

□ Procedure No.: PS/00316/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 06/18/2019

before the Spanish Agency for Data Protection, which is directed in principle against the restaurant located at c/Preciados 3, Madrid, in the EL CORTE INGLÉS shopping centre.

Indicates:

“Dated 05/05/2019, in the restaurant of the aforementioned shopping center, he presented a claim after the refusal of the establishment to the request to decrease the volume of

music.” “They decided to file a claim with the establishment, filling out the

corresponding claim sheet” “After realizing that they had not put their

phone number on the claim sheet, on the claim sheet, requested by

Please if you would allow him to enter that data. Once this demonstration took place, some

customers who were at the next table began to rebuke and disrespect

Once the claim was made, “he noticed that the person in charge gave some clients the

copy of the claim pertaining to the restaurant. These people did not present

any type of identification or badge that would make one think that they worked there or had

any kind of relationship with the establishment.” These people once were

delivered the copy of the claim sheet, they made some notes and comments

pen on her and against her.”

Once this first claim was made, “the restaurant workers told him that

had to go to the Customer Service section of the English Court to deliver the

claim where they were treated.”

He adds that he also called the Local Police, appearing and the agents issued a report and filed a second claim at the aforementioned EL Customer Service office

ENGLISH COURT.

And, among other things, attach the following documentation:

-Copy of claims sheet number ***NUMBER.1 stamped by Corte Inglés, S.A.

and signed in the "Signature of the claimant" section where they include:

The details to fill in include the establishment, El Corte Inglés, S.A. at the address Calle Preciados 3, as well as the company headquarters.

The date of the claim is 05/05/2019 at 4:00 p.m.

The data of the name, first surname, nationality, ID number, and address of the claimant. The phone number is not listed.

In the "Reason for the claim" section, it states "Volume of the music greater than 76 decibels, food conversation being impossible". In the Request: "The repair of the inconvenience in the food with apology, and compensation".

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/13

-Copy of report by police action where it is stated:

Date of the performance 05/05/2019 and approximate time 6:15 p.m.

Place of the events at ***ADDRESS.1 (Restaurant terrace "***EMPRESA.1")

In the field "Description of the intervention, action or incidence" it is stated that:

"The active callsigns were required to go to ***ADDRESS.1 (Terrace

Restaurant "*** COMPANY.1") due to a problem in the claim form with a

client. According to the claimant's statements, the person in charge of the restaurant has

delivered the pink copy belonging to the establishment to several clients who they were eating and they have seen their personal data and have written comments against him."

"Requested by the acting agents, the pink copy that remains on establishment, confirm that the foregoing is true, with comments manuscripts in ballpoint pen with names of people and comments against the petitioner and his companions.

-Copy of second sheet of claims No. 28/313/***NUMBER.1 stamped by the CORTE INGLÉS, S.A. in the section "Signature and seal of the claimed" and with signature in the "Signature of the claimant" section where they include:

In the name of the establishment: El Corte Inglés, S.A. in the direction Hermosilla street 112, 28009, Madrid. (headquarters)

That the date of the claim is 05/05/2019 at 6:40 p.m.

Consisting of the data of the name, surnames, ID number, and address of the claimant.

In the "Reason for the claim" section, it is completed by the claimant

"after filing a claim at the Puerta del Sol restaurant", putting into question knowledge that the pink specimen that remains in the establishment has been delivered to some clients and they have written in it that the first claim was filed in the Sun Gate restaurant.

Copy of ticket dated 05/05/2019 for an amount of €280.30 where it appears in your

Headboard:

"THE ENGLISH COURT
SUN GATE SQUARE, 10
28013 MADRID"

SECOND: In view of the facts denounced in the claim and the documents, the

Subdirector General for Data Inspection proceeded to carry out the transfer to EL

CORTE INGLÉS, S.A., dated 8/13/2019. Notification is made electronically to
through the notification system.

On 09/06/2019, EL CORTE INGLÉS, S.A. sends this Agency the following
information and demonstrations:

“That the pertinent investigations have been carried out and having verified the

1.

information with the owner of the restaurant, who was present the day
events occurred, both the complainant and his companions requested in two
occasions to turn down the volume of the music.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/13

two.

That notwithstanding the foregoing, and despite the fact that the music was at a suitable volume
with the policy of the establishment, the restaurant staff agreed in up to two
occasions to the request, being on this last occasion when they were informed that no
I was going to lower the volume of the music.

That given the refusal to lower the volume for the second time, one of the companions who
was with the complainant tried to start one of the speakers that were in the
local.

That it was then that the incident reported by the complainant occurred, at which time
the claim in question was put.”

Manifests:

“We want to show that the PUERTA DEL SOL restaurant is a space that is

It is located on the roof of the building that my client has on Calle Preciados, 3 in Madrid, and which is the owner of the Shopping Center located at this address, without However, the establishment that develops the restoration activity (restaurant door of the sun), does not belong to my client nor is it his property, and there is an agreement between both parties, whose purpose is the installation in this space of a restaurant for develop the activity mentioned above, so that each of the parties has with its own purchasing and sales policy, and other regulations that each one has established internally.

We also want to point out that all the staff who provide their services in the restaurant PUERTA DEL SOL, is a staff outside EL CORTE INGLÉS, so on my part represented cannot be assumed nor the way of proceeding of the employees of the aforementioned establishment, nor the consequences that derive from this behavior and that have place this claim with the possible consequences that may arise from it.”

3.

They state that they have sent the complainant a certified letter dated 08/27/2019 and that "at the current date they do not have the acknowledgment of receipt report" to inform you that your claim is pending.

Provide a copy of the list with the title "List of objects that must be processed with character of certificates", dated 08/27/2019, with the El Corte Inglés logo and where there is a only certificate being the recipient the complainant.

-Copy of the letter sent with, among others, the following statements:

All the personnel that work in the establishment are not employees of El Corte Inglés, what they cannot assume the way of proceeding of the manager of the restaurant.

THIRD: On 06/1/2020, as part of previous investigation actions, the write to EL CORTE INGLÉS, S.A requesting information on:

1. Reason why the claim sheet is stamped by EL CORTE INGLÉS yes

They are not responsible for the event.

2. Copy of the contract signed with the restaurant in relation to the assignment of the space.

3. Identification and contact data, including postal address, of the person responsible for the operation of the restaurant.

On 6/15/2020, a response is sent, indicating:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/13

He reiterates that the restaurant located on the roof of the shopping center does not belong to EL CORTE INGLÉS, S.A. nor is it your property, and there is an agreement between both parties in the one that regulates the cession of the space for the exploitation of the restoration activity.

“That the ownership of the entire Shopping Center and the commercial activity license is name of EL CORTE INGLÉS, this being the reason why the complaint forms are in the name of EL CORTE INGLÉS in accordance with the provisions of current regulations in this matter

.”

Provide a copy of the commercial contract signed and dated 10/1/2015, 36 pages (document 1) where it is stated that in the space of the shopping center, owned by CORTE INGLÉS, stipulates the installation by the restoration company DESOLASOL RESTAURACIÓN SL, with the commercial name of the PUERTALSOL restaurant.

It is indicated that the restaurant and the terrace are located on the fifth floor.

In general conditions it is indicated in the personnel section that to carry out the activity of the contract, DESOLASOL RESTAURACIÓN has specialized personnel with the due training that will attend during the opening business hours of the restaurant

DESOLASOL undertakes that these employees have, for example, the food handler and adequate training in food hygiene, putting provision of the CORTE INGLÉS supporting documentation of said compliance.

It is also indicated that CORTE INGLÉS will be responsible for the relationship as seller with the client as well as the repercussion and income of the VAT corresponding to the sale. The cut INGLÉS will develop, together with the restaurant, an information system so that the restaurant receives daily the detail of the sales made in it.

FOURTH: Internal search carried out in the Information System of the Subdirectorate

General Inspection of Data on interveners with sanctions or pre-warnings

vios, with the data of DESOLASOL RESTAURACIÓN SL, as of 09/21/2020 does not appear none.

FIFTH: According to the monitoring report of the AXESOR tool, the company

DESOLASOL RESTAURACIÓN is a microenterprise, established on 07/14/2015 and as

employees appear in the latest data for 2018: 27 permanent and 3 non-permanent. in turnover 2017/2018 has a negative variation of minus 4.70% and the result for the year compared

Comparatively 2017 2018 shows a negative term of minus 21.41%. It is indicated as weakness

ties that due to the alarm situation caused by COVID-19 could present tendencies

financial claims, among others with a 49.55% probability of default in the next 12 months.

SIXTH: On 09/30/2020, the Director of the AEPD agrees:

“INITIATE PUNISHMENT PROCEDURE against DESOLASOL RESTAURACIÓN, S.L., for the alleged infringement of article 5.1. f) of Regulation (EU) 2016/679 of the Parliament European and Council of 04/27/2016 regarding the protection of natural persons in the regarding the processing of personal data and the free circulation of these data (as far hereafter, GDPR); (hereinafter RGPD), as indicated in article 83.5.a) of the RGPD.”

The initial assessment of the sanction, for the purposes of the articles of Law 39/2015, of 1/10, of the

Common Administrative Procedure of Public Administrations, (LPCAP): 64.2.b) and

85, it was indicated:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/13

“-Regarding the nature of the treatment, it is a consequence of the dispatch of a document official destined to the authorities of consumption, does not enter inside the habitual traffic of the establishment in its ordinary client-service relationship 83.2.k) RGPD and 76.2.b) of the Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights” (hereinafter LOPDGDD).

-The infraction has been caused, formally, with the momentary availability of the printed to third parties unrelated to your office, the data of the claimant is objectively indicated. te, for the time in which third parties use that form to write down their observations, which would necessarily be brief, limiting itself to the view of the document at that moment, without that it is proven that these data could have been saved in some way by those third parties. zeros or noted for a different use. The data is basic referring to name and surname and direction. 83. 2 a).

-Could be classified as negligence on the part of an employee of the claimed, article 83.2. b), in a specific situation related to the complaint about the music in a terrace.

Adding the elements that concur, it is considered, without prejudice to the processing of the procedure that the initial sanction would be 6,000 euros.”

SEVENTH: Against the initiation agreement, the respondent states:

1) Your entity was not given the claim transfer process, and you request a copy of the

file, which is sent to you.

He states that his entity was not taken into account during the processing of the transfer and has been able to exercise its right to defense.

She was not called in the investigative proceedings either. It states that during investigation, he should have been given a hearing and allowed to defend himself during the research. As she was not called or notified of the investigation, she has not been allowed to exercise the right to promote evidence or to control the evidence promoted by the complainant, aggravating if your situation. Request that the actions be replaced at the time they are He should have notified him of the claim so that he could be notified of the complaint.

2) "By involuntary error, the person in charge exhibited the claim to the clients who were witnesses of the exposed acts and these motu proprio wrote their data and telephone numbers offering themselves for testify about the facts, but at no time did this exhibition imply the transfer of the personal information".

The display of the document does not imply transfer of data, since, furthermore, this was only an instant. In no case did it imply that the third party could take note, retain or know the personal data of the complainant, much less use this data.

The third parties, what they did was place their data and expose what happened in the claim with the sole intention of offering their testimonials to expose the reality of the facts, which does not imply that these third parties have arranged or taken note of the data information supplied by the complainant.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/13

3) Proposes the declaration of the person in charge of the establishment present on the day

the events occurred.

4) Due to the fact that they do not have previous sanctions and that it was an error of a employee, that a data was given a correct treatment to the clients and being the fact that an isolated incident, they request that it be warned instead of sanctioning.

EIGHTH: On 12/4/2020, it is agreed to open the test practice period, giving reproduced:

1) The claim filed by the claimant and its documentation, the documents obtained and generated and the Report of previous inspection actions that are part of file E/11474/2019.

2) The allegations to the initiation agreement presented by the respondent, and the documentation that accompanies them.

The respondent is requested to make a contribution or report:

3) Complaint sheet, model kept by the claimed company, front and back.

Also if there has been a resolution of the matter by the competent body, remission of it.

4) Inform if the self-copy sheets of Consumer claims delivered, the they have in the same restaurant and it is delivered to the users there or if they have to go to the mall offices. If it is this second option, briefly detail the course of the form filled out by the client-claimant.

5) Briefly detail, because the data of the claimed company is not contained, the restaurant, in the claim sheet (responsible for the data), not the CORTE INGLÉS.

6) Indicate (crediting it if applicable) if you have adopted any measure related to the facts that were denounced, and also specifically with the employee that you indicate "exhibited" the claim sheet.

7) Request for information to the respondent, which can be answered and signed by him manager of the establishment if he deems it appropriate, which in his allegations identify, -

if he was the one who intervened directly by "exhibiting" the claim form to other clients, or failing that, by the employee who participated in the events.

You are asked to respond or report:

A) Indicate the reason why you displayed or showed the sheet to other customers.

B) Indicate if it was provided in delivery mode, or made available, how long, at

How many people and why?

C) Space, place where the sheet is made available to customers who are dissatisfied with the claimant. Space and place where the person was (in charge or whoever had

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/13

and made the sheet available) to the aforementioned clients and recount what happened. In the same sense, space, place and surface in which the clients wrote down what they wrote down in the sheet, whether or not the employee was with them, whether or not a pen was provided to fill it out, and what that I consider.

No response was received to the request.

NINTH: On 04/20/2021, a resolution proposal was issued with the following literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for DESOLASOL RESTAURACIÓN, S.L., with NIF B87334983, for a violation of Article 5.1.f) of the RGPD, in accordance with article 83.5 a) of the RGPD, with a fine of 6,000 euros.”

No claims were received.

PROVEN FACTS

1) At the “Puerta del Sol” restaurant, located on the roof of the EL

CORTE INGLÉS de Madrid, c/ Preciados, 3, on 05/05/2019, the claimant submitted a sheet of consumer claims for a matter that you could not talk at the table due to the volume of the music. The copy of a copy of said sheet that remains as receipt in the possession of the restaurant was delivered by an employee of the same to some clients who were present during the circumstances expressed. These clients, according to appears in writing dated 06/06/2019 in the "description of the intervention of the Local Police", which was requested by the claimant, they stated in their report that, upon seeing the sheet, "comments handwritten in pen with names of people and comments against" about the claimant and his companions".

2) According to the information provided by EL CORTE INGLÉS in the transfer of the claim, regarding the physical space of its ownership where the restaurant is located in which the events occurred, and providing a copy of a commercial contract, the business is of the restoration company DESOLASOL RESTAURACIÓN SL, (the claimed) with the commercial name of the restaurant-terrace PUERTALSOL located on the fifth floor. Among other stipulations, it also states that the respondent has its own staff that attends the restaurant.

The respondent stated that: "By involuntary error, the person in charge exhibited the

3)
claim to clients witnesses of the exposed acts and these motu proprio wrote their data and telephone numbers offering to testify about the facts"

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

C/ Jorge Juan, 6

Regarding the allegations that by not being transferred, he has not been able to exercise his right to the defense or that in the investigative proceedings she was not called either, it should be noted that in the transfer there is no imputation without asking for explanations of what happened. As for the previous investigations, in this case there has been no such phase.

The provisions of article 65.4 and 5 of the LOPDGDD apply:

"4. Before deciding on the acceptance of the claim for processing, the Spanish Agency of Data Protection may send it to the data protection delegate who had, where appropriate, designated the person responsible or in charge of the treatment or the body of supervision established for the application of the codes of conduct for the purposes provided for in articles 37 and 38.2 of this organic law.

The Spanish Agency for Data Protection may also send the claim to the responsible or in charge of the treatment when a delegate of data protection or adhered to extrajudicial resolution mechanisms of conflicts, in which case the person in charge or person in charge must respond to the claim within a month.

The decision on the admission or non-admission for processing, as well as the one determined, in 5.

where appropriate, the referral of the claim to the main control authority that is considered authority, the claimant must be notified within three months. If after this period if said notification does not occur, it will be understood that the processing of the claim in accordance with the provisions of this Title from the date on which the

three months have elapsed since the claim was received by the Spanish Agency for Data Protection."

Regarding the previous investigations, in the same norm, it indicates article 67.1 "Before of the adoption of the agreement to initiate the procedure, and once the application has been admitted for processing. claim if any, the Spanish Agency for Data Protection may carry out preliminary investigative actions in order to achieve a better determination of the facts and the circumstances that justify the processing of the procedure."

In both cases it is a matter of possibilities, and in neither of them is it indicated that the investigation or the transfer has to take place to the claimed one, being possible that one and the other are not treated with the same. If the transfer of the claim has not been reported in said phase, material defenselessness has occurred because it has received the initial agreement and has been able to obtain a copy of the proceedings and formulate allegations as well as propose evidence.

Insofar as the initiation agreement contains a sanctioning amount of a fine, this does not

It is neither more nor less than because the payment of the sanction is applicable to the benefits of the recognition of the same contemplated in article 85 of the LPCAP, and effects of reductions. In the same agreement it is indicated that it is a starting point, when it is indicated "without prejudice to what results from the processing of the procedure.

Therefore these allegations cannot be taken into account.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/13

III

Complaint sheets in consumer matters are governed by Decree 1/2010, of 01/14 of the Government Council, which approves the Regulation of Law 11/1998, of 9/07,

Protection of Consumers of the Community of Madrid, which in its title III refers to

“administrative and technical legal protection in relation to the rights of

consumers.” Within its scope of application are natural or legal persons or

holders of public or private, fixed or mobile establishments that produce, facilitate,

supply, or issue under private law goods, services, products

activities or functions.

The claim sheet model will contain, among others, the spaces for the

identification of the claimed claimant and for the allegations of the same (art 31.2).

Article 36.2 of the aforementioned Decree indicates:

“1. Prior to its delivery to the consumer, the owner or employee of the establishment

or dependency must duly fill in the box corresponding to the identification

cation of the establishment and the service provider.

2. The consumer will complete the rest of the claim form in the establishment,

premises or dependency where you request it, stating your name, surnames, address,

number of the national identity document or passport, as well as the other data that is

include in the model. You must clearly state the facts that gave rise to the complaint,

with an expression of the date on which they occurred, and specify your request without this implying

limit the scope of administrative action.

3. The owner or employee of the establishment or dependency will record, where appropriate, in the

corresponding section, the allegations that it considers pertinent and will proceed to sign and

seal the set of claim sheets and upon delivery to the consumer.”

Article 5.1.f) of the GDPR provides:

“Personal data will be:

“processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational structures ("integrity and confidentiality")."

The LOPDGDD states in its article 5:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679."

As regards the commission of the offence, an employee of the restaurant intervenes DESOLASOL RESTAURACIÓN SL, which after having the copy, copy for the claimed, it is delivered to other users, without connection with the processing of the same, given which is a private claim. These third parties, according to the story and the police report, they put their data and observations, clearly having access to the claimant's data, being the reason for the claim supposedly due to the high volume of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/13

music. Access to the claim form therefore implies, while the observations, the certain possibility of accessing the data of the claimant, when the Users present as witnesses to the events must not have access to the document. This purpose of adding testimonials, if desired, it can be done separately and added attached, avoiding access by third parties for which there is no legitimacy.

The imputed infraction is for not keeping confidential data that has a purpose and contact with them was allowed to the people who added the notes in company copy. It has nothing to do with the fact that they did not take note, and it is considered that the more people put the references on the sheet, the more time in contact with the data would be had, Thus, the knowledge of the data does not have to take place through the

annotation but the disclosure made manifest by the access provided.

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation. regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is establishes that each control authority may “order the person responsible or in charge of the that the treatment operations comply with the provisions of this Re-regulation, where appropriate, in a certain way and within a specified period.

do...” and in its section “i) impose an administrative fine in accordance with article 83, in addition to in addition to or instead of the measures mentioned in this paragraph, depending on the circumstances. tions of each particular case;”

Regarding the amount of administrative fines that would proceed to be imposed, must be in accordance with the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate lan:

“1 Each control authority will guarantee that the imposition of administrative fines you go under this article for the infractions of these Regulations indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive. laugh.”

“2 Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount aunt in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature origin, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to allocate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/13

gives an account of the technical or organizational measures that have been applied by virtue of the articles butts 25 and 32;

- e) any previous infraction committed by the person in charge or the person in charge of the treatment.
- to;

- f) the degree of cooperation with the supervisory authority in order to remedy the the infringement and mitigate the possible adverse effects of the infringement;

- g) the categories of personal data affected by the infringement;

- h) the way in which the supervisory authority became aware of the infringement, in particular

Determine whether the controller or processor reported the breach and, if so, to what extent;

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

- j) Adherence to codes of conduct under Article 40 or to certification mechanisms.

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

In relation to section k) of article 83.2 of the RGPD, the LOPDGDD, article 76, “Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the violation.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are such controversies between those and any interested party.”

The alleged infringement is integrated into article 83.5.a) of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

-Regarding the nature of the treatment, it is a consequence of the dispatch of a document official destined to the authorities of consumption, does not enter inside the habitual traffic of the

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/13

establishment in its ordinary customer-service relationship 83.2.k) RGPD 76.2.b)

LOPDGDD.

-The infraction has been caused with the formal availability of the form to third parties unrelated to his office, the data of the claimant is objectively indicated, but the time in which third parties use that form to write down their observations, would necessarily be brief, limiting itself to the view of the document at that moment, without it is proven that these data could have been saved in some way by those third parties or made some use outside the annotations. The data is basic referred to name and surnames and address. 83. 2 a).

-Could be classified as negligence on the part of an employee of the claimed 83.2. b), in a specific situation related to the complaint about the music on a terrace, avoidable easily.

Adding the elements that concur, it is considered that the penalty would be 6,000 euros.

Therefore, in accordance with the applicable legislation and having assessed the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE DESOLASOL RESTAURACIÓN, S.L., with NIF B87334983, for an infringement of article 5.1.f) of the RGPD, in accordance with article 83.5 of the RGPD, a fine of 6,000 euros.

SECOND: NOTIFY this resolution to DESOLASOL RESTAURACIÓN, S.L.

THIRD

: Warn the sanctioned person that he must make the imposed sanction effective once

that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations Public (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of 07/29, in relation to art. 62 of Law 58/2003, of 12/17, through its entry, indicating the NIF of the sanctioned and the number of the procedure that appears in the heading of this document, in restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.. Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be until the 20th day of the following month or immediately after, and if it is between the days 16th and last of each month, both inclusive, the payment term will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution It will be made public once it has been notified to the interested parties.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/13

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with
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 two months from the day following the notification of this act,
according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be
precautionary suspension of the firm decision in administrative proceedings if the interested party expresses
its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency
Spanish Data Protection, presenting it through the Electronic Registry of the
Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the
remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing
effectiveness of the contentious-administrative appeal. If the Agency were not aware of the
filing of the contentious-administrative appeal within two months from the day
following the notification of this resolution, it would end the suspension
precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es