

□ File No.: PS/00043/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated September 1,  
2020 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against the OWNERS COMMUNITY \*\*\*ADDRESS.1, with  
CIF \*\*\* CIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are that it has proceeded, by the  
Presidency of the Community of Owners, to be placed on the bulletin boards  
a list of debtor owners, including the claimant.

Specifically, the first on the list. The reason for its publication is discretionary,  
because it does not obey any Assembly call, nor any publication of  
any past Assembly Minutes.

The Community of Owners consists of three blocks, with their respective boards of  
advertisements. These publications have been in the 3 boards of the community. The  
location of the respective bulletin boards is inside the portals,  
all boards are locked and exposed to third party viewing  
people outside this community.

Along with the claim, it provides a photograph of the community bulletin board, with  
the lists of owners of all the blocks (debtors and non-debtors) in which  
consists of name and surnames, block, floor and letter. It also provides other photographs in the  
It can be seen that the bulletin board is located on the ground floor, which  
would correspond to the portal of the building.

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

documents provided by the claimant, the claim was transferred to the claimant, the

October 7, 2020 (repeated on October 19, 2020), requiring you to:

"Within a maximum period of one month, from the receipt of this letter, you must analyze the claim and send this Agency the following information:

The decision made regarding this claim.

In the event of exercising the rights regulated in articles 15 to 22 of the

RGPD, accreditation of the response provided to the claimant.

Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent incidents from occurring similar, dates of implementation and controls carried out to verify their effectiveness.

Any other that you consider relevant."

In response to the aforementioned request, the Administrator of the Community of Owners states that "... we consider that, in general, the publication

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on the notice board of the community of a list of owners that is not

are up to date in payment of their fees is not covered by the regulations of

Data Protection."

"That, on August 12, 2020, a letter was sent to all the owners of this

Community where they were informed: "Due to the situation created by the pandemic

of COVID-19 we have not been able to convene the ordinary meeting in order to present

annual accounts, renewal of charges, pending issues, etc. However we have decided, for the purposes of greater information of the owners, to publish the accounts for the entire year 2019, and from January to July 2020, and leave the other Topics for a next regular meeting.”

“That, in accordance with the provisions of the Horizontal Property Law, public, in those annual accounts, the identity of the debtors and their debts with the community, allowing this same Law to be published on the Notice Board of community, (....). However, the aforementioned publication has been made in compliance with an express agreement adopted by the Board of Owners, so We humbly believe that we will find ourselves before a transfer of data with prior consent of the interested parties, which in principle would not violate the regulations on the protection of personal data.”

The Administrator of the Community of Owners provides a copy of the letter that says having sent to all the owners, without it being indicated that the posting on the Community Notice Board is to be made in compliance with an express agreement of the Board of Owners. This letter is signed by the Administrator, although the names of the President and of the two vowels, one from block 3-4 and another from block 6-7, but not a vowel from block 5.

On the other hand, although the letter is dated August 12, 2020, the signature of the Administrator in said letter is dated November 9, 2020, a date that coincides with the signature of the response to the request of this Agency.

THIRD: On February 1, 2021, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Data Protection Agency agreed admit for processing the claim filed by the claimant against the entity claimed.

FOURTH: On June 11, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed entity, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the entity claimed submitted a written of allegations in which, in summary, it stated that it expressly recognizes that the established legal precepts have been infringed, but without any intention of cause damage to the owner, to the claimant. The community never wanted damage the honor or acted with intent towards the claimant, proof of this is that the administrator and representative of the community, contacted him and gave him all possible explanations, in addition to personally apologizing, explained that the facts that he mentioned in his claim in no case existed bad faith on the part of the community and that in future calls the community will publicly retract such non-compliance, non-compliance that is derived from

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an exceptional situation due to the impossibility of holding the ordinary meeting scheduled. It has ordered that the listings subject to the claim, as evidenced in the attached document (Photographs of the planks).

SIXTH: On January 19, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction to the OWNERS COMMUNITY \*\*\*ADDRESS.1, with CIF \*\*\*CIF.1, for a

infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, with a fine of FIVE HUNDRED € (500 euros).

SEVENTH: On January 30, 2022, ten calendar days after the made available to the notification, without the claimed party having agreed to its content, is understood to be rejected, in accordance with article 43.2 of the LPACAP.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

## FACTS

FIRST: The Presidency of the Community of

Owners, to post on the bulletin boards a list of debtor owners, among which is the complaining party (the first on the list), and non-debtors.

The Community of Owners consists of three blocks, with their respective boards of advertisements. These publications have been in the 3 boards of the community. The location of the respective bulletin boards is inside the portals, all boards are locked and exposed to third party viewing people outside this community. In the lists of owners of all the blocks (debtors and non-debtors) includes name and surname, block, floor and letter. The notice board is located on the ground floor, which would correspond to the portal of the building.

SECOND: The claimed entity expressly acknowledges that the established legal precepts, but without any intention of causing damage to the owner, to the claimant. The community at no time wanted to harm the honor or acted with intent towards the claimant, proof of this is that the administrator and representative of the community, contacted him and gave him all possible explanations, in addition to personally apologizing, explained that the facts that he mentioned in his claim in no case existed

bad faith on the part of the community and that in future calls the community will publicly retract such non-compliance, non-compliance that is derived from an exceptional situation due to the impossibility of holding the ordinary meeting scheduled. It has ordered that the listings subject to the claim, as evidenced in the attached document (Photographs of the planks).

## FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), grants each authority of

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control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In accordance with the evidence available at the present time of the sanctioning procedure, it is considered that the proven facts constitute

of infraction.

The defendant is accused of committing an infraction for violation of the

Article 5.1.f) of the RGPD, which states that:

"1. The personal data will be:

"f) processed in such a way as to guarantee adequate security of the data

including protection against unauthorized or unlawful processing and against

your transcript.

The infringement is typified in Article 83.5.a) of the RGPD, which considers as such:

"the basic principles for treatment, including the conditions for the

consent under articles 5, 6, 7 and 9".

III

This infraction can be sanctioned with a maximum fine of €20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5 of the RGPD.

In this sense, the actions taken by the claimed party are relevant.

upon learning of the claim of which it was informed by this AEPD and the measures

adopted, having to report on them within the procedure, being able to

in the resolution, adopt the appropriate ones for its adjustment to the regulations.

IV

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:

2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

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

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b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate 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, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

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

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

h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

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 mechanisms of



certification approved in accordance with article 42,

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.”

v

In accordance with the precepts transcribed, in order to set the amount of the penalty for infringement of article 5.1 f) to the claimed party, as responsible for the aforementioned infringement typified in article 83.5 of the RGPD, and estimated the allegations filed by the respondent, due to the circumstances of the case, it is appropriate to graduate the fine taking into account the following mitigating factors:

. Non-existence of antecedents.

. Recognition of the infraction, which has been remedied in its entirety once received the agreement to start this procedure, deleting all the data bulletin board staff.

. Compliance with the measures imposed in the Start Agreement, by the person in charge or in charge of the treatment, so that the treatment operations are adjusted to the GDPR provisions.

. Measures taken to mitigate damages and losses suffered: the administrator and representative of the community, contacted the complaining party and gave him all possible explanations, in addition to personally apologizing, explained that the facts that he mentioned in his claim in no case existed bad faith on the part of the community and that in future calls the community will retract such non-compliance publicly.

. The breach is derived from an exceptional situation due to the impossibility of carry out the regular scheduled meeting of the Community of Owners.

Considering the exposed factors, the valuation that reaches the amount of the fine

is €500 for violation of article 5.1 f) of the RGPD.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the OWNERS COMMUNITY \*\*\* ADDRESS.1, with CIF

\*\*\* CIF.1, for an infringement of Article 5.1.f) of the RGPD, typified in Article 83.5

of the RGPD, a fine of €500 (FIVE HUNDRED euros).

SECOND: NOTIFY this resolution to the OWNERS COMMUNITY

\*\*\*ADDRESS 1.

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

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

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

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

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

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

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

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

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Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Sea Spain Marti

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