, in

Their case; c) the purposes of the processing for which the personal data is intended and the legal basis of the treatment; d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the controller or a third party; and) recipients or categories of recipients of personal data, in

Their case; f) where appropriate, the intention of the person responsible for transferring personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to the adequate or appropriate guarantees and to the means to obtain a copy of these or the fact that they have been provided.

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13/20

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 a treatment

Fair and transparent data storage: a) the period during which they will be kept

personal data or, when this is not possible, the criteria used to determine

end this period; b) the existence of the right to request the person responsible for the

treatment access to personal data relating to the interested party, and its rectification

cation or deletion, or the limitation of its treatment, or to oppose the treatment

to, as well as the right to data portability; c) when the treatment

is based on Article 6(1)(a) or Article 9(2)

a), the existence of the right to withdraw consent at any time.

without affecting the legality of the treatment based on consent.

lien prior to its withdrawal; d) the right to file a claim with

a control authority; e) if the communication of personal data is a re-

legal or contractual requirement, or a necessary requirement to enter into a contract, and

if the interested party is obliged to provide the personal data and is informed

of the possible consequences of not providing such data; f) the existence of

automated decisions, including profiling, referred to in the

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

about applied logic, as well as the importance and consequences

views of said treatment for the interested party”.

In the case at hand, on the form sheet that the defendant entity presents-

asked customers to indicate their personal data, the following could be read:

"ORDER of April 14, 2021, which modifies the Order of February 25,

February 2021 establishing the necessary actions for the

implementation of the Safe Hospitality Plan of the Autonomous Community

of Galicia (DOG No. 69-Bis)

"DATA PROTECTION: XASTRE DO PETO, S.L, As responsible for the

processing informs you that the purpose of processing your personal data

is to collect the necessary information for table reservation or appointment in

compliance with the measures established as prevention of SARS-COVID

19 and automated decisions will not be made based on the data provided.

two. Your data will be kept as long as the interested party does not request its deletion.

and, where appropriate, during the years necessary to comply with the obligations

legal purposes. We indicate the legal basis for the processing of your data: Ex-

execution of a contract: fiscal, accounting and administrative management. Legitimate Interest

of the person in charge: sending commercial communications even by telephone

single (GDPR considering 47 LSSICE art. 21.2).

Your data will be communicated to Public Administrations with competence

in the matter in order to comply with legal obligations and to third parties

in the cases necessary for the development, control and compliance of the fi-

purposes expressed in the cases provided for in the Law with the purpose of

compliance with other legal obligations. Interested people have

right to access your personal data, as well as request the rectification of

inaccurate data or, where appropriate, request its deletion when, among other reasons,

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14/20

the data is no longer necessary for the purposes for which it was collected.

two. You also have the right to the portability of your data. in certain

circumstances, the interested parties may limit the processing of their data

in which case we will keep them for the exercise or defense of claims

tions. You can exercise your rights in the following way: by contacting info-

@elpapatorio.com or at RUA DO FRANCO 10 BJ - C.P. 15702-SANTIAGO DE

COMPOSTELA (A CORUÑA). When commercial communications are made

based on legitimate interest, the interested party may oppose the processing of

your data for this purpose. In the event that you feel your rights have been violated with

regarding the processing of your personal data, especially when it is not

have obtained satisfaction in the exercise of their rights, they can present

a claim before the control authority on data protection

through the site: www.aedp.es. The personal data that we process in XAS-

TRE DO PETO, S.L. come from the interested party.

In the present case, it can be seen how the form lacks information

about the purpose for which it is necessary to enter personal data, that is, to

facilitate contact tracing in case of positive COVID cases, based on

Laws: 14/1986 General Health, 33/2011 General Public Health, and 8/2018

of health of Galicia.

Therefore, in the case at hand, the lack of information in accordance with the regulations

in force could imply the violation of article 13 of the GDPR.

This infraction can be penalized as established in article 83.5.b) of the GDPR, where it is established that: "Violations of the following provisions shall be sanctioned, in accordance with section 2, with administrative fines of 20,000,000 EUR maximum or, in the case of a company, an amount equal to 4% maximum of the overall annual total turnover of the financial year above, opting for the one with the highest amount: a) the rights of the interested parties to tenor of articles 12 to 22".

In this sense, article 74.a) of the LOPDGDD, considers light, for the purposes of prescription, "Breach of the principle of transparency of information or the right to information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679."

The balance of the circumstances contemplated, with respect to the infraction committed, by violating the provisions of article 13 of the GDPR, it allows an initial sanction to be set of 1,000 euros (one thousand euros),

V.- Regarding the sending of commercial communications to clients and the impossibility their right to oppose this at the time their data is collected:

In the present case, the claimed entity, in the form provided to the client is told the following:

"We indicate the legal basis for the processing of your data: Execution of a contract: fiscal, accounting and administrative management. Legitimate Interest of the Respondent
sable: sending commercial communications even by telephone (RGPD

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28001 – Madrid

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considering 47 LSSICE art. 21.2)

However, the form that was provided to customers to fill out with your personal data, was not intended for the performance of a contract, in this case, the execution of a hotel or restaurant service, but to comply with compliance with the ORDER of April 14, 2021 of the Xunta de Gallega, by which the established the necessary actions for the implementation of the Hospitality Plan insurance of the Autonomous Community of Galicia.

In this sense, article 21 of the LSSI provides that:

"1. The sending of advertising or promotional communications is prohibited by email or other equivalent electronic means of communication that had not previously been requested or expressly authorized by the recipients of these.

2. The provisions of the previous section shall not apply when there is a prior contractual relationship, provided that the provider had obtained lawful contact details of the recipient and use them to send commercial communications referring to products or services of your own company that are similar to those that were initially contracted with the client.

In any case, the provider must offer the recipient the possibility of opposing consent to the processing of your data for promotional purposes through a process simple and free procedure, both at the time of data collection as in each of the commercial communications that you direct.

When the communications have been sent by email, say

This means must necessarily consist of the inclusion of an email address

email or other valid electronic address where you can exercise

this right, being prohibited the sending of communications that do not include

said address.”

However, in article 21 of the GDPR, on the right of opposition, it is established that :

"1. The interested party will have the right to oppose at any time, for reasons related to your particular situation, to what personal data that concerned are subject to treatment based on the provisions of article 6, paragraph 1, letter e) or f), including profiling on the basis of such provisions. The controller will stop processing the data personal, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party. do, or for the formulation, exercise or defense of claims.

2. When the processing of personal data has the purpose of marketing directly, the interested party will have the right to oppose the treatment at all times. processing of personal data concerning you, including the preparation of profiles to the extent that it is related to the aforementioned marketing.

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28001 – Madrid

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sedeagpd.gob.es

16/20

3. When the interested party opposes the processing for marketing purposes directly, the personal data will no longer be processed for said purposes.

4. At the latest at the time of the first communication with the data subject, the right indicated in sections 1 and 2 will be explicitly mentioned when interested and will be presented clearly and apart from any other information mation.

5. In the context of the use of information society services, and notwithstanding the provisions of Directive 2002/58/EC, the interested party may exercise enforce your right to object by automated means that apply specific technical tions.

6. When personal data is processed for the purposes of scientific research or historical or statistical purposes in accordance with article 89, paragraph 1, the The interested party shall have the right, for reasons related to their particular situation, lar, to oppose the processing of personal data that concerns him, unless necessary for the fulfillment of a mission carried out for reasons of in-public interest”.

The person who owns the personal data may exercise before the responsible for the treatment a series of rights, among which is the opposition to treatment

In the present case, the respondent entity indicates in the form that, "When allows the sending of commercial communications using as a legal basis the interest of the person in charge, the interested party may oppose the processing of their data for that purpose”.

But the truth is that, according to art. 21.2 of the LSSI indicated above, the provider must offer the recipient the possibility of opposing the processing of their data for promotional purposes through a simple and free procedure, both in the collection of data as in each of the commercial communications that directs you and this implies that, at the same time the data is collected, must provide the interested party with the possibility of objecting (art. 21 of the GDPR) and not expect, as can be deduced from what was indicated by the claimed party when the interested party request through the means indicated in the form.

Therefore, in the case at hand, the lack of a simple and free mechanism that

makes it possible for the client to oppose the use of their personal data to send commercial communications at the time of their collection by the responsible could lead to the violation of article 21 of the GDPR.

This infraction can be penalized as established in article 83.5.b) of the GDPR, where it is established that: "Violations of the following provisions shall be sanctioned, in accordance with section 2, with administrative fines of 20,000,000 EUR maximum or, in the case of a company, an amount equal to 4% maximum of the overall annual total turnover of the financial year

C / Jorge Juan, 6

28001 – Madrid

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sedeagpd.gob.es

17/20

above, opting for the one with the highest amount: a) the rights of the interested parties to tenor of articles 12 to 22".

In this sense, article 72.1.k) of the LOPDGDD, considers it very serious, for the purposes of prescription, "The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679."

The balance of the circumstances contemplated, with respect to the infraction committed, by violating the provisions of article 21 of the GDPR, it allows an initial sanction to be set of 2,500 euros (two thousand five hundred euros),

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

START: SANCTION PROCEDURE against the entity XASTRE DO PETO, S.L.

with CIF.: B70353677 by:

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Violation of 6.1) GDPR, regarding the illegal processing of personal data of clients, when requesting their data based on a legal obligation that already was not in effect.

Violation of article 13 GDPR regarding the lack of information on the purposes in the processing of your personal data included in the form of data collection.

Violation of article 21 GDPR regarding the lack of a simple and free to oppose, at the time of obtaining the data personal, to the sending of commercial communications

APPOINT: D. R.R.R. as Instructor, and Secretary, if applicable, D^a S.S.S., indicating that any of them may be challenged, if applicable, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

ADD: to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and their documentation, the documents obtained and generated by the General Sub-directorate of Data Inspection during the phase of investigations, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations, the sanction that could correspond would be 6.0

, for the infraction of the

00 euros (six thousand euros)

Article 6.1) GDPR (2,500 euros), for violation of article 13 GDPR (1,000 euros) and for the infringement of article 21 GDPR (2,500 euros), without prejudice to what results from The instruction.

C / Jorge Juan, 6

28001 – Madrid

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18/20

NOTIFY: the present agreement to initiate a disciplinary file against the entity

XASTRE DO PETO, S.L., granting it a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, he may acknowledge his responsibility within the term granted for the formulation of allegations to this initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in the present procedure, equivalent in this case to 1,200 euros. With the application of this reduction, the sanction would be established at 4,800 euros, resolving the ceding with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which supposes will give a reduction of 20% of the amount of this, equivalent in this case to 1,200 euro. With the application of this reduction, the penalty would be established at 4,800

euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

allegations at the opening of the procedure. Voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain established at 3,600 euros (three thousand six hundred euros).

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or waiver of any action or appeal through administrative treatment against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it into account No. ES00

0000 0000 0000 0000 0000 open in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the reference number

of the procedure that appears in the heading of this document and the cause

of reduction of the amount to which it receives.

Likewise, you must send proof of income to the Sub-directorate General of Ins-

expectation to continue with the procedure in accordance with the amount entered.

gives.

The procedure will have a maximum duration of nine months from the date of

date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed-

After this period, its expiration will take place and, consequently, the file of actions;

in accordance with the provisions of article 64 of the LOPDGDD.

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28001 – Madrid

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19/20

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPA-CAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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SECOND: On September 12, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 3600 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

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."

II

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

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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

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28001 – Madrid

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20/20

compensation for damages caused by the commission of the offence.

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

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202206486, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to XASTRE DO PETO, S.L..

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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