

□ File No.: EXP202202952

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) with dates 01/19 and 27/2022

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against Randstad Project Services, S.L. (hereinafter Randstad).

The reasons on which the claim is based are the following:

The complaining party states that the Randstad entity has violated the regulations of  
data protection when identifying it as responsible for a traffic offense

committed on \*\*\*DATE.1, which has given rise to the Tax Agency of the Islands

The Balearic Islands proceed to seize the corresponding amount. points out that he has  
provided their name and surname, as well as their identity number (...) as if they were

It was about his driver's license, which he doesn't have. In addition, an address was reported

which is not yours. It also points out that it never received prior notifications from the

fine or the seizure procedure, reason for which he filed a claim "before the

Electronic record".

With your claim, you provide, among other things, the following documentation:

. Information on the embargo procedure processed by the Tax Agency  
from Balearic Islands:

. Tax address: \*\*\*ADDRESS.1\*\*\*DATE.1

. Object: \*\*\*REGISTRATION.1(...)

. DNI: \*\*\*NIF.1

. Name: (name and surname of the complaining party)

. Reference: (...)

. Start date: \*\*\*DATE.2

. End date: \*\*\*DATE.3

.(...). It is established that the claimant resides (...), with address at \*\*\*ADDRESS.2.

. (...).

. Screenshot obtained from the "Application of fines (IMI Palma)"

corresponding to a traffic offense ("circulating in the "acire" area without a  
authorization") committed with the vehicle with registration number \*\*\*MATRICULA.1 on  
\*\*\*DATE.1. The data of the complaining party as denounced, and the entity  
owner of the vehicle ("\*\*\*COMPANY.1").

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. Communication dated 11/21/2019, sent by Randstad to Palma City Council

of Mallorca, in which the following is indicated:

"That on 11/04/2019 I have been notified of a complaint with a file..., for which I was  
demands the payment of XX euros, and I am charged with an infraction for the fact of "circulating in the area  
acire without authorization card" having violated article..., and that affects the vehicle with  
registration \*\*\*REGISTRATION.1.

That said offense was committed on \*\*\*DATE.1 at \*\*\*TIME.1, and on those dates the

The driver of the vehicle was... (name and surname of the complaining party), with permission to  
drive no.... ((...)) corresponding to the claimant), and with address at c/...,  
\*\*\*LOCATION.1".

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

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to Randstad, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on 03/14/2022 as stated in the acknowledgment of receipt in the file.

On 04/13/2022, this Agency received a written response from Randstad indicating:

. About the facts:

"On date \*\*\*DATE.1 a traffic violation was committed with a rental vehicle of Randstad... in Palma de Mallorca.

Subsequently, on November 4, 2019, the Palma de Mallorca City Council communicated to Pyramid Consulting, S.L. (hereinafter, PYRAMID) the aforementioned infraction. PYRAMID is the Randstad provider in charge of managing traffic fines...

On November 19, 2019, PYRAMID notifies Randstad of the fine received... so that it can be Proceed to identify the driver. That same day, from Randstad, (...)(in forward, \*\*\*B.B.B.), direct employee of Randstad...

The next day, November 20, 2020, PYRAMID contacts \*\*\*B.B.B. via email, informing you that you have been identified as a driver and requiring you to provide additional identification data to be able to manage the fine before the Administration. On the same day, \*\*\*B.B.B. states that he is not the driver, and identifies... (the complaining party) as the driver at the time of the offence. \*\*\*B.B.B. brings the following data of... (the claiming party): the identification number "\*\*\*\*NIF.1" and the

address "\*\*\*\*ADDRESS.3"...

PYRAMID, on November 21, 2020, requests \*\*\*B.B.B. more information about... (the part claimant) to be able to identify her as the driver, but states that she cannot locate her or have more data... The same November 21, 2020, PYRAMID, on behalf of Randstad..., proceeds to identify before the City Council of Palma de Mallorca... (the complaining party) as the driver of the vehicle that committed the traffic offense, in compliance with the obligation established in art. 11 of the Road Safety Law..."

It adds that the claimant contacted Randstad on 01/26/2022 requesting

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an explanation of what happened, which was provided on 02/03/2022, indicating that

Your data was communicated to the Palma de Mallorca City Council by Pyramid

Consulting, S.L. (hereinafter PYRAMID CONSULTING).

It clarifies that the data of the complaining party was communicated to the aforementioned

City Council in relation to the management of the fine having been provided by a

third, that he identified her as the driver of the vehicle.

Regarding the fine management process followed by PYRAMID CONSULTING,

indicates that initially it only contemplated cases related to workers of

that entity that commits traffic offenses with renting cars of the

company, as reflected in the data processor contract

signed between Randstad and PYRAMID CONSULTING, and that when the worker

identified by Randstad provides the data of a third party, a

verification by PYRAMID CONSULTING with Randstad as to whether the person

The driver to be identified is a worker of the latter entity.

Warns that you have started a process to configure a new process to correct the deficiencies appreciated in these cases and that will correct the protection agreement of data with PYRAMID CONSULTING to include the processing of data of interested parties who are not considered employees ("drivers"), as well as the duty to PYRAMID CONSULTING to inform these interested parties on behalf of Randstad according to article 14 GDPR.

With its response, Randstad provides, among other things, the following documentation:

. Copy of the notification of the complaint that has given rise to these proceedings, sent by Palma City Council to the entity Randstad, addressed to the address of this entity. In this communication there is a stamp with the text: "Randstad. Entry date 04-Nov-2019. Reception. Madrid". In this notice it is indicated that the complaint "could not be notified immediately for the reasons that the complainant stated in the complaint" ("Absent driver").

. Copy of the emails sent by Randstad, PYRAMID CONSULTING and the worker "\*\*\*\*B.B.B." after the notification outlined in the previous point, in relation to the identification of the driver at the time the committed the traffic offense referred to in said notification:

. Mail dated 11/19/2019, addressed by PYRAMID CONSULTING to Randstad ("\*\*\*C.C.C."), with the following text:

"...we send you the driver's data request that has been sent by the Hon. Palma de Mallorca Town Hall...

For the reason indicated above, we need you to fill in the following information relating to the person responsible for the offense committed...

1. Name and two surnames
2. DNI/Driving license

3. Complete address (town, postal code, street number, floor, door)

4. Telephone

5. Email address

If you are not the offender and fill in the data described above, you need

the offending person:

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Photocopy of driver's license

Signed authorization and the data requested above.

. Mail dated 11/19/2019, addressed by Randstad ("\*\*\*C.C.C.") to PYRAMID

CONSULTING, with the following text:

"...I pass the driver's data:

Name and two surnames: "\*\*\*B.B.B...."

DNI/Driving license...

Full address...

Phone...

Email address..."

. Email sent by PYRAMID CONSULTING to "\*\*\*B.B.B.", dated

11/20/2019. The text of this email is outlined in the Fourth Proven Fact.

. Email sent by "\*\*\*B.B.B." to PYRAMID CONSULTING, dated

11/20/2019. The text of this email is outlined in the Fifth Proven Fact.

. Email sent by PYRAMID CONSULTING to "\*\*\*B.B.B.", dated

11/21/2019. The text of this email is outlined in the Sixth Proven Fact.

. Email sent by "B.B.B." to PYRAMID CONSULTING, dated 11/21/2019. The text of this email is outlined in the Proven Fact Seventh.

. Communication sent by "Randstad" to the City Council of Palma de Mallorca, of date 11/21/2019. This communication coincides with that provided by the complaining party, reviewed in the First Antecedent.

. Copy of the communications maintained by the complaining party with Randstad in 2022 (whatsapp messages and emails), in relation to the facts reported. In an email dated 02/03/2022, the aforementioned entity informs the claimant the next:

"Once the corresponding inquiries have been made... we inform you that Randstad... does not has not proceeded to identify her as a driver, nor to provide any type of personal data yours to Palma de Mallorca City Council. On the other hand, we have learned that apparently it has been the company Pyramid Consulting (company that manages the fines for traffic offenses contracted by RANDSTAD...) which identified her as the driver of the vehicle, and therefore who provided their personal data to the City Council..."

. Screenshot of the "candidate data query and deletion console" registered on the web" of Randstad, which shows that the registration date of the party claimant is (...).

. Copy of the data processor contract signed between Randstad and PYRAMID CONSULTING dated 11/03/2021.

. Copy of emails exchanged between Randstad and PYRAMID CONSULTING on the occasion of the claim transfer process. in these emails reference is made to the configuration of a new identification procedure of the [www.aepd.es](http://www.aepd.es)

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driver responsible for a traffic offense and it arises, for cases such as the one that motivates these actions, the option for PYRAMID CONSULTING to contact with Randstad to confirm the data before identifying a possible author of the traffic violation. Likewise, the possibility of formalizing an addendum to the contract to contemplate the processing of personal data of interested parties who do not are considered Randstad employees and "include Pyramid's duty to report on behalf of Randstad in accordance with article 14 GDPR in those cases where data from third parties that are not considered employees are processed":

. Mail of 03/25/2022, directed by the PYRAMID Quality Department

CONSULTING to Randstad ("\*\*\*D.D.D."), with the following text:

"...I am sending you all the documentation related to this file.

As you can see, first we ask for the driver's information and, as usual, we confirm the information with the user. Since it tells us not to be the driver in the moment of the infraction, we request some type of accreditation that demonstrates that Indeed, the data provided belongs to the offending person. The driver tells us that he is unable to contact her and, before the expiration date of the notice, we decided to provide such data.

We have discussed this issue with... and we have agreed that, from now on in cases similar, we will always contact Randstad again to confirm if the information provided is correct.

In turn, tell you that we had a meeting with... (name of the complaining party), the plaintiff person. To confirm whether or not we should bear the cost, we spoke with the person who provided us with the data at the time and it was confirmed that he had provided the



correct data. When we discuss this issue with... (name of complaining party), we perceived (...), and since I had already filed a complaint and we had the written email where your data is provided to us, we are waiting to receive said notification to be able to defend your and our management through the appropriate path...".

. Mail dated 03/30/2022, addressed by Randstad ("\*\*\*E.E.E.") to the Department of Quality of PYRAMID CONSULTING, with the following text:

"...I am writing to ask you a question that arises: Regarding the point "We have discussed this issue with... and we have agreed that, from now on in similar cases, we will always contact Randstad again to confirm if the information provided is correct": when data from a third party who is not an employee is provided of Randstad, will your data also be communicated to the Corresponding administration? Or what will be done in these cases?

. Mail of 04/01/2022, directed by the PYRAMID Quality Department CONSULTING to Randstad ("\*\*\*E.E.E."), with the following text:

"That's right, in principle, and unless you tell us otherwise, we will provide the data of this third after confirming with you...

Since at the moment in which your employee provides us with data from a third person we do not know if he works for you, if you think we can always

Contact us to confirm if we identify you with the data provided and, if so,

We request either the person who provides us with these data or you internally for a authorization from the person to be identified as a driver, to

Thus, if you deny being the driver, being able to prove that you authorized us, even if it is true, is could manage without said authorization because as I mentioned before it is a obligation of the owner of the vehicle to provide the data and they always have the right to deny be the driver.

We remain at your disposal to clarify any type of doubt and thus assess the

different options to modify the identification procedure to the option that most suits your needs."

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. Mail dated 04/01/2022, addressed by an employee ("\*\*\*E.E.E.") of Randstad to other employees of the same entity, with the following text:

"... We would need to see with you or with someone from your teams the possible risks that this new procedure may entail, both from the point of view legal as operational.

In addition, it must be taken into account that the definition of a new procedure to act

In these cases, it is important for the response that we give to the Spanish Agency for Data Protection, since we have to demonstrate that we are taking measures to avoid these situations.

. Mail dated 04/04/2022, addressed by an employee ("\*\*\*E.E.E.") of Randstad to other employees of the same entity, with the following text:

"I have spoken with... and he tells me that, in these cases, where a worker has provided data from a third person, we should request consent to this third party before sending any of your data to the Administration.

Please, when you can tell me if from the operational point of view this is viable so that a new procedure can be set up with Pyramid and demos a response to the AEPD".

. Mail dated 04/07/2022, addressed by Randstad ("\*\*\*E.E.E.") to the Department of Quality of PYRAMID CONSULTING, with the following text:

"Once this matter has been transferred to our Legal department, to Purchasing and seen in data protection, the following actions will be taken:

1. Configuration of a new fine management procedure

In those cases where the worker initially identified by Randstad as driver, in turn refers to a third party who, presumably, would be the driver, the following steps should be followed:

a) From Pyramid, once you have the data of that third party, you will have to communicate it to Randstad to proceed to verify if that person is our employee.

b) If you are a worker: Pyramid will send you an email informing you that you have been identified as a driver and will follow standard procedure.

c) If you are not a worker: from Pyramid you will contact the interested party informing you that you have been identified as a driver and requesting your agreement about this fact (consent), together with information on the protection of data pursuant to art. 14 GDPR (this information will be transferred to you from Randstad.

We are working on it and as soon as we have it we will send it to you):

. If you confirm that you were indeed the driver, you will proceed to communicate your data to the administration.

. In those cases, where the interested party declares not to be the driver or does not have contact information (email or phone number) for inform the interested party, the cost of the fine will be assumed and it will not identify any driver before the Administration.

2. Amend the treatment order agreement signed between both parties

In November 2021 we signed between both parties a treatment order for regulate the processing of personal data, which you carry out on our behalf for the provision of fines management service. Following this incident, we will proceed to

Prepare an addendum to modify the following issues:

. Include the processing of data of interested parties who are not considered to be employees ("drivers").

. Include Pyramid's duty to report on behalf of Randstad pursuant to art. 14

GDPR in those cases where data from third parties that do not have the employee consideration.

As soon as we have the addendum prepared, we will send it to you for your review and

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subsequent signature".

THIRD: On April 19, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On 07/08/2022, by the General Sub-Directorate of Data Inspection

the information related to the entity PYRAMID CONSULTING is accessed in "Axesor"

("Monitoring Report"). (...).

FIFTH: On 07/22/2022, the Director of the Spanish Agency for the Protection of

Datos agreed to start a sanctioning procedure against PYRAMID CONSULTING, with

in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged infringement

of article 6 of the GDPR, typified in article 83.5.a) of the aforementioned Regulation; and

classified as very serious for the purposes of prescription in article 72.1.b) of the

LOPDGDD.

In the opening agreement it was determined that the sanction that could correspond,

attention to the existing evidence at the time of opening and without prejudice to the

that results from the instruction, would amount to a total of 30,000 euros (thirty thousand euros).

Likewise, it was warned that the imputed infractions, if confirmed, may entail the imposition of measures, according to the aforementioned article 58.2 d) of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in the LPACAP, the claimed party presented a pleading in which it requests the procedure file based on the following considerations:

1. In relation to the factual circumstances revealed in the

Background of the agreement to open the procedure, highlights the following questions of interest:

. The claim is filed against Randstad, as it is the legal entity responsible for the act object of the claim (identification of the driver in a traffic ticket), as well as the responsible for data processing.

. The traffic ticket was imposed on (...) \*\*\*DATE.1, that is, for the use of a vehicle Outside working hours.

. From the documentation provided by the complaining party, it is shown that (...), place of offence.

. It follows that the Administration carried out executive actions (embargo) to be able to collect the fine. That is, there necessarily had to be a procedure prior administrative decision where it was resolved that the complaining party committed the infraction indicated.

. In other words, it is proven by the disciplinary file that the claimant party committed the offence. The identification, therefore, was correct and there is no proof, hint or evidence to the contrary.

. The process of transfer of the claim regulated in article 65.4 of the LOPDGDD It was not given to PYRAMID CONSULTING, despite imputing the condition of solely responsible for the infringement.

. Randstad reported that, on 11/04/2019, the Palma de Mallorca City Council

informed PYRAMID CONSULTING of the infraction committed. However, the

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Administration, by legal imperative, notifies the sanctions to the owner of the vehicle (...) and,

where appropriate, to the lessee of the same (Randstad), to proceed in its discharge,

pay the penalty or, if applicable, identify the natural person who was driving the vehicle

at the time of the infringement, complying with the legal obligation that establishes it.

. Randstad does not identify “\*\*\*B.B.B.”. The procedure is that an employee of that

The entity provides the data of the driver of the vehicle on that date (“\*\*\*B.B.B.”) to

PYRAMID CONSULTING, and it contacts said driver, who intervenes as

a second Randstad employee, who tells PYRAMID CONSULTING

expressly on two occasions that the complaining party is the responsible driver

of the infringement and provides the necessary data to proceed with the identification

(provide a copy of the emails received from the Randstad employee, identifying the

complaining party), which were enough for the City Council of Palma de

Mallorca considers the identification correct and initiates the corresponding procedure

disciplinary action against the complaining party and declare it responsible.

PYRAMID CONSULTING understands that the identification was legally made.

. The report and documentation provided by Randstad show that (...). The part

Claimant acknowledged meeting on those dates with “\*\*\*B.B.B.” and meet him

personally, and he flatly affirms that he was traveling with her on the day of the

violation, that he left the car because Randstad said so, which is normal policy of the

company that can or must leave the car to third parties.

. The obligation of PYRAMID CONSULTING is to provide the driver's data, but is not responsible for whether the driver is a Randstad worker or a third party (relative, friend, thief, etc.).

. The identification data is provided by Randstad employees, without PYRAMID CONSULTING access the driver database. A Randstad employee gave some data of "\*\*\*\*B.B.B.", and a second Randstad employee gave the data of the complaining party.

. The legal obligation is to identify the driver, not to verify the relationship of the driver with the owner of the vehicle.

. In relation to the measures to be adopted announced by Randstad, the entity PYRAMID CONSULTING indicates that the new process confirms that it authorizes the use of vehicles by non-worker third parties, and includes a new verification process for such cases, which did not exist previously. Therefore, the performance of PYRAMID CONSULTING against Randstad was correct and in accordance with the procedure, with independence that now the same is changed.

2. In relation to the legal arguments that support the opening agreement of the procedure:

a) Regarding the consideration of PYRAMID CONSULTING as the person in charge of the treatment.

. The AEPD correctly describes PYRAMID CONSULTING as being in charge of the treatment, but, despite this, it considers it responsible for the alleged offense based on a data processing contract well after the fact, signed between Randstad and PYRAMID CONSULTING on 11/03/2021, so it is not applicable to the present case. The contract in force when the events take place analyzed was the original service lease contract, signed between both parties on 04/25/2012 (provide a copy).

. It also omits that Randstad, in his report, acknowledges that the agreement of

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Data processing was carried out as part of the corrective measures treated to solve problems like the one at hand.

. From all this it can be deduced that the performance of PYRAMID CONSULTING was correct in at all times and appropriate to the relationship between the two companies and to the legality applicable to the service. Specifically, it is stated that PYRAMID CONSULTING receives from Randstad the data of the natural person who was driving the vehicle on the day and time indicated in the complaint and, after several verifications and confirmation of the data by Randstad, PYRAMID CONSULTING communicates to the acting Administration such data. All this procedure must be carried out in an approximate average time of ten business days or Randstad would receive an aggravated penalty for non-compliance with the obligation to identify the responsible driver, and PYRAMID CONSULTING would have breached what was agreed in its contract with said entity, to the point of being able to be obliged to indemnify him with the amount of said fine.

It is clear that it was Randstad, as data controller, who decided deliver to PYRAMID CONSULTING the data of the complaining party so that the notify the City Council of Palma de Mallorca indicating it as the driver of the offending vehicle.

. The offending driver identification procedure cannot be limited in traffic tickets exclusively to Randstad workers. The current contract on the date of the facts obliged PYRAMID CONSULTING to communicate the data



of the driver, without specifying that said communication will only be made in the event of being a Randstad worker. In addition, said agreement cannot violate a legal obligation, which is to identify the driver responsible for the traffic ticket corresponding.

In fact, the data communicated by PYRAMID CONSULTING were always those that provided by Randstad, since PYRAMID CONSULTING does not have direct access to the data.

In the case at hand, the offense was committed (...), that is, the vehicle was not used at that time for work purposes, so it is clear that the driver he didn't have to be a Randstad worker.

Based on the foregoing, PYRAMID CONSULTING concludes that the requirements to consider that the data processor is responsible exclusive of any attributable fact. PYRAMID CONSULTING acted in accordance with the law and in accordance with the contract at all times, the processing of the data being lawful of the complaining party.

b) On the violation by PYRAMID CONSULTING of the provisions of article 6 of the GDPR.

Said entity understands that the provisions of article 6 of the GDPR are not violated, in accordance with what is stated in section 1, letter a), inasmuch as the complaining party consented to the processing of your personal data (...).

In the same way, data processing is covered by the provisions of the letter c) of the same article, considering that there is a contractual relationship between Randstad and PYRAMID CONSULTING, which began on 04/25/2012, and has been maintained uninterruptedly during all these years, by virtue of which PYRAMID CONSULTING has the obligation to communicate the offender's data in traffic in compliance with a legal obligation (article 11 of the Law on

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Road Safety) and by contractual obligation, as established in the contract

in force at the time the traffic offense occurred, dated 04/25/2012,

in its First Clause

In this regard, the defendant emphasizes that the breach of these

obligations entails the application of the penalties provided in clause

Fifth of the aforementioned contract.

Through the aforementioned contract it is agreed that PYRAMID CONSULTING will act as

Randstad supplier, in charge of managing traffic fines. In this sense,

Randstad acts as data controller and PYRAMID

CONSULTING as data processor, and this implies that it

can access certain personal data that are the responsibility of

randstad.

In this case, it adds, there has been no action, omission and/or total, partial,

defective of the obligations assumed by PYRAMID CONSULTING in its

status of data processor, nor does it exist or have been provided to the

present procedure any evidence that undermines his good work.

During the more than 12 years of professional relationship between both entities, no

detected any incidence similar to the present one, having always acted in the

the same way. There is not and never has been in the data processing agreement a

written and specific action procedure referring to this type of situation, in

which a Randstad worker reports not being the driver at the time of

the infringing act is committed and provides data from a third party.

In situations like this, we have always acted as indicated, being key

for PYRAMID CONSULTING that whoever provides the data of the third party is "worker,

Randstad staff. That is, if the person who provides the third party's data is a worker

of Randstad who has access to them as data controller

of data, it is understood that we are dealing with contrasted and truthful information, since

there is no express written procedure in the data processing agreement

relative to this type of situation, which has always been dealt with verbally.

Nor has it been designated by Randstad which specific workers are the

responsible for providing the data of the drivers, understanding that any

company worker can facilitate the same indistinctly.

By not specifying which specific person or persons must inform PYRAMID

CONSULTING, but refers to all Randstad personnel,

We understand that PYRAMID CONSULTING has not breached at any time with

the obligations assumed by virtue of the agreement signed between the parties.

“\*\*\*B.B.B.” is a direct worker of the company and in his capacity as worker

identifies the complaining party as the driver at the time of the

violation, providing your data to PYRAMID CONSULTING. Consequently, the

The claimant's data was not obtained by a third party, but was

provided by a Randstad worker and also extracted from its database,

since it had been registered on the platform.

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By virtue of all of the foregoing, and in order to prevent situations such as the present one from repeat, Randstad proposed to PYRAMID CONSULTING the signing of a data processing and both companies are developing a new data processing process management of fines, proceeding to the correction in this sense of the agreement of treatment of data signed between the parties and the one that we reiterate, did not contemplate these assumptions.

### 3. Category of personal data communicated to the administration.

The City Council of Palma de Mallorca only communicated the data relating to name, surname, identification number (\*\*NIF.1) and address (\*\*ADDRESS.2).

In addition, according to the claimant, the identification number and address are not correct. According to PYRAMID CONSULTING, the data provided by the complaining party to Randstad and by the latter to PYRAMID CONSULTING, it cannot be impute data processing.

In greater abundance, beyond the name and surname, no other data appears personal, nor especially sensitive. We are not facing a security breach, nor in the event of a data breach in accordance with the provisions of the GDPR.

### 4. Prescription of the action to claim.

In the present case, taking into account the lack of intentionality of the parties, which have tried to act lawfully at all times, it can be determined that we would be facing an infraction considered minor, in accordance with the provisions of article 74 of the LOPDGDD, sections h) and k):

“Article 74. Offenses considered minor. They are considered mild and will prescribe after a year remaining infringements of a merely formal nature of the articles mentioned in the sections 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:  
(...)

h) The lack of formalization by the co-responsible for the treatment of the agreement that determines

the respective obligations, functions and responsibilities with respect to the treatment of personal data and their relations with those affected referred to in article 26 of the Regulation (EU) 2016/679 or the inaccuracy in determining them.

(...)

k) Non-compliance by the person in charge of the stipulations imposed in the contract or act that regulates the treatment or the instructions of the person in charge of the treatment, unless is legally obliged to do so in accordance with Regulation (EU) 2016/679 and this law organic or in the cases in which it was necessary to avoid the infringement of the legislation in terms of data protection and the person in charge or the person in charge has been notified of this of the treatment”.

PYRAMID CONSULTING understands that letter h) of this article is applicable to the there is no protocol between that entity and Randstad on the assumption that it has originated this claim, having acted as usual, understanding that the obligations established in the contract for the person in charge of data treatment.

By virtue of the foregoing, if it is considered that PYRAMID CONSULTING has committed an infraction, it would be in any case minor and would prescribe within a year.

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Therefore, it is understood that the claim presented would be time-barred, as the filed on January 19 and 27, 2022, more than a year after the events that occurred, which took place on \*\*\*DATE.1.

5. Finally, PYRAMID CONSULTING formulated a test proposal to be

have submitted the documentation that accompanies your brief of allegations

and the following are practiced:

. That it notify the City Council of Palma de Mallorca so that it can be sent to the AEPD

full copy of the disciplinary administrative file followed against the party

claimant for the traffic offense (...), committed on \*\*\*DATE.1 at

\*\*\*HOUR.1 hours, with the vehicle registration \*\*\*MATRICULA.1.

. Testimony, so that “\*\*\*B.B.B.”, a Randstad employee, who provided in

twice the data of the complaining party as the offending driver, in order to

to ratify the legality of the data processed and the veracity of the information related to the

commission of the offence.

With your PYRAMID CONSULTING pleadings, in addition to the emails

previously mentioned emails, provide a copy of the service lease contract to

advice on traffic, road safety and transport signed by said

entity with Randstad on 04/25/2012. According to the first stipulation of this

contract, which is reproduced in the First Proven Fact,

PYRAMID

CONSULTING undertakes to manage and process all sanctions imposed on

Randstad, in terms of traffic and transport, taking charge of the study of the

sanctions, as well as the drafting and presentation of writs and appeals

necessary.

responsible of

Among the services that are contemplated is included the communication of the data of the

person

previous commitment (driver)

request/confirmation with the lessee of the vehicle (Identification). For

comply with this obligation, PYRAMID CONSULTING must send to the

worker-

driver associated with the penalized vehicle a communication or contact with

Randstad and, once the information is obtained, proceed to identify it before the agency

issuer of the sanction.

infringement

the

SEVENTH: On 10/27/2022, the procedure instructor required the

entity PYRAMID CONSULTING to provide details of the questions that

intends to pose “\*\*\*B.B.B.” and justification on how the practice of

this test for the resolution of the disciplinary procedure, in order to assess whether the

indicated testimony is appropriate and necessary. Also, they were asked to provide the

current postal address of the person cited, to whom you can send, where appropriate, the

list of questions that are deemed appropriate.

In response to this requirement, on 11/11/2022, PYRAMID CONSULTING

submitted a document providing the address of “\*\*\*B.B.B.” to which to direct the

request for information and the specific questions that it intends to raise

(detailed in the following background), as well as a series of considerations on

the relevance of this test, considering that the facts to be proved are

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related to the procedure, with the lawful treatment of the data of the party

claimant, with the fulfillment of the obligations regulated in the signed contract

with Randstad and the legal obligation to communicate the personal data of the driver

in traffic violations.

EIGHTH: On 02/13/2023, during the test phase, the

reproduced for evidentiary purposes the claim filed and its documentation, as well as

such as the documents obtained and generated during the phase of admission to processing of

the claims; and the allegations to the initiation agreement were considered presented

of the disciplinary procedure formulated by PYRAMID CONSULTING and the

accompanying documentation.

On the other hand, it was agreed to carry out the following tests:

a) In response to what was requested by PYRAMID CONSULTING, the City Council was requested

of Palma de Mallorca full copy of the sanctioning administrative file followed

against the complaining party for the traffic offense committed on \*\*\*DATE.1 at

\*\*\*HOUR.1 hours, with the vehicle registration \*\*\*MATRICULA.1, on the street

\*\*\*ADDRESS.1, for "circulating in the "acire" area without an authorization card".

The information request document was notified to the Town Hall mentioned in

date 02/13/2023. In said letter, the repeated City Council was granted a period of

ten business days to provide the information, which elapsed without this

Agency received any writing.

b) In attention to what was requested by PYRAMID CONSULTING, "\*\*\*\*B.B.B." was required,

Randstad employee, to provide testimony on the following matters:

1. What is your relationship with Randstad today?

In view of documents 3 and 4 provided by PYRAMID CONSULTING with its

brief of allegations at the opening of the procedure:

2. On November 20 and 21, 2019, you provided by email the

data of the claimant as driver of the vehicle registration

\*\*\*MATRICULA.1 that you used. Why did you leave this vehicle at the

complaining party and who authorized it?



3. Who provided you with the personal data of the complaining party?
4. Was the complainant's data on the Randstad platform?
5. Did you have access to the Randstad driver files?
6. How did you know the complaining party?
7. What relationship did the complaining party have at that time with Randstad?
8. Was it normal practice in Randstad to leave the car to third parties?
7. Do you know that this has happened on other occasions?

From what was stated by “\*\*\*B.B.B.” In response to this request for information, that is received accompanied by the scanned copy of your ID, it is worth noting what following:

- . The respondent (“\*\*\*B.B.B.”) was a temporary employee of Randstad.
- . The day the offense was committed, he used the vehicle outside working hours together with the claimant, allowing it to drive him to his home

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usual.

- . (...) and it was she herself who provided her personal data.
- . The complaining party had no relationship with Randstad.
- . He did not have access to any driver file of the Randstad entity.
- . In the vehicle leasing contracts the freedom was left for the same could be used if the case arises by a third person, who was linked to the company or maintained a relationship with an employee, there was no any prohibition

. He knows that the vehicles were lent between colleagues, and they left them to their relatives at specific times.

c) Require the Randstad entity to provide the information and/or documentation following:

. Copy of the contract for the provision of services signed with the entity PYRAMID CONSULTING, in force at the time the traffic offense was committed mentioned and on the date on which the latter entity communicated to the Administration the personal data of the claimant as driver of the vehicle and author of the repeated traffic offence; as well as a copy of the documentation formalized by both entities, as the case may be, regarding the order of processing of personal data, which also covers the indicated period.

. DNI number and contact information (postal address and email address e-mail) relating to “\*\*\*B.B.B.”, an employee of said entity.

In response to this request for information, Randstad provided a copy of the data from contact of “\*\*\*B.B.B.” and copy of the contract signed with PYRAMID CONSULTING in dated 04/25/2012, which coincides with that provided by the latter entity with its allegations at the opening of the procedure.

d) Require the claimant to provide the following documentation:

. All the documentation you have available related to the administrative file disciplinary action followed by the Palma City Council against the complaining party for the traffic offense committed on \*\*\*DATE.1 at \*\*\*TIME.1 hours, with the vehicle registration \*\*\*MATRICULA.1, on street \*\*\*ADDRESS.1, for “circular por “acire” zone without authorization card; whether it is documentation issued by the Administration or contributed to the procedure by the complaining party.

. All the documentation that you have available related to the procedure of embargo processed by the Tax Agency of the Balearic Islands on the occasion of the

penalty imposed for the aforementioned traffic offense; whether it's about

Documentation issued by the Administration or contributed to the procedure by the complaining party.

The request for information was notified to the claimant on the date

02/13/2023, no response having been received.

NINTH: On 03/22/2023, a resolution proposal was formulated in the sense of that the Director of the AEPD declare the non-existence of an infraction, with file of the actions, in relation to the imputation to PYRAMID CONSULTING, S.L. of an alleged violation of the provisions of article 6 of the GDPR.

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TENTH: Notification of the proposed resolution outlined in the Background

Ninth was delivered to the claimed party on the same date of 03/22/2023,

being granted a period of ten working days to formulate allegations.

Said term elapsed without this Agency having received any letter from the claimed part.

ELEVENTH: On 03/27/2023, the response issued by the

Palma de Mallorca City Council to the request for information that was

done during the testing phase. This City Council reports the following:

“The interested person submitted a letter addressed to the Treasury Section. due to this circumstance, the file was reviewed, realizing that the person concerned had not been notified of the fine in question. At that time, it was resolved to make a decree of revocation of the exp... that this month will be decreed and sent to the Treasury Section”.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

## PROVEN FACTS

FIRST: On 04/25/2012, the entities Randstad and PYRAMID CONSULTING

signed a service lease agreement for advice on

traffic, road safety and transportation. Under this contract, PYRAMID

CONSULTING undertakes to manage and process all sanctions imposed on

Randstad, in terms of traffic and transport, taking charge of the study of the

sanctions, as well as the drafting and presentation of writs and appeals

necessary. Among the services that PYRAMID CONSULTING provides to Randstad, in

the first and fifth stipulations of the contract contemplate the communication to the

Acting administration (body issuing the traffic sanction) of

the details of the person responsible for the offense committed (driver):

“First.- During the term of this contract Pyramid Consulting

will manage and process all sanctions imposed on Randstad, in terms of traffic

and transportation. Pyramid Consulting will be in charge of studying the sanctions imposed

to Randstad, the drafting and presentation of the necessary writings and appeals before the Body

competent in defense of their interests, as well as advice to Randstad, in matters

of traffic and transportation.

The services provided by Pyramid Consulting by virtue of the signing of this contract

They will be the ones that we will detail below;

-Communication of the data of the person responsible for the offense committed

(driver) upon request/confirmation with the lessee of the vehicle

(ID).

On a daily basis, Randstad undertakes to update, on the server set up for this purpose, the

necessary certificates for the discharge of the sanctions that exist and that affect the

fleet of vehicles collected within this contract.

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For the correct performance of this service, Randstad undertakes to provide monthly to Pyramid Consulting, S.L. of a database in which will be specified the following data: active vehicle license plates and contact details of the consultant who Manage each worker.

Based on the provisions of the previous paragraph, Pyramid Consulting, S.L. shall, within 24 hours following knowledge of the sanction, send the worker-driver associated with the sanctioned vehicle according to the database described in a communication, in order to identify it and communicate it to the body issuing the sanction. For this Pyramid Consulting, S.L. will use Annex I of this contract.

Said communications must be available to Randstad on the Pyramid website Consulting, SL ([www.pyramidconsulting.es](http://www.pyramidconsulting.es)) the same day they were sent to the consultation and information purposes that Randstad wishes to exercise.

Randstad must, within a maximum period of 48 business hours from the date the communication described in the previous paragraph, provide the required data to Pyramid Consulting, S.L. If no response is received after said period, Pyramid Consulting, S.L. You must contact directly the person responsible for the communication by part of Randstad whose data is as follows:

\*\*\*D.D.D.

\*\*\*TELEPHONE 1

\*\*\*D.D.D.@randstad.es

Once the information regarding the worker-driver has been obtained from Randstad, Pyramid Consulting, S.L. must, within a maximum period of 48 working hours, proceed to the identification of the same before the body issuing the sanction.

Notwithstanding the foregoing, Pyramid Consulting, S.L. will be responsible for compliance with the deadlines established according to current legislation for the communication of the required data by the agency issuing the sanction.

(...)

Fifth... When Pyramid Consulting, S.L. not identify the driver within the period required by the body issuing the sanction and this entails the non-compliance of Randstad with respect to such body with its consequent sanction, Randstad will be empowered to discount the amount full amount of such sanction on the monthly invoice in which the error occurs”.

SECOND: On \*\*\*DATE.1, in the municipality of Palma de Mallorca, a traffic offense (“circulating in the “acire” area without an authorization card”) with the vehicle with registration number \*\*\*MATRICULA.1. The Town Hall of this municipality sent Randstad the corresponding notification of the complaint. In this communication consists of a stamp with the text: “Randstad. Entry date 04-Nov-2019. Reception. Madrid”.

THIRD: For the management of the traffic offense outlined in the Proven Fact Second, the entity PYRAMID CONSULTING, by email from 11/19/201, Randstad requested the data of the employee who was assigned the vehicle with which the offense was committed. On the same date, Randstad informed PYRAMID CONSULTING that the driver of the vehicle was his employee \*\*\*B.B.B., facilitating your contact information (full address, telephone and email address).

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FOURTH: On 11/20/201, the entity PYRAMID CONSULTING sent to

“\*\*\*B.B.B.” an email with the following text:

"From Pyramid Consulting S.L., entity that manages fines for offenses committed with vehicle of the RPS entity, and by virtue of the obligation imposed by article 11 of the RDLEG 6/2015 of the Law on Traffic Circulation of Motor Vehicles and Road Safety, we send you the driver data requirement issued by the Hon. Palma City Hall Mallorca, consequence of the commission of an infraction with the vehicle registration \*\*\*REGISTRATION.1.

If you are not the driver of the reported vehicle on the indicated date, we require that

Please provide us with the following information regarding the person responsible for the infringement committed within a maximum period of 48 hours:

1. Name and two surnames
2. DNI/Driving License
3. Full address (Town, Postal Code, Street Number, Floor, Door,)
4. Telephone
5. Email address

In the event that you are not the offender, and fill in the data described above, you need the offending person:

Photocopy of driver's license

Signed authorization and the data requested above.

FIFTH: Dated 11/20/201, “\*\*\*B.B.B.” responded to the entity PYRAMID

CONSULTING by email, with the following text:

“I have received your notification, but it was not me who was driving at the time.

The person who was driving at the time, and whom I proceed to identify as the driver for the

time of the offense is as follows:

Name: \*\*\*F.F.F..

Identification: \*\*\*NIF.1

Address: \*\*\*ADDRESS.3.

They have not provided me with more information, they have informed me that with this information the Police will be in charge of notifying said complaint to the driver.

I have already complied with identifying the driver.

So that you proceed to notify the corresponding department of fines”.

SIXTH: On 11/21/201, the entity PYRAMID CONSULTING sent to

“\*\*\*B.B.B.” a new email, with the following text:

"Please, we need a copy of the driver's license and the document with your data and your signature, to be able to identify correctly”.

SEVENTH: Dated 11/21/201, “\*\*\*B.B.B.” responded to the entity PYRAMID

CONSULTING by email, with the following text:

“Good morning, I have tried to contact her. But he did not locate her, it was his partner

Who could locate the information for me?

And they should know very well that due to the data protection law it is something delicate.

Therefore they are the only real data. That I have, she knows that it was her turn anyway that ticket because she was driving.

I wasn't driving, that's what happens when companies irresponsibly tell you that you give the car to third parties.

Just recently with another car that I rented, they told me the same thing that they will deliver the car to a colleague and let him. And I refused for this very reason.

Having said this, I was not driving, I have complied.

I can't do more about it."

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EIGHTH: On 11/21/2019, the entity PYRAMID CONSULTING, on behalf of Randstad, sent a communication to the Palma de Mallorca City Council in which the following is indicated:

"That on 11/04/2019 I have been notified of a complaint with a file..., for which I was demands the payment of XX euros, and I am charged with an infraction for the fact of "circulating in the area acire without authorization card" having violated article..., and that affects the vehicle with registration \*\*\*REGISTRATION.1.

That said offense was committed on \*\*\*DATE.1 at \*\*\*TIME.1, and on those dates the The driver of the vehicle was... (name and surname of the complaining party), with permission to drive no.... ((...) corresponding to the claimant), and with address at c/..., \*\*\*LOCATION.1".

NINTH: On 01/19 and 27/2022, the claimant filed a claim before the AEPD against the Randstad entity for the communication of your personal data to Palma de Mallorca City Council, identifying her as the driver of the vehicle with which the traffic offense described in the Second Proven Fact was committed. In this claim, he stated that he never received prior notice of the fine or of the seizure procedure.

TENTH: During the instruction of the procedure, "\*\*\*\*B.B.B." has confirmed that the claimant was the driver of the vehicle with registration \*\*\*REGISTRATION.1 with the that the offense was committed on \*\*\*DATE.1 at \*\*\*TIME.1. He has also declared that (...) it was she herself who provided her personal data.

ELEVEN: During the investigation of the procedure, the complaining party was

required to provide the proceedings with all the documentation that they have available regarding the sanctioning administrative file followed by the Palma City Council against the claimant for the traffic offense committed on \*\*\*DATE.1, at \*\*\*TIME.1 hours, with the vehicle registration \*\*\*REGISTRATION.1, on street \*\*\*ADDRESS.1, for "circulating through the "acire" area without a card of authorization; whether it is documentation issued by the Administration or provided to the procedure by the complaining party.

Likewise, the claimant was required to provide all the documentation it has available regarding the embargo procedure processed by the Tax Agency of the Balearic Islands due to the sanction imposed for the traffic offense before reviewed; whether it is documentation issued by the Administration or provided to the procedure by the complaining party.

The request for information was notified to the claimant on the date 02/13/2023, no response having been received.

## 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 [www.aepd.es](http://www.aepd.es)

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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: "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".

Responsibility of PYRAMID CONSULTING

II

The claim that has motivated these proceedings questions the treatment of

the personal data of the complaining party, which were communicated to the City Council

of Palma de Mallorca identifying her as the author of a traffic offense

committed with a vehicle owned by the Randstad entity.

For the management of traffic fines, Randstad contracted the services of PYRAMID

CONSULTING. For this reason, both entities signed the corresponding

contract for the provision of services, by virtue of which Randstad intervenes in the

facts as responsible for data processing and PYRAMID CONSULTING

as treatment manager.

The figures of "responsible for the treatment" and "in charge of the treatment" are defined

in article 4 of the GDPR as follows:

. "Responsible for the treatment or responsible: the natural or legal person, public authority,

service or other body which, alone or jointly with others, determines the ends and means of the

treatment; if the law of the Union or of the Member States determines the ends and means

of the treatment, the person in charge of the treatment or the specific criteria for their appointment

they may be established by the law of the Union or of the Member States".

. "In charge of the treatment or in charge: the natural or legal person, public authority,

service or other body that processes personal data on behalf of the data controller

treatment".

In the present case, it is clear that Randstad is responsible for the processing of

personal data that have a cause in the process of managing traffic fines

committed by its employees with vehicles whose ownership corresponds to that

entity, since, as defined in article 4.7 of the GDPR, it is the entity that

determines the purpose and means of the treatments carried out. In these cases,

it is up to Randstad to fulfill the duty of identifying to the authorities

acting administrative authorities to the persons causing the traffic infractions.

On the other hand, the existence of a data processor depends on a decision

adopted by the person responsible for the treatment, which he may decide to carry out himself

certain processing operations or hire all or part of the

treatment with a manager.

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The essence of the function of the person in charge of the treatment is that the personal data

are processed in the name and on behalf of the data controller. In practice,

it is the person in charge who determines the purpose and the means, at least the essential ones,

while the person in charge of the treatment has the function of providing services to the

data controllers. In other words, "acting in the name and on behalf of

of the person in charge of the treatment" means that the person in charge of the treatment is aware of the

serving the interest of the controller in carrying out a task

specific and, therefore, follows the instructions established by it, at least in

regarding the purpose and the essential means of the treatment entrusted.

The person in charge of treatment is an extension of the person in charge of the treatment, and only

You can carry out treatments on the documented instructions of the person in charge.

Only the person in charge of the treatment will be fully responsible when it is

entirely responsible for the damages caused in terms of the rights and

freedoms of the affected parties.

By establishing the responsibility of the person in charge of the treatment in the commission of

infringements of the GDPR, its article 28.10 also meets the criterion of determining

of the purposes and means of processing. Pursuant to this article, if the manager

determines the purposes and means of treatment will be considered responsible for it:

“10. Without prejudice to the provisions of articles 82, 83 and 84, if a data processor

infringes this Regulation when determining the purposes and means of processing, it will be

considered responsible for the treatment with respect to said treatment”.

In the present case, as has been said, the correct legal classification according to the

GDPR of PYRAMID CONSULTING is in charge of the treatment, since

acts in the name and on behalf of Randstad.

In this case, the proceedings offered indications that PYRAMID CONSULTING could

have processed the personal data of the complaining party, communicating them to the

Palma de Mallorca City Council, deviating from the instructions that were given to it

indicated by Randstad.

According to the information provided to this Agency by the Randstad entity, the contract for

data processor signed with PYRAMID CONSULTING, which is

of the fine management services that the latter provides to the former, contemplates

only the processing of personal data of Randstad employees.

When Randstad receives notification of an administrative offense committed with

one of its vehicles, PYRAMID CONSULTING begins the management process

requesting that entity the data of the worker driver of the vehicle in the moment in which the infraction was committed, to communicate them later to the acting administration.

However, in the present case, after requesting from Randstad the data of the driver of the vehicle with which the offense was committed that gave rise to the performances, consulted the worker appointed by Randstad, who provided PYRAMID with CONSULTING the data of a third party, the claimant.

It was understood that this entity processed the data of the complaining party to communicate them [www.aepd.es](http://www.aepd.es)

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Palma City Council without previously checking whether or not it was a Randstad worker and, since the complaining party has no relationship with Randstad, it was concluded that PYRAMID CONSULTING could have carried out a processing of personal data that is not covered in the order of treatment formalized with Randstad.

Based on this, the agreement to open this procedure was issued.

disciplinary action accusing PYRAMID CONSULTING of an alleged violation of the provided in article 6 of the GDPR, considering that, if the infringement is confirmed, the responsible would be PYRAMID CONSULTING.

Processing of personal data. Compliance with a legal obligation

II

Article 6.1 of the GDPR, which establishes the assumptions that allow the use of processing of personal data:

"1. Processing will only be lawful if at least one of the following conditions is met:

- a) the interested party gave his consent for the processing of his personal data for one or various specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at his request of pre-contractual measures;
- c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;
- d) the processing is necessary to protect vital interests of the data subject or of another person physical;
- e) the processing is necessary for the fulfillment of a task carried out in the public interest or in the exercise of public powers conferred on the data controller;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the user. responsible for the treatment or by a third party, provided that such interests are not the interests or fundamental rights and freedoms of the data subject prevail require the protection of personal data, in particular when the data subject is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions in order to adapt the application of the rules of this Regulation with respect to the treatment in compliance with section 1, letters c) and e), setting more precisely requirements treatment and other measures that guarantee lawful and equitable treatment, with inclusion of other specific treatment situations under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

- a) Union law, or
- b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, as regards

to the treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment. Said legal basis may contain specific provisions for adapt the application of the rules of this Regulation, among others: the conditions general rules that govern the legality of the treatment by the person in charge; data types object of treatment; affected stakeholders; the entities to which you can communicate

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personal data and the purposes of such communication; purpose limitation; the terms of data storage, as well as processing operations and procedures, including measures to ensure lawful and equitable treatment, such as those relating to other specific situations of treatment according to chapter IX. Union law or of the Member States will meet a public interest objective and be proportionate to the end legitimate pursued.

4. When the treatment for a purpose other than that for which the data was collected personal information is not based on the consent of the interested party or on Union Law or of the Member States which constitutes a necessary and proportional measure in a company democracy to safeguard the objectives indicated in article 23, paragraph 1, the responsible for the treatment, in order to determine if the treatment for another purpose is compatible with the purpose for which the personal data was initially collected, will take into account account, among other things:

a) any relationship between the purposes for which the personal data was collected and the purposes of the intended further processing;



- b) the context in which the personal data was collected, in particular with regard to the relationship between the interested parties and the data controller;
- c) the nature of the personal data, in particular when dealing with special categories of personal data, in accordance with article 9, or personal data relating to convictions and criminal offenses, in accordance with article 10;
- d) the possible consequences for data subjects of the planned further processing;
- e) the existence of adequate guarantees, which may include encryption or pseudonymization”.

PYRAMID CONSULTING processed the personal data of the party claimant consisting of communicating such data to the City Council of Palma de Mallorca, identifying her as the author of a traffic offense committed on the day \*\*\*DATE.1, at \*\*\*TIME.1 hours, with the vehicle registration \*\*\*MATRICULA.1, for “Circulate through the “acire” area without an authorization card”.

This identification of the driver responsible for a traffic offense is carried out in compliance with the legal obligation set forth in Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety. This regulation, in its article 11, sets the following:

“Article 11. Obligations of the owner of the vehicle and the habitual driver.

1. The owner of a vehicle has the following obligations:

- a) Provide the Administration with the identification of the driver of the vehicle at the time of commit an offence. The data provided must include the permit or license number driving license that allows identification in the Registry of Drivers and Violators of the autonomous body Central Traffic Headquarters...”.

Therefore, the communication of the data of the driver of a vehicle with which committed a traffic violation, identifying it before the competent Administration to penalize the offense in question, constitutes data processing

protected by letter c) of article 6 of the GDPR, cited above ("c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment").

Obviously, for this processing of personal data to have legal protection, from

From the point of view of data protection regulations, it is necessary that the data

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communicated correspond to the driver actually author of the traffic violation.

In the present case, of the actions available at the time of the opening of the

procedure, it turns out that the personal data of the complaining party that PYRAMID

CONSULTING informed the Palma de Mallorca City Council that they were provided with

by a third person, without it being established that the complaining party had a relationship

any with the entity that owns the vehicle (Randstad) or with the third person that

designated as the driver.

Faced with this, the claimant filed a claim with this Agency in protest

for having been identified as the author of the traffic offense in question.

However, during the investigation of the procedure, the third person who facilitated the

PYRAMID CONSULTING the data of the complaining party has confirmed that this was

the driver of the vehicle at the time the traffic offense was committed and that

it was she herself (the third person) who allowed the vehicle to be driven by

the complaining party, (...). It has even declared that the data of the complaining party

They were given to her by herself.

The complaining party, on the other hand, despite having been expressly required, has not provided during the investigation of the procedure any evidence that proves having denied responsibility for the traffic offense before the City Council of Palma de Mallorca and before the Tax Agency of the Balearic Islands, on the occasion of the embargo procedure referred to by the claimant itself in its claim.

Thus, from the evaluation of the tests carried out during the instruction of the procedure, it turns out that the facts that determined the imputation, that is, it is not irrefutably proven that the party claimant was not the author of the traffic offense that is at the origin of the claim formulated, there being serious doubts about this fact, in view of the certainty required in a sanctioning action.

This reasonable doubt about the facts forces us to consider the inspiring principles of the criminal order, whose application to the penalizing administrative law cannot be ignored, with some qualification, but without exceptions. It is clear the full virtuality of the principles of presumption of innocence and "in dubio pro reo" in the scope of the sanctioning power, which shift the burden of proving to the person accused the facts and their authorship. The presumption of innocence must govern without exceptions in the disciplinary system and must be respected in the imposition of any sanctions, since the exercise of the "ius puniendi", in its various manifestations, is conditioned to the test game and a contradictory procedure in which can defend their own positions. In this sense, the Constitutional Court, in its Judgment 76/1990, of 04/26, considers that the right to the presumption of innocence entails "that the sanction be based on acts or evidence of charge or incriminators of the reproached conduct; that the burden of proof corresponds to whoever accuses, without anyone being obliged to prove their own innocence; and that any insufficiency in the results of the tests carried out, freely

valued by the sanctioning body, must be translated into a pronouncement  
acquittal". In accordance with this approach, article 28.1 of Law 40/2015, of

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October 1, of the Legal Regime of the Public Sector (LRJSP), establishes that "Only  
may be penalized for acts constituting an administrative offense

physical and legal persons, as well as, when a Law recognizes their capacity to  
act, the affected groups, the unions and entities without legal personality and the  
independent or autonomous patrimonies, which are responsible for them  
title of fraud or fault".

Likewise, the same Constitutional Court, in Judgment 44/1989, of 02/20, indicates  
that "Our criminal doctrine and jurisprudence have been maintaining that, although  
both can be considered as manifestations of a generic favor rei, there is

a substantial difference between the right to the presumption of innocence, which

It develops its effectiveness when there is an absolute lack of evidence or when the  
practiced do not meet the procedural guarantees and the jurisprudential principle in dubio  
pro reo that belongs to the moment of the assessment or appreciation of evidence, and that has  
to judge when, concurrent with that essential probative activity, there is a  
rational doubt about the real concurrence of the objective and subjective elements that  
are part of the criminal type in question".

In short, those principles prevent imputing an administrative offense when  
a minimum charge test has not been carried out proving the facts that  
motivate this imputation or of the intervention in them of the presumed offender,

applying the principle "in dubio pro reo" in case of doubt regarding a fact concrete and decisive, which obliges in any case to resolve said doubt in the most favorable to the interested party.

In view of the foregoing, taking into account that in the present case there is a lack of accreditation in the facts attributed to PYRAMID CONSULTING, in terms of the incorrect identification of the complaining party as the author of the infringement of traffic mentioned in this act, in view of the certainty and specificity required in these assumptions in order to classify the conduct as punishable, it must be concluded that there is sufficient evidence against the aforementioned entity, so it is appropriate to agree the file of this proceeding.

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: DECLARE the non-existence of an infringement, with a file of the proceedings, in relation to the imputation to the entity PYRAMID CONSULTING, S.L., with NIF B80176506, of a possible violation of the provisions of article 6 of the GDPR.

SECOND: NOTIFY this resolution to PYRAMID CONSULTING, 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 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

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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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