

□ Procedure No.: PS/00136/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 05/24/2019, a letter is received from the Junta de Andalucía, ADDRESS  
GENERAL OF TEACHING AND HUMAN RESOURCES MANAGEMENT (complainant),  
that it has become aware that on the https website: \*\*\*URL.1, whose controller is the entity  
FILIGRANA COMUNICACIÓN, S.L.U., (claimed) deals with information relating to processes of  
Provision of interims of the Ministry of Education and Sports managed by this to  
through the \*\*\*URL.1 system (Interim Provision System) that supports the  
call procedure for interims during the course, either due to vacancies, or due to  
substitutions.

It states that said website has a home page with the following functionalities:

- different informative content about \*\*\*URL.1, steps to participate, access methods,  
so, an informative video and so on.
- a subscription system to receive notifications.
- link to the \*\*\*URL.1 system originating from the Junta de Andalucía.
- a menu with options and contents of calls, results, bags and oppositions.
- buttons to see the "last awarded" and see the "last call". in functionality

calls and results, you can consult different calls made by the

\*\*\*URL.1 being able to access personal data of the winners of the call,

name, identification document and assigned center of destination. "Therefore included

all the lists that are generated by the system". "The data shown is not a hyperlink.

nk, are data obtained from listings published in our own system through a system

computerized and hosted on this website”.

The claimant states that “The data of the participants in the calls for provision of interims although they are obtained from lists that are public, hosted on this website without that we have any type of prior consent”

This information does not reflect official reliability and any error may have consequences for interested.

The claimant states that in the section of the aforementioned website it appears in "privacy policy" the data of the person in charge; FILIGRANA COMUNICACIÓN SLU, and a social activity :”periodism and other communication professionals” and provides the data that appears in the same ma.

Considers that a treatment that is not lawful may be being carried out, due to the lack of legitimate basis and information on the origin of the data and exercise of rights.

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SECOND: In view of the reported facts and the documents provided by the claimant, the claim is transferred to the claimant by the electronic system, showing the 08/20/2019 as automatic rejection after the time for making it available has elapsed and despite to be obliged to communicate with the administration telematically.

It was also sent through certified ordinary mail, stating in the delivery unknown with return to origin on 08/22/2019.

THIRD: On 12/26/2019, the director of the AEPD admitted the claim.

FOURTH: On 12/30/2019, investigative actions are initiated, the content of which is transcribe:

1. "Dated 04/15/2020, the existence of a PRIVACY POLICY is verified

on the website \*\*\*URL.1.es where it is stated, among other content:

"\*\*\*URL.1.es is committed to safeguarding your privacy. Keep in contact with

us at \*\*\*EMAIL.1 if you have any questions or problems regarding the use of your

Personal Data and we will gladly help you.

By using this website and/or our services, you consent to the Processing of your

Personal Data as described in this Privacy Policy.

In accordance with the provisions of Organic Law 15/1999 on Data Protection of

Personal Character, by accepting this Privacy Policy you lend your

Informed, express, free and unequivocal consent so that the personal data that

proportions through our website \*\*\*URL.1.es are included in a file of

"USERS OF THE WEBSITE AND SUBSCRIBERS" property of FILIGRANA COMUNICACIÓN

SLU, whose data are:

Corporate name: FILIGRANA COMUNICACIÓN SLU

CIF B04770632

Registered Office, \*\*\*ADDRESS.1 (\*\*\*LOCATION.1) – Spain.

Email: \*\*\*EMAIL.1

Social Activity: Journalism and other communication professionals."

2. The section on "Principles of Data Protection" contains, among others:

"Our processing activities are consistent with the purpose for which you provided us with

Personal information."

"Processing is done with minimal data"

"We will not store your personal data for longer than necessary"

"We will do our best to ensure the accuracy of the data"

"We will do everything possible to guarantee the integrity and confidentiality of the data"

There is a section named "User Rights".

The “Data we collect” section contains:

“The information you have provided us

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This is your email address, name and surname, ID and mobile phone. Is

information is necessary to be able to check if the \*\*\*URL.1 system has summoned you,

awarded or any other circumstance. In addition, we keep the information that we

provides so that you can comment or perform other activities on the website.

#### Automatically Collected Information

All websites and this one also automatically store through cookies and other

session tools certain information. For example, your IP address. This information is

used to improve the user experience. When you use our services or view the

contents of our website, your activities may be recorded.

#### Publicly available information

We may collect information about you that is publicly available on the websites of

the different public administrations, such as, for example, the website of the Ministry of

Education of the Junta de Andalucía.”

In the section “How we use your personal data” it is stated, among other things:

manifestations:

“We use your personal data to:

Provide our service. This includes, for example, registering your account;

- 

provide you with other products and services that you have requested; provide you with items

promotional information at your request and communicate with you in relation to those products and services; communicating and interacting with you; and notifying you of changes in any service.

- 
- 
- 

We use your personal data for legitimate reasons and with your consent.

In order to enter into a contract or fulfill contractual obligations, we process your

Personal data for the following purposes:

- 
- 

interim and aspiring teachers.

- 
- 

For reasons of legitimate interest, we process your personal data for the following purposes:

- 

carefully selected;

- 

To manage and analyze our user base (buying behavior and track record) to improve the quality, variety and availability of products/services offered / provided;

- 

Improve your user experience.

Comply with a legal or contractual obligation.

Check if the \*\*\*URL.1 system has made any publication related to you.

to identify you.

to notify you of developments that directly affect you or in general to

to provide you with a service or to send/offer you a product

to communicate either for sales or billing

To send you personalized offers from us and/or our partners

Conduct questionnaires on user satisfaction.

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For other purposes, from which we have requested your consent.

To send you notices, newsletters and campaign offers (from us and/or our

As long as you have not informed us otherwise, we consider that offering you

products / services similar to your behavioral history is our legitimate interest.

With your consent, we process your personal data for the following purposes:

- 

carefully selected partners).

- 

...”

-In the “Who else can access your personal data” section, it contains, among other things:

manifestations:

“This website also studies the preferences of its users, their characteristics

demographics, your traffic patterns, and other information in the aggregate to better understand

who constitutes our audience and what do they need. tracking preferences

from our users also helps us show you the most relevant ads”

3. On 04/15/2020, the existence of lists with the following data is verified

personal:

In results: Name and surnames, masked DNI, Center, Province, Town, Position.

(ANNEX 3)

On page 16 of 18 of ANNEX 3 there is the literal: "All the lists of positions and people that appear on this website are in the public domain and have been published and exposed previously in an open, free and public manner on the web portal of the Ministry of Education of the Junta de Andalucía, by virtue of the obligatory principles of publicity and transparency that must govern public employment offers by law. Therefore, \*\*\*URL.1 does not publish any data that is sensitive or subject to privacy, any data that is not in the free domain public and no data that is not or has not been exposed openly and publicly in the web portal of the aforementioned Ministry of Education

Although \*\*\*URL.1 reflects the public data of the Ministry for informational purposes, always

We recommend that said data be collated directly on the web portal of the

Counseling. Therefore \*\*\*URL.1.ES is not responsible for the accuracy of the data

which have been compiled directly from the publicly accessible area of the website of the

Ministry and it is the responsibility of the user to verify it on the website of said Ministry.

“

In calls: Name and surnames, masked DNI, Stock market order, Position” (ANNEX 4)

On 04/15/2020 it is verified that at the end of the website \*\*\*URL.1 there is the

Four.

following notice:

“Warning: The page you are on is not an Administration website. Belonging to

FILIGRANA COMUNICACIÓN SLU, which offers an information service on the system

\*\*\*URL.1 of the Ministry of Education of the Junta de Andalucía.

\*\*\*URL.1 recommends always collating and verifying all the data on the page of the

Ministry of Education of the Junta de Andalucía”

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FIFTH: ANNEXES ONE to FOUR that are

correspond to the content of the inspector's diligence on 04/15/2020. Content

Appendices I and II coincide with points 1 and 2 reflected in the FACTS section, fourth. The

ANNEXES THREE and FOUR, refer to point 3 of point four of FACTS.

1.

ANNEX ONE: Result obtained when accessing the URL \*\*\*URL.1.

It contains various information, among others, aspects such as:

-Details that \*\*\*URL.1 is a "interim provision system, a telematics platform

launched by the Ministry of Education of the Junta de Andalucía for the adjudication

vacancies arising and substitutions throughout the school year" "Goodbye to the call-

telephone calls"" platform launched 01/28/2019 replaces the traditional system of

telephone calls from the different provincial delegations". "The interim or aspira-

companies on the stock market no longer have to wait for a call from the Ministry to adjudicate-

destiny to him how does \*\*\*URL.1 work? Through two weekly calls and the result

of the callings of each. It details what the interim calls consist of

and applicants in the stock market indicating that the platform publishes three lists, the one of people summoned

each, compulsory places and voluntary places and details what each one corresponds to

of the categories.

"According to information from the Ministry, all the people summoned receive a co-

e-mail from the Ministry advising that they are obliged to participate. Of all ma-

it is important to bear in mind that mass mail systems in general also



those of the Board can give errors they can even be confused with spam for this reason

it is recommended that they check directly in \*\*\*URL.1 if they are summoned or not. Exists

even the possibility of making a query by DNI to find out if you are summoned ".

Information is also given on the steps to participate in the calls for \*\*\*URL.1.

-It is warned that "the page you are on is not an administration website,

belongs to FILIGRANA COMUNICACIÓN that offers an Information Service on the

system \*\*\*URL.1 of the Ministry of Education of the Junta de Andalucía"

- As a service they provide, it appears: "subscribe, you will receive notices of the calls

\*\*\*URL.1, scholarships and oppositions" "Subscribe and our intelligence system

artificial agency will send you an email automatically when you are summoned and awarded a

square, you are declared inactive ex officio you receive expulsion proposal or any other inci-

We will also notify you every time there is a new call \*\*\*URL.1 and an ad-

judgment as well as any other relevant novelty for interim teachers and aspiring

rant. Why do we ask for the DNI? So that our artificial intelligence system can

check more reliably if it has been called and/or awarded". As data to enter

in the boxes there is a name and surname, email, mobile phone and a section that puts

feeling I accept the privacy policy. Clicking on privacy policy leads to the in-

training that is contained in the "privacy policy" section. Under the section I want

subscribe figure:

"Responsible; A.A.A." (XX hereinafter) "PURPOSE to send you Notices \*\*\*URL.1 and

news of interest (no spam). LEGITIMATION: your consent by checking the box-

there. RECIPIENTS your data will be secured on the SITEGROUND servers

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SPAIN SL (hosting of \*\*\*URL.1 within the EU) Rights: you have the right to verify limit and delete your data. “

two.

ANNEX TWO: Privacy policy of the website \*\*\*URL.1

3. ANNEX THREE: Result obtained when accessing the URL \*\*\*URL.2

4. ANNEX FOUR: Result obtained when accessing the URL \*\*\*URL.3

SIXTH: On 06/17/2020, the Director of the AEPD agrees:

“INITIATE PUNISHMENT PROCEDURE as stated in article 58.2.i) to

FILIGRANA COMUNICACIÓN S.L.U., for the alleged infractions of the articles:

-6.1 of the RGPD, in accordance with article 83.5.a) of the RGPD.

-14 of the RGPD, in accordance with article 83.5.b) of the RGPD.

-13 of the RGPD, in accordance with article 83.5.b) of the RGPD.”

"For the purposes specified in the art. 64.2 b) of the LPCAC that may correspond, without prejudice of the instruction of the procedure, they would be:

-2,000 euros as an administrative penalty for the infringement of article 6.1) of the GDPR.

-2,000 euros as an administrative penalty for the infringement of article 14 of the GDPR.

-4,000 euros as an administrative penalty for the infringement of article 13 of the GDPR.”

The notification of the agreement resulted in the acknowledgment of receipt that appears in the pen-  
“automatic rejection” tooth, due to the expiration of the period for making it available without having  
ceded to it. Figure made available 06/18/2020 automatic rejection 06/29/2020,  
understood to be practiced in accordance with the LPCAP.

SEVENTH: On 01/19/2021, a resolution proposal was issued, with the literal:

“ FIRST: That by the Director of the Spanish Agency for Data Protection

sanction FILIGRANA COMUNICACIÓN S.L. U., with NIF B04770632, for the infractions

of the items:

- 6.1 of the RGPD, with 2,000 euros, in accordance with article 83.5.a) and 83.2 a) and b) of the

GDPR,

-14 of the RGPD, with 2,000 euros, in accordance with article 83.5.b) and 83.2 of the RGPD, and

-13 of the RGPD, with 4,000 euros, in accordance with article 83.5.b) and 83.2.a) and d) of the

GDPR.

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SECOND: In accordance with article 58.2.d) of the RGPD, “each control authority

may order the person responsible or in charge of the treatment that the treatment operations

comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period...” the respondent is ordered to

correct the three declared infractions, being able to order such a measure in the resolution,

granting a term for it, if it does not certify compliance beforehand. “

The telematic shipment, according to the certificate that appears in the file, contains the following result:

ted after ten calendar days have elapsed since it was made available for access

according to paragraph 2, article 43, of the LPCAP.

“Date of availability: 01/19/2021 12:39:08

Automatic rejection date: 01/30/2021 00:00:00”

By deference, and with the purpose of obtaining the notification, the

01/21/2021, a second shipment, through postal mail, to the address that appears in the Re-

Mercantile Registry: \*\*\*ADDRESS.1 (\*\*\*LOCATION.1), stating: "Returned to Origin by 02

Wrong address on 02/05/2021 at 10:15"

## PROVEN FACTS

1)

GENERAL DIRECTORATE OF TEACHING STAFF AND RESOURCE MANAGEMENT

HUMAN (claimant), of the Ministry of Education and Sports of the Board of

Andalusia claims against the defendant FILIGRANA COMUNICACIÓN, S.L.U. (social object

Social Activity: Journalism and other communication professionals) because on the website of the

claimed [https://\\*\\*\\*URL.1](https://***URL.1) deals with information related to interim provision processes

through [\\*\\*\\*URL.1](https://***URL.1) (Interim Provision System) with which the claimant gives

support for the procedure for calling teachers for internships during the course,

-by vacancies, or substitutions-.

The aforementioned website of the respondent informs that [\\*\\*\\*URL.1](https://***URL.1) is a "provision system".

two)

session of interinities, a telematics platform launched by the Ministry of Education

cation of the Junta de Andalucía for the adjudication of supervening vacancies and substitution

throughout the school year" "Goodbye to phone calls"" platform launched

cha 01/28/2019 replaces the traditional system of telephone calls from the different

these provincial delegations". "The interim or applicants in the stock market no longer have to be

attentive to a call from the Ministry to assign him a destination. how does [\\*\\*\\*URL.1](https://***URL.1) work?

- The service they provide includes the subscription of system notices [\\*\\*\\*URL.1](https://***URL.1)

through which "an email is sent automatically when you are summoned and awarded

a place, you are declared inactive ex officio you receive an expulsion proposal or any other

incidence we will also notify you every time there is a new call [\\*\\*\\*URL.1](https://***URL.1) and a

adjudication as well as any other relevant novelty for interim and as-

pyrant". For this subscription, it is requested to fill in on the web: name and surnames, email, telephone number,

mobile phone and, a section that puts consent "I accept the privacy policy". Pin-

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Clicking on privacy policy leads to the information contained in the "policy" section

Of privacy." Below the section I want to subscribe appears:

Responsible; MR PURPOSE to send you Notices \*\*\*URL.1 and news of interest (nothing of

spam). LEGITIMATION: your consent by checking the box. RECIPIENTS your data

They will be secured on the servers of SITEGROUND SPAIN SL (hosting of \*\*\*URL.1

within the EU) Rights: you have the right to verify, limit and delete your data. (ANNEX I

of 04/15/2020).

3) In accordance with ANNEX ONE, filled out by the inspector of the Inspection Service

of the AEPD, on April 15, 2020, on the website of the claimed party: \*\*\*URL.1 consists:

-In PRIVACY POLICY on the website \*\*\*URL.1, among other content:

the use of the website and its services and the services

Consent is understood to be granted by the record of the "acceptance" of the "Privacy Policy".

Privacy" of its page for those who provide their data, which become part of the

file of "USERS OF THE WEB and SUBSCRIBERS" property of FILIGRANA

COMUNICACIÓN SLU, also mentioning "In accordance with the provisions of the Law

Organic Law 15/1999 on the Protection of Personal Data".

4) In accordance with ANNEX TWO, filled out by the Inspector of the inspection service of

the AEPD, on April 15, 2020, on the website of the defendant, in the section on

"Principles of Data Protection" consists, among others and begins, informing that "Our

processing activities are consistent with the purpose for which you provided the data to us

personal.” In the section "User rights", "Data we collect" it states: "The information that you have provided to us,"" This is, your email address, name and surnames, ID and mobile phone. This information is necessary in order to Check if the \*\*\*URL.1 system has summoned you, awarded you or any other circumstance. In addition, we save the information you provide us so that you can comment or make other activities on the website.” also appears “Publicly available information We may collect information about you that is publicly available on the websites of the different public administrations, such as, for example, the website of the Ministry of Education of the Junta de Andalucía.”

5) The Inspector attached to the AEPD Inspection Service will complete ANNEX THREE AND FOUR, that on the website of the claimed party, on 04/15/2020, there are lists with the following personal information:

In results: Name and surnames, masked DNI, Center, Province, Town, Position.

(ANNEX 3)

On page 16 of 18 of ANNEX THREE is the literal: "All the lists of positions and people who appear on this website are in the public domain and have been published and exposed previously in an open, free and public manner on the web portal of the Ministry of Education of the Junta de Andalucía, by virtue of the obligatory principles of publicity and transparency that must govern public employment offers by law. Therefore, \*\*\*URL.1 does not publish any data that is sensitive or subject to privacy, any data that is not in the free domain public and no data that is not or has not been exposed openly and publicly in the web portal of the aforementioned Ministry of Education

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Although \*\*\*URL.1 reflects the public data of the Ministry for informational purposes, always

We recommend that said data be collated directly on the web portal of the

Counseling. Therefore \*\*\*URL.1 is not responsible for the accuracy of the data

which have been compiled directly from the publicly accessible area of the website of the

Ministry and it is the responsibility of the user to verify it on the website of said Ministry.

“

In calls: Name and surnames, masked DNI, Stock market order, Position” (ANNEX

FOUR)

It is verified that at the end of the website \*\*\*URL.1 there is a notice that “The page on which you

you find is not an Administration website. It belongs to FILIGRANA COMMUNICATION

SLU, which offers an information service on the \*\*\*URL.1 system of the Ministry of

Education of the Junta de Andalucía.\*\*\*URL.1 always recommends collating and checking all

the data on the page of the Ministry of Education of the Junta de Andalucía””

FOUNDATIONS OF LAW

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

and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Agency

Spanish Data Protection is competent to resolve this procedure.

II

The initiation agreement was notified electronically to the respondent, as required by article

14.2 of the LPACAP according to which: "In any case they will be obliged to relate through

of electronic means with the Public Administrations to carry out any transaction

limits of an administrative procedure, at least, the following subjects: a) Legal persons

ridiculous”.

The certificate issued by the Electronic Notification Service and

of the Authorized Electronic Address of the FNMT-RCM, which records the sending of the initiation agreement, notification from the AEPD addressed to the claimed party and the date of auto-rejection. matic.

Article 43.2. of the LPACAP establishes that when the notification by electronic means is mandatory -as is the case in this case- "it shall be understood that the when ten calendar days have elapsed since the notification was made available without accessing its content." (The underlining is from the AEPD)

It should be added that articles 41.5 and 41.1, third paragraph, of the LPACAP say, respectively vaguely:

"When the interested party or his representative rejects the notification of an administrative action will be recorded in the file, specifying the circumstances of the attempt to notify cation and the means, considering the procedure completed and following the procedure." (The sub-yado is from the AEPD)

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"Regardless of the means used, the notifications will be valid as long as they allow They allow to have proof of their sending or making available, of the reception or access by the interested party or his representative, of their dates and times, of the complete content, and of the fi-worthy of the sender and the recipient thereof. The accreditation of the effective notification tuadas will be incorporated into the file".

Thus, considering that the notification of the initiation agreement was made electronically due to legal imperative (article 14 LPACAP) and that the notification was rejected

After ten days, as provided in article 43.2 of the aforementioned law, the procedure will be



considered carried out and the procedure continued its course (former article 41.5 LPACAP)

Pursuant to article 73.1 of the LPCAP, the term to formulate allegations to the

Start Agreement is ten days computed from the day following the notification.

Article 64.2. LPACAP, indicates that the defendant will be informed of the right to make allegations

tions, of the "right to a hearing in the procedure and of the terms for its exercise,

as well as the indication that in the event of not making allegations within the stipulated period on

the content of the initiation agreement may be considered a resolution proposal

when it contains a precise statement about the imputed responsibility". (The su-

underlined is from the AEPD)

The agreement to initiate the sanctioning file that concerns us contained a pronouncement

about the responsibility of the entity claimed in the aforementioned agreement was specified

what were the offending behaviors, subsumable type, the circumstances that were estimated

concurrent to quantify the amount of the fines, and the amount of the same that in court

of the AEPD proceeded to impose.

This proposal is sent electronically again, as the initial agreement, and to the

same time in order to ensure effective compliance with the measures

consigned in the resolution, through postal mail. The first received will be the one

have all the effects of calculating the term for allegations. However, the resolution

will be issued after the proposal will be notified as provided by the regulations, via telematics.

III

Regarding the infringement of article 6.1) of the RGD, the data of the people included in the

website of the claimed from the page of the Ministry of Education of the Board of

Andalucía that manages the \*\*\*URL.1 system, which is not a link to it, is data

from another entity, in this case public, responsible for them. the mere

provision of the same in the systems of the claimed party constitutes data processing

of a personal nature as indicated in article 4.2 of the RGD: "Treatment any

operation or set of operations carried out on personal data or data sets  
either by automated procedures or not, such as the collection, registration,  
organization, structuring, conservation, adaptation or modification, extraction, consultation,  
use, communication by transmission, diffusion or any other form of authorization of  
access, collation or interconnection, limitation, suppression or destruction”

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The regulations on the protection of personal data contained in the RGPD,  
maintains the principle that all data processing needs to be supported by a database  
legitimizing factor that legitimizes it, just as before the aforementioned entry into force established the LOPD  
which transposed Directive 95/46/CE of the European Parliament and of the Council, of 10/24/1995,  
on the protection of natural persons with regard to data processing  
and to the free circulation of these data.

In this way, various legitimizing causes of the treatment are established, so that the  
consent does not operate as the only possible one.

In any case, from the entry into force of the RGPD it is not possible to speak of a concept  
law of "sources accessible to the public" such as the one that existed in the LOPD, nor can we  
understand that the fact that the data appears in this type of sources legitimizes its more  
treatment. The RGPD only speaks of public access sources when regulating the right to  
information if the data has not been collected from the interested party.

However, the fact that the Public Administrations or the jurisdictional bodies may  
documents with personal data do not imply, in any case, that the data  
object of treatment have the nature of "open data". Category defining the Annex

I, point 1, of Law 37/2007 of 16/11, on "reuse of public sector information"

co", as "those that anyone is free to use, reuse and redistribute, with the only limit

te, where appropriate, of the requirement of attribution of its source or acknowledgment of its authorship".

Law 37/2007 on "reuse of public sector information" transferred to the

Spanish internal regulation Directive 2003/98/CE, of 11/17/2003, regarding the reuse of

public sector information, which was modified by Directive 2013/37/EU and has been repealed

Gated with effect 07/17/2021 by Directive (EU) 2019/1024, of 06/20/2019, on data

open and the reuse of public sector information. The novelties introduced by

the new Directive, which requires the pertinent transpositions of the Member States to their

Domestic law, do not affect the issues that are of interest in the present case or the

transposition made in law 37/2017.

They are subject to Law 37/2007 on "reuse of public sector information", for

express provision of its article 2 and of its second additional provision, the documents

prepared by the State Administration, by the Administration of the Autonomous Communities

nomas, by the entities that make up the Local Administration, by any public body or

Public Law entity linked or dependent on the above, as well as the "resolutions"

judicial actions".

Law 37/2007 defines reuse as "the use of documents in the possession of

Administrations and organizations of the public sector, by individuals or legal entities, for

commercial or non-commercial, provided that such use does not constitute an administrative activity

public interest" (article 3.1)

When regulating the legal regime of reuse, Law 37/2007 (article 4.6) says: "The reuse-

tion of documents containing personal data will be governed by the provisions of

Organic Law 15/1999, of 12/13, on the protection of personal data."

On the other hand, in opinion 6/2013 of 06/05/2013, on open data and reuse of the

public sector information. of the Article 29 Working Group on Protection of

Data, (GT 29) established in article 29 of Directive 95/46/CE, of 10/25/1995, of the

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European Parliament and of the Council, relating to the protection of natural persons in what

Regarding the processing of personal data and their free movement, the matter is addressed

open data and reuse of public sector information.

Reference that we must understand currently made to the RGPD and LOPDGDD in accordance with

the sole repeal provision of the latter, which repealed the LOPD and how many provisions

of equal or lower rank contradict, oppose, or are incompatible with the provisions

in the RGPD and in the Organic Law 3/2018 itself.

It is concluded from the foregoing that the processing of personal data contained in documents

those elaborated or that are in the power of the Public Administrations that are the object of

reuse by a person -in this case the person claimed-, for a use that does not represent a

administrative activity, will be subject to the personal data protection regulations.

Personal: RGPD and LOPDGDD.

In other words, in no case is it an obstacle to the application of the protection regulations

of data that the personal data processed by the person claimed through its tool is

should have been obtained from the reuse of documents held by the State Administration,

of the Autonomous Communities, of the local Administration, of Public Law entities

dependent on them -such as the General Treasury of the Social Security (TGSS) or the Agency

State Tax Administration (AEAT)- or the resolutions of the jurisdictional bodies-

which were published well through official newspapers -such as the BOE, the official newspapers-

them of each autonomous community, or the BOP- either through announcements in the electronic office

or physical information of such organizations, either on the benches of the Courts or on the judicial edictal board.

unique cial.

The fact that a piece of data is accessible by anyone can be taken into account when

carry out the weighting when the treatment is formulated under a base

legitimizing such as that of article 6.1.f) of the RGPD, but it does not necessarily imply

that the treatment will be lawful, since the remaining principles of the

GDPR.

On the requirements of legitimate interest, the Judgment of the Court of Justice of the Union

European Court of 11/24/2011, which resolves the preliminary questions raised by the

Supreme Court in the appeals filed against the Regulation for the development of the Law

Organic 15/1999, and in which the direct effect of article 7 f) of

Directive 95/46/EC, made it clear in section 38 that article 7 f) of the

Directive “establishes two cumulative requirements for a processing of personal data

is lawful, namely, on the one hand, that the processing of personal data is necessary to

the satisfaction of the legitimate interest pursued by the data controller or by the

third party or third parties to whom the data is communicated, and, on the other hand, that do not prevail

the fundamental rights and freedoms of the interested party” and, in relation to the aforementioned

weighting, section 40 made it clear that it “will depend, in principle, on the

the specific circumstances of the particular case in question and in which framework the person or

The institution that carries out the weighting must take into account the importance of the rights

that Articles 7 and 8 of the Charter of Fundamental Rights of the European Union

confer to the interested party”.

In the same sense, more recently, the Judgment of the Court of Justice of the Union

Union of 05/04/2017, in case C-13/16, (Valsts policijas Rīgas reģiona pārvaldes

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Kārtības policijas pārvalde and Rīgas pašvaldības SIA «Rīgas satiksme», remembered that the Article 7, letter f) of Directive 95/46 sets three cumulative requirements for the processing of personal data is lawful: first, that the data controller or the third party or third parties to whom the data is communicated pursue a legitimate interest; second, that the treatment is necessary for the satisfaction of that legitimate interest and, third, that it does not prevail the fundamental rights and freedoms of the interested party in the protection of the data.

In the RGPD, for the existence of legitimate interest as a legal basis for processing, requires a weighting to determine the prevalence between the legitimate interest alleged and the "interests, or fundamental rights and freedoms" of the interested party that require the protection of personal data (art. 6.1 f) RGPD).

The protection regime of the interested party in the RGPD against the person responsible for the treatment that intends to use your personal data based on a legitimate interest is more intense in the RGPD than in the LOPD, since if in the latter, to allow legitimate interest it was enough provided that their rights or freedoms are not "violated", in the GDPR regime it is enough that your interests, rights or freedoms prevail over said legitimate interest. Note that the word interests is added, against the violation of the rights or freedoms necessary previously in the LOPD. And that no violation is necessary, but that one that suffices that your interests, rights or freedoms are affected, even slightly, provided that said interest prevails over the alleged legitimate interest.

On the legitimate interest of the data controller under article 7 of the directive 95/46, the WG 29 issued opinion 6/2014 of 04/09/2014 regarding the concept of legitimate interest of the data controller. The opinion 6/2013 already mentioned, deals with the

issue of open data and reuse of public sector information. of none of

It follows from them that from the fact that the data is published on the internet it must be assumed that can be treated for any possible purpose.

The exposed facts suppose on the part of the defendant the commission of an infraction of the article 6.1) of the RGD that indicates:

“1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave his consent for the treatment 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 part or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or another person physical;

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller;

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f) the treatment is necessary for the satisfaction of legitimate interests pursued by the responsible for the treatment or by a third party, provided that said interests are not prevail the interests or the fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.”

Article 13 of the RGPD specifies the information that must be provided to the interested party when the personal data is obtained from it. In this case, the personal data of the persons related to the \*\*\*URL.1 are obtained and taken to the website of the claimed party, and to through its website, are owned by another data controller, who in addition to offering them in consultation mode, uses them for other purposes. Article 14 of the GDPR deals with the information that must be provided when the personal data has not been obtained from the interested party, which would correspond to this case, since the data is originally processed and they are given to the Ministry of Education of the Junta de Andalucía. Regarding these data, the claimed has not informed about the rights that correspond to the holders of the data that it deals with on its website, which come, as it indicates, from the website of the Ministry of Education.

This principle is considered in recital 39, which indicates:

“The principle of transparency requires that all information and communication regarding the treatment of said data is easily accessible and easy to understand, and that a simple and clear language. This principle refers in particular to the information of the interested parties about the identity of the person in charge of the treatment and the purposes of the same and to the added information to guarantee a fair and transparent treatment with respect to the natural persons affected and their right to obtain confirmation and communication of the personal data that concerns them that are subject to treatment. natural persons must be aware of the risks, standards, safeguards and rights regarding the processing of personal data as well as the way to assert their rights in relation to treatment. In particular, the specific purposes of data processing must be explicit and legitimate, and must be determined at the time of their pickup”

In this case, the people whose personal data comes from the \*\*\*URL.1 have been included in



the website of the claimed party without being informed of the extremes contained in article 14 of the RGPD that is considered infringed, and that indicates:

"1. When the personal data has not been obtained from the interested party, the person in charge of the treatment will provide you with the following information:

- a) the identity and contact details of the person in charge and, where appropriate, of his representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment for which the personal data is intended, as well as the legal basis of the treatment;

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- d) the categories of personal data in question;
- e) the recipients or categories of recipients of the personal data, if applicable;
- f) Where appropriate, the intention of the controller to transfer personal data to a recipient in a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party with the following information necessary to guarantee a treatment of fair and transparent data regarding the interested party:

- a) the period during which the personal data will be kept or, when that is not possible, the criteria used to determine this period;

b) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests

of the person in charge of the treatment or of a third party;

c) the existence of the right to request access to the data from the data controller

related to the interested party, and its rectification or deletion, or the limitation of its

treatment, and to oppose the treatment, as well as the right to data portability;

d) when the treatment is based on article 6, paragraph 1, letter a), or article 9,

paragraph 2, letter a), the existence of the right to withdraw consent at any

time, without affecting the legality of the treatment based on the consent before

its withdrawal;

e) the right to file a claim with a supervisory authority;

f) the source from which the personal data comes and, where appropriate, if they come from sources

public access;

g) the existence of automated decisions, including profiling, to which

refers to article 22, sections 1 and 4, and, at least in such cases, significant information

on the logic applied, as well as the importance and the foreseen consequences of said

treatment for the interested party.

3. The controller will provide the information indicated in sections 1 and 2:

a) within a reasonable period of time, once the personal data has been obtained, and no later than

within one month, taking into account the specific circumstances in which such

data;

b) if the personal data is to be used for communication with the interested party, unless

later than at the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time when the

personal data is communicated for the first time.

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4. When the person in charge of the treatment projects the subsequent treatment of the data personal data for a purpose other than that for which they were obtained, will provide the data subject, prior to such further processing, information about that other purpose and any other relevant information indicated in section 2.

5. The provisions of paragraphs 1 to 4 shall not apply when and to the extent that:

- a) the interested party already has the information;
- b) the communication of said information is impossible or supposes an effort disproportionate, in particular for processing for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation mentioned in section 1 of this article may make it impossible or hinder seriously the achievement of the goals of such treatment. In such cases, the responsible will take appropriate measures to protect the rights, freedoms and legitimate interests of the interested, including making the information public;
- c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the data controller and that establish adequate measures to protect the legitimate interests of the interested party, or
- d) when the personal data must remain confidential on the basis of an obligation of professional secrecy regulated by the Law of the Union or of the Member States, including a statutory secrecy obligation.”

personal information other than those contained in the lists of participants in the processes of the calls \*\*\*URL.1. For this data that is contained in the subscription boxes to the notice service, the obligations imposed by article 12 of the RGPD that "indicates that the interested party be provided with all the information indicated in the articles article 13 as well as any communication under articles 15 to 22 and 34 relating to treatment in a concise, transparent, intelligible and easily accessible form in clear language And simple".

This means that the data controller must present the information or communication information efficiently and succinctly to avoid information fatigue. The requirement that the training to be "intelligible" means that it must be understood by the average recipient, bound to the requirement to use clear and simple language. In an online context, the use of a declaration or layered privacy notice will allow the interested party to go to the specific section of the privacy statement or notice that you want immediate access to instead of having to ner to scroll through large amounts of text looking for a certain question.

The 'easily accessible' element implies that the data subject does not have to search for the information; must- It should be immediately apparent to him where and how this information can be accessed, for example by providing it directly, providing a link to it, pointing to it clearly or in response to a question in natural language.

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The information must be concrete and decisive; should not be formulated in abstract terms or ambivalent or give rise to different interpretations. In particular, the purposes and legal basis for the processing of personal data must be clear.

idiomatic qualifiers such as "may", "might", "some", "often" and "possible"

should also be avoided. When data controllers choose to use a language

je indefinite, they should be able, in accordance with the principle of liability, to prove by

why the use of such language could not be avoided and how this fact does not undermine the impartiality

ciality of treatment.

WG29 recommends the use of layered privacy statements or notices that allow

visitors go to those aspects of the privacy statement or notice in question that

are of most interest to them

Due to the lack of information on the data collected from users who subscribe to the

notification service, the infringement of article 13 of the RGPD is imputed, which indicates:

"1. When personal data relating to him is obtained from an interested party, the person in charge of the treatment, at the time these are obtained, will provide you with all the information

indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of his representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment.

treatment;

- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

- e) the recipients or categories of recipients of the personal data, if any;

- f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision on the adequacy of the

Commission, or, in the case of transfers indicated in articles 46 or 47 or article

49, section 1, second paragraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of them or to the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;

b) the existence of the right to request access to the data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9,

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paragraph 2, letter a), the existence of the right to withdraw consent at any moment, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to

Article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and expected consequences of such treatment for the interested party.

3. When the data controller plans further processing of personal data

for a purpose other than that for which they were collected, will provide the interested party, with

prior to such further processing, information about that other purpose and any information relevant addition pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the interested party already has the information.”

This article is developed in the 11 of the LOPDGDD, which indicates:

"1. When the personal data is obtained from the affected party, the data controller may comply with the duty of information established in article 13 of the Regulation (EU) 2016/679 providing the affected party with the basic information referred to in section following and indicating an electronic address or other means that allows access in a simple and immediate to the rest of the information.

2. The basic information referred to in the previous section must contain, at least:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly in a similar way, when this right concurs in accordance with the provisions in article 22 of Regulation (EU) 2016/679.”

The following deficiencies are observed with respect to the information offered by the respondent to

Users who subscribe to the service of notices and news of the calls for

\*\*\*URL.1, scholarships and oppositions offered on its website:

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-Refers to a regulation, Organic Law 15/1999, of 13/12, on Data Protection of Personal Character (hereinafter LOPD) that is not in force, without any reference to which yes it is, Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 on the protection of natural persons with regard to processing of personal data and the free circulation of these data (hereinafter, RGPD); Already LOPDGDD.

-"The mere use of the web or the website" does not imply consent to the processing. The term "data processing" does not adapt to the legal concepts provided by the regulations on personal data, its substitution being convenient for treatment of data.

-"The processing is limited to the purpose of this website. Our activities of processing are in accordance with the purpose for which you provided us with the personal data."

In addition to the suggestion of the term processing, the purpose of the treatment must be informed, specified, specified by the person in charge of the data that is collected. In this case, it has only been verified that data is not transferred, it is collected from the interested party, data to receive notices. You must inform of the purpose of the treatment of the data, not to make said purpose fall on the interested party.

-"We will not store your personal data for longer than necessary" is not correct, since that the period during which the personal data will be kept must be specified or, when not possible, the criteria used to determine this period;

- Publicly available information

We may collect information about you that is publicly available in the websites of the different public administrations, such as the website of the Ministry



of Education of the Junta de Andalucía.”

If it refers to the mechanism of confronting the notices that interest the affected party with the listings managed by the Ministry, should eliminate the term "we can" vague and unspecific.

- “We use your personal data to:

- 

Provide our service. This includes, for example, registering your account;

provide you with other products and services that you have requested; provide you with items

promotional information at your request and communicate with you in relation to those products and

services; communicating and interacting with you; and notifying you of changes in any

service.

- 

- 

All these purposes, other than the sending of notices, must be the subject of consent.

differentiated specific, with the possibility of opposing each of them, without suffering restriction

in the provision of the subscribed service. If the legitimate basis for subscribing to the service is the

consent, it is not understood that it has to do with the addition of "compliance with a

legal or contractual obligation. They must also be specified products or services. The

object of consent must be provided in objective elements so that it is not

make this nonspecific, without knowing what it consents to.

Improve your user experience.

Comply with a legal or contractual obligation”

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Regarding "Compliance with a legal or contractual obligation" the basis of the treatment of the service of notifications and SMS shipments is based on the consent not in contractual bond, for which creates confusion.

-- We use your personal data for legitimate reasons and with your consent.

In order to enter into a contract or fulfill contractual obligations, we process your Data.

personal data for the following purposes:

☐

to identify you.

☐

to notify you of developments that directly affect you or in general in the interim.

us and aspiring teachers.

☐

☐

to provide you with a service or to send/offer you a product.

to communicate either for sales or billing.

If the use of the subscription service falls on the basis of informed consent, it will not be

It would be necessary to indicate "We use your personal data for legitimate reasons" since you can add

dir confusion by contradicting the bases of the treatment, since there is a different denomination

undermined legitimate interest in article 6.1.f) of the RGPD.

"In order to enter into a contract or fulfill contractual obligations." In this case, it

unknown in these cases that the origin of the link is contractual, since the origin of the

data rests on consent, which does not imply legal agreement in terms of link

legal rights-obligations by the parties.

"to provide you with a service or to send/offer you a product". In this case, you must

circumscribe what service, and what product is treated and the possibility of rejecting must be offered

the use of data for this additional service.

-“For reasons of legitimate interest, we process your personal data for the following purposes:

☐

To send you personalized offers from us and/or our partners carefully selected you;

☐

To manage and analyze our user base (buying behavior and history) to improve the quality, variety and availability of the products / services offered.  
two / provided;

☐

Carry out questionnaires on user satisfaction.”

As a basis for treatment other than consent, if the data from the service of notices in this way, the reasons of legitimate interest must be detailed in what they consist of, specifying what the aforementioned interest consists of, the resulting balance made to pre-control over the rights of the owner of the data. Likewise, the option of opposition must be given. tion to treatment. For more details on the basis of legitimate interest, you can consult the dictamen 6/2014 of 04/9/2014, of GT 29 whose explanations are applicable to said base of treatment provided for in the RGPD.

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“send you personalized offers from us and/or our partners carefully selected;” In this case, you must offer the possibility of opposing said purpose as well as specify the products that are offered, and specify not the partners, but "the recipients or categories category of recipients of personal data".

“purchase behavior and history”

- “As long as you have not informed us otherwise, we consider that offering you products/services similar to your behavioral history is our legitimate interest.”

This clause supposes a possible legitimate interest in marketing activities, but in the shipments must be informed and given the option to oppose the treatment.

Regarding the "history of behavior" it is based on the consideration that "Every interested party shall have the right not to be the subject of a decision based solely on the treatment automated, including profiling, that produces legal effects on it or significantly affected in a similar way. (article 22.1 RGPD), detailing if there is any exception of article 22.2 of the RGPD.

If they are used, the existence of automated decisions must be reported, including the profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, giving significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

It does not suppose a legitimate basis for the treatment consisting of the analysis of the history of the behavior the legitimate interest briefly indicated, and must be adjusted to what established for this type of treatment to article 22 of the RGPD.

To send you notices, newsletters and campaign offers (from us and/or our

-“With your consent, we process your personal data for the following purposes:

- 

carefully selected partners).

- 

For other purposes, we have requested your consent.”

The sending of commercial communications "campaign offers" must be subject to a clause the specific one on which the opportunity to oppose such treatment must be provided.

development and the products or services must be specified and specified, and cannot be generic.

rich or indeterminate.

It is not clearly stated who is responsible for the processing of the data given for

receive notices from the \*\*\*URL.1 because in one case it refers to A.A.A., and in the section “Policy

of privacy” indicates that the subscriber file is property of FILIGRANA COMUNICACIÓN

SL. To this is added that in neither of the two cases is the venue or the way of exercising

the rights derived from the RGPD.

Thus, it is considered that the claimed party has infringed article 13 of the RGPD.

Infractions are referred to in article 83.5.a) of the RGPD, which indicates:

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“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 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:

the basic principles for treatment, including the conditions for consent

a)

tion under articles 5, 6, 7 and 9;”

b)

the rights of the interested parties under articles 12 to 22;

The LOPDGDD indicates in its article 72:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.

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

And article 74 of the LOPDGDD:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year. merely formal of the articles mentioned in sections 4 and 5 of article 83 of the

Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679.”

In addition, among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each control authority may “order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period specified...”.

The imposition of this measure is compatible with the sanction consisting of a fine administrative, according to the provisions of art. 83.2 of the GDPR.

In this sense, the claimed party must correct the infractions that are declared, being able to provide in the operative part of the resolution the obligation to take effect if before it would not have been done.

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The determination of the sanctions that should be imposed in this case requires observing the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, have the next:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with this article for the infringements of this Regulation indicated in the sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive."

"two. 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

In each individual case, due account shall be taken of:

- 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 as the number of affected parties 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 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, account of the technical or organizational measures they have applied under articles 25 and 32;
- e) the categories of personal data affected by the breach;
- f) the degree of cooperation with the supervisory authority in order to remedy the
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- F)

infringement and mitigate the possible adverse effects of the infringement;

g)

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

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 prior to

directly 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 certification mechanisms

cation approved under 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.

you, through the infraction.” Within this section, the LOPDGDD contemplates in its

Article 76, entitled “Sanctions and corrective measures”:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also

may be taken into account:

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a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing

personal.



- 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 commission of the crime.
- infringement.
- 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 delegate.
  - 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 controversies between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

For the assessment of sanctions, the following factors are considered:

Regarding the infringement of article 6.1 RGPD, it is valued that the data is exposed on a website open to the public supposedly pretending to carry out with the treatment an informa- interested parties, for which all the data is imported despite the fact that the expectations you go from the holders of the data makes it difficult to think that they will be used on another page with commercial purposes (83.2.a) of the RGPD, the alleged lack of intentionality, considering that these data could be a source for public use, lacking a more detailed analysis (83.2.b) RGPD, so the valuation of the fine for the imputed infraction is 2,000 euros.

Regarding the amount of the infringement of article 14 of the RGPD, the high degree of negligence in not incorporate any aspect of the information (83.2.b) of the RGPD, valuing the fine at 2,000 euros.

Regarding article 13 of the RGPD, it is appreciated that the information is not sufficiently clear, producing reiteration of information, and contains several inaccurate and inde-

terms that do not clarify what treatment consists of, contain terms that lead to

lead to confusion (83.2.a) GDPR and a lack of adaptation to organizational and technical guidelines

The only ones that the entry into force of the RGPD entailed, containing references to the LOPD and none

to the RGPD (83.2.d) RGPD. The value of the fine for this infraction is 4,000 euros

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Therefore, in accordance with the applicable law, the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO IMPOSE FILIGRANA COMUNICACIÓN S.L.U., with NIF B04770632, the

sanctions for violation of:

- article 6.1 of the RGPD, fine of 2,000 euros, in accordance with article 83.5.a) and 83.2

a) and b) of the RGPD,

-article 14 of the RGPD, fine of 2,000 euros, in accordance with article 83.5.b) and 83.2 b)

of the GDPR, and

-article 13 of the RGPD, a fine of 4,000 euros, in accordance with article 83.5.b) and

83.2.a) and d) of the GDPR.

SECOND: In exercise of article 58.2.d) of the RGPD, “each control authority may

order the person in charge or in charge of the treatment that the treatment operations be

comply with the provisions of this Regulation, where appropriate, of a given

manner and within a specified period” the respondent is required to correct the three

declared infractions” granting a term for it, of two months in which it must inform

the measures taken. If the non-compliance persists, a procedure could be initiated

sanctioned for non-compliance with the requirements set forth in the RGPD.

THIRD: NOTIFY this resolution to FILIGRANA COMUNICACIÓN S.L.U.

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

This resolution is executive, in accordance with the provisions of art. 98.1.b) of the

LPACAP, within the voluntary payment period established in art. 68 of the General Regulations of

Collection, approved by Royal Decree 939/2005, of 07/29, in relation to art. 62 of the

Law 58/2003, of 12/17, through its entry, indicating the NIF of the penalized person and the number of

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

nº ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Protection Agency

of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will be processed

collection in 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

on the 20th day of the following month or immediately after, and if it is between the 16th and

last of each month, both inclusive, the payment term will be until the 5th of the second month

next or immediately following business.

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.

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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 Agency

Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13/07, regulation of the Contentious-administrative Jurisdiction, within a period of two months from 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, 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 LPCAP. You must also transfer to the Agency the documentation that proves 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 terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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