

File identification

Resolution of sanctioning procedure no. PS 44/2019, referring to Ferrocarril Metropolità de Barcelona, SA; Transports de Barcelona, SA; Mobility Projects and Services, SA; Transports Metropolitans de Barcelona, SA and the TMB Foundation.

Background

1. On 20/10/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Ferrocarril Metropolità de Barcelona, SA (hereinafter, FMB); Transports de Barcelona, SA (hereinafter, TB); Mobility Projects and Services, SA (hereinafter, PSM); Transports Metropolitans de Barcelona, SL and the TMB Foundation (all of them, henceforth, entities of the TMB group), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant complained about several aspects linked to the website of Transports Metropolitans de Barcelona (tmb.cat):

- 1.1. That on various pages of the TMB website, website content could be shared through the "*send to a friend*" functionality, without the consent of the recipients of the email that is generated; and without making effective the right of information.
- 1.2. That the right to information was not adapted to that provided for by Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereinafter, RGPD). Specifically, both section 8 of the legal notice and the various forms published on the web.
- 1.3. That in the section of the TMB website where job offers from the entities of the TMB group ("*Work with us*") were published, once the corresponding form was filled out to request registration for the job offers, informed that the company Consulting Integral en Formación, SL (hereafter CIEF) was responsible for the treatment. The person making the complaint considered that CIEF would be considered to be in charge of the treatment, with the entities of the TMB group being responsible.
- 1.4. That in the terms and conditions that had to be accepted in order to register in the section of the TMB website "*JoTMBé*" it was informed that the collection of the data was carried out with the aim of improving the mobility experience, but that the treatment was conditional on consent to receive advertising from TMB and third parties. The complainant added that, in the terms and conditions of "*JoTMBé*", it was reported that the affected persons could contact the data protection representative of the responsible entities (TB, FMB and PSM), although there was none official appointment of data protection delegate. In turn, the complainant indicated that TB, FMB and PSM had made the co-responsibility agreement public.
- 1.5. That in the section of the TMB website dedicated to transparency, the curriculum of the high officials with their signature.

The reporting person provided documentation regarding the events reported.

With respect to the other reported issues related to the TMB website, the letter of complaint has been forwarded to the Spanish Data Protection Agency.

2. The Authority opened a preliminary information phase (no. IP 297/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 11/09/2018, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint.

3.1. About the possibility of sharing content:

- The bus rental section of the TMB website was accessed (<https://www.tmb.cat/ca/negocis-tmb/lloguer-autobusos>) and the option to share the content was selected through email. Then a new page opened with the addthis.com domain. The form (requesting sender and recipient email address) was filled out and submitted. The inspector staff then received an email message with the link to the shared TMB web content. The message was sent from the address (...)@addthis.com.

ï Noticies.tmb.cat was accessed and one of the news items was selected (<https://noticies.tmb.cat/sala-de-premsa/afectacions-linies-dautobusos-cursa-de-dona-de-barcelona-1>). The option to share via email was selected, opening a new page (<https://noticies.tmb.cat/printmail/819025>) that requested the email address, name of the sender and the recipient's email address. The inspector staff then received an e-mail message with the title of the news, the subtitle and a link to the website noticies.tmb.cat. The message was sent from the address (...)@tmb.cat, without exercising the right to information.

3.2. About the right to information:

- Check what was the content of section 8 of the legal notice (<https://www.tmb.cat/ca/avis-legal>), relating to the "Protection of personal data".

3.3. The information that was provided through one of the forms on the metro incident website will be checked TMB, specifically, in the form to request supporting documents (<https://www.tmb.cat/ca/atencio-al-client/gestions/justificants-incidencies-metro>).

ï If a specific incidence was selected, in the form that had to be filled in (in which the name and email address of the sender and the email address of the recipient were requested) the right to information, nor was there any reference to the privacy policy.

On the other hand, when processing the form, the inspector staff received an email message, from the address (...)@tmb.cat, justifying the incident mentioned above.

- If "*The incident I'm looking for does not appear*" was selected, a form was opened that the interested person had to fill in (name and surname, email address and certain information about the incident were requested). At the end of the form there was a box that was not checked, with the following content: "*I have read and accept the privacy policy*", which linked to the privacy policy of the TMB website. It was found that to send the form it was necessary to press this box.

ÿ With respect to the rest of the forms on the TMB website that the complainant mentioned in his letter of complaint, it will be verified that they refer to the privacy policy of the TMB website. However, in relation to two forms reviewed by the complainant, this verification could not be carried out. In particular, the professional filming form was not available; and the form for presenting allegations required that a file number be previously indicated.

3.4. Regarding the selection of personnel, it was not possible to access the job offer indicated by the complainant in his letter of complaint since it was already closed. In turn, it was found that there was no other active job offer.

3.5. About the TMB website section "JoTMBé":

- It was found that, in order to register (create an account) in "JoTMBé", a pop-up window opened in which it was necessary to check the box (which was unchecked): "*I have read and accept the terms and conditions*", which linked to the "*General conditions of access and use of JoTMBé*" (<https://www.tmb.cat/ca/termes-i-condicions-jotmbe>). In said conditions it was reported that the purposes of the treatment were the following:

- "a. The provision of the JoTMBé service to registered Users with the purpose of offering them a series of services and advantages to improve their mobility experience and learn about and benefit from everything that TMB can offer and present through this community, as well as managing the relationship between USERS and TMB, as well as the rights and obligations arising from it. TMB informs the registered User that it will process their geolocation data for the above purpose. As well as the management of all your requests for information and claims.*
- b. Offer you certain own or third-party products or services, including sending commercial communications to the email address you provide us, and manage your participation in contests, sweepstakes and promotions, as well as to benefit from discounts in establishments, promote relations with the users (without prejudice to the fact that in certain services or activities the registration or cancellation is absolutely voluntary for the member of the community)."*

- It was found that the "JoTMBé" registration form did not allow the interested person to decide whether or not their data was processed for advertising purposes.

- It will be checked what was the content of section 9 (Privacy Policy) of the "*General conditions of access and use of JoTMBé*".

3.6. About the transparency portal:

- The "*Corporate and organizational information*" section (<https://www.tmb.cat/ca/portal/transparencia/informacio-corporativa-organizativa>) of the TMB transparency portal was accessed. Then the PDF file called "*Professional trajectory of the members (CV) advice manager*"

from (<https://www.tmb.cat/documents/20182/89788/Trajectoria+professional+del+Consell+directiu+Nov+2018/1f0cb980-f324-4d19-aaad-d41195cce838>). It was verified that this file allowed access to the profile and career of the members of the TMB Board of Directors.

- The inspection staff accessed the profile of the first three people in that file, verifying that all of them contained the handwritten signature of the corresponding member of the Board of Directors.

4. On 11/12/2018, also during this preliminary information phase, FMB was required to report on the facts reported.

5. Also on 11/12/2018 and still within the framework of this preliminary information phase, the Authority's Inspection Area accessed the section of the TMB website where job offers were published, and specifically, to the offer "*Technical operational commands for the Barcelona Metro network*". It will be verified that in order to sign up for said offer it was necessary to fill in a form that was on a domain (<https://seleccio-grupcief.was.tmb.cat/TMB/Transparencia/Ofertes>) before signing up for the offer, it was required to mark the box according to "*I have read and accept the privacy policy.*", which linked to the privacy policy of the company CIEF (http://gdpr.grupcief.com/Legal/CIEF/politica_privacidad.aspx), of which a copy was kept.

6. On 12/24/2018, FMB responded to the above-mentioned request in writing, in which it set out, among others, the following:

- That, in relation to the TMB website, they are considered service providers of the information society TB, FMB, PSM, Transports Metropolitans de Barcelona, SA and the TMB Foundation.

- That these entities are jointly responsible for the treatment.

- That when web content is shared and a message is received from (...)@addthis.com, it is considered that the interested person must have registered within the Addthis program. TMB cannot pronounce on the legal basis, since it does not know the provenance of the finger mail

- That when the mail is received from (...)@tmb.cat, the user may have received the communication if he has completed the process of subscribing to the newsletter, or has used the forms reserved for media professionals communication. Currently, these forms already

they have the first layer of information to be able to exercise the right to information. These emails are only sent with the consent of the interested parties.

- That the information provided through section 8 of the legal notice was pending adaptation to the RGPD. Currently, it is reported in accordance with the provisions of article 13 RGPD.
- That in the electronic form to request evidence of incidents in the metro, when an incident already registered is selected, it is reported in accordance with art. 13 GDPR.
- That, in relation to job offers, the CIEF group by virtue of the service awarded to it with TMB is the one that manages TMB's selection processes, and consequently, is responsible for the treatment.
- That in relation to the "JoTMBé" section of the TMB website, the essential aspects of the agreement indicated in art. 26.1 RGPD in point 6. The rights of users are contained in section 9 of the privacy policy of the terms and conditions of "JoTMBé".
- That as part of TMB's adaptation work to the RGPD, the user is currently given the possibility to accept the sending of communications that are outside the provision of the service offered by "JoTMBé" related to events and notices, news and newsletter.
- That the document published on the transparency portal, relating to the profile and career of the members of the Board of Directors, was authorized by each of the affected persons. The handwritten signature was incorporated to certify the veracity of the information. However, taking into account the principle of minimization, the signature has been deleted.
- That TMB has decided to hire externally the figure of the data protection delegate.
- That once the previous contract has been formalized, the competent authority will be notified.

7. On 07/22/2019, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet. Thus, the following was established:

- If a news item published in the news section (<https://noticies.tmb.cat/>) was selected, it could be shared via email, by filling out an electronic form, which did not contain any relevant information to the processing of personal data. In the e-mail message that was received when sending said form, the right to information was also not effective.
- That at the bottom of the web page that contained the previous electronic form (shaded in gray), there was another electronic form to sign up for the newsletter. In this form, there was an unchecked box, according to which the user indicated having read and accepted the privacy policy, which could be accessed through a link (<https://noticies.tmb.cat/privacitat>). This electronic form was independent of the first one.
- Check the content of the privacy policy (<https://www.tmb.cat/ca/politica-privacitat>); of the data protection policy of the news area of the TMB website (<https://noticies.tmb.cat/politica-de-privacitat>); and the privacy policy for candidates (<https://www.tmb.cat/ca/politica-privacitat-candidats>).
- It was found that the content of section 8 of the legal notice (<https://www.tmb.cat/ca/avis-legal>) was as follows:

"8. Protection of personal information

To find out how we treat personal data, consult our Privacy Policy and Privacy Policy for candidates pages."

- Check that, in the electronic form to request a proof of incidence in the metro (<https://www.tmb.cat/ca/atencio-al-client/gestions/justificants-incidencies-metro>), you provided the is following information:

"Basic data protection information The co-responsible for data processing are Transports de Barcelona, SA, Ferrocarril Metropolità de Barcelona, SA, and Projectes i Serveis de Mobilitat, SA. We will process your personal data to respond to and manage your queries, requests, requests, claims, allegations or suggestions. The reason why we are authorized to process your data is because we have a legitimate interest in attending to and responding to the requests received. We share your data mainly with service providers in the EU and, where applicable, with public administrations or authorities. You have the right to access, rectify and delete your data, as well as others, about which we inform you in detail in our Privacy Policy. For more information regarding the way in which we treat your personal data and the rights you have, you can consult additional information in the Privacy Policy."

- Check that in the electronic form, to register in the "JoTMBé" space (<https://www.tmb.cat/ca/jotmbe>), there was a drop-down box, where the following information was provided:

"Terms of service and data protection

Those responsible for the processing of the data are Transports de Barcelona, SA, Ferrocarril Metropolità de Barcelona, SA, and Projectes i Serveis de Mobilitat, SA (henceforth, together, TMB). You can contact the TMB Data Protection representative to raise any doubts you may have at the email address dpd@tmb.cat

We will process your personal data to offer you services and advantages to improve your mobility experience with TMB. The reason why we are authorized to process your data is because we have your consent and for the execution of the contract for the provision of services. The data retention period is the duration of the contractual relationship and has a maximum duration of two years after the termination of the contract. We share your data mainly with service providers in the EU and, where applicable, with public administrations or authorities. You can exercise your rights of access, rectification, opposition, deletion and limitation of the processing of your personal data collected by TMB through the e-mail address elèccióndades@tmb.cat

You can submit a claim addressed to the APDCAT, through the Catalan Data Protection Authority's electronic headquarters <https://seu.apd.cat/> or by non-electronic means. You can consult additional information in the *Privacy Policy*"

- The content of the "General conditions of access and use of JoTMBé" will be checked. (<https://www.tmb.cat/ca/termes-i-condicions-jotmbe>).
- Access the corporate organizational section "Information" (<https://www.tmb.cat/ca/portal-transparencia/informacio-corporativa-organizativa>). It was found that the document "Professional trajectory of the members of the Board of Directors (CV)" had been unpublished.

8. On 07/26/2019, also during this preliminary information phase, the Inspection Area verified that it was possible to access the document "Professional history of members of the Board of Directors (CV)", from the following link: "<https://www.tmb.cat/documents/20182/89788/Trajectoria+professional+del+Consell+directiu+Nov+2018/1f0cb980-f324-4d19-aaad-d41195cce838>".

Based on this document, the profile and career of all the members of the TMB Board of Directors were consulted, noting that the handwritten signature had been deleted.

On the other hand, it will also be verified that in order to share any content from the TMB website via email, other than that published in the news section, it is no longer required to fill in any form. Specifically, this action involved generating a draft in the user's default email account, which contained a link to the shared content.

9. On 08/01/2019, also during this preliminary information phase, the Inspection Area verified that, on 07/18/2019, FMB, TB and PSM notified the Authority the designation of the person who performed the functions of data protection delegate. According to the information provided by said entities, this person was appointed on 04/01/2019.

10. On 14/11/2019, the director of the Catalan Data Protection Authority agreed to start a sanctioning procedure against the entities of the TMB group, firstly, for an alleged infringement provided for in article 83.5.b), in relation to article 13 (of the 3 conducts included in the imputed fact that was considered constitutive of this infringement, 1 referred exclusively to FMB, TB and PSM); secondly, for an alleged infringement provided for in article 83.5.a), in relation to article 6 (only FMB, TB and PSM were considered responsible for this infringement); thirdly, for an alleged infringement provided for in article 83.4.a), in relation to article 28 (only FMB, TB and PSM were considered responsible for this infringement); and, fourthly, for an alleged violation provided for in article 83.5.a), in relation to article 5.1.c) all of them of the RGPD.

This initiation agreement was notified to the imputed entities on 11/25/2019, except for the TMB Foundation. The notification to the TMB Foundation was understood to have been rejected

10 calendar days have passed since the notification was made available without its content being accessed, in accordance with article 43.2 of the LPAC.

The initiation agreement explained the reasons why no charge was made with respect to other reported facts. Firstly, regarding the sending of commercial communications, given that the person who shared the content of the TMB website would be responsible for these facts; secondly, regarding the lack of legal basis for the treatments linked to the sending of an email to share web content, since these treatments of personal data would be based on the legitimate interest of the entities of the group TMB (art. 6.1.f RGPD); thirdly, with regard to the lack of designation of a data protection delegate, given that his designation was not mandatory and the fact that the Authority was not notified of his designation or voluntary appointment only 'has collected as an infringement in those cases in which the designation is mandatory; and, fourthly, in relation to the lack of information linked to the co-responsibility agreement, since these entities made the essential aspects of the co-responsibility agreement available to the interested parties, as required by the article 26.2 of the GDPR.

11. On 10/12/2019, the entities of the TMB group made objections to the initiation agreement.

12. Given that in their pleadings, FMB, TB and PSM indicated that they had regulated the task of treatment with the company CIEF, on 12/12/2019 the instructing person agreed to have the opening of a trial period for a period of 10 days, in order to carry out the test consisting of requiring the said entities to provide the documentation regulating CIEF's access to personal data on behalf of the said entities.

This trial agreement was notified to the entities of the TMB group on 01/14/2019, except for the TMB Foundation. This last notification was considered rejected, because 10 calendar days have passed since the notification was made available without its content being accessed.

13. On 23/01/2020, the entities of the TMB group contributed the contract of manager signed between FMB, TB and PSM with CIEF on 02/05/2018. In turn, through the same letter they reported on other corrective measures they had implemented.

14. On 01/31/2020, the person in charge of the sanctioning procedure verified via the internet that, in order to share content through the news section (<https://noticies.tmb.cat/>), already it was not necessary to fill out any form; as well as that in the privacy policy of the TMB website (<https://www.tmb.cat/ca/politica-privacit>) the TMB Foundation had been included as the entity co-responsible for the treatment.

15. On 12/02/2020, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority; in the first place, it imposed on the entities of the TMB group two sanctions consisting of one

fine of 2,000 euros (two thousand euros) each (4,000 euros as a whole), as jointly and severally responsible for two violations provided for in article 83.5.b) in relation to article 13; secondly, to impose on FMB, TB and PSM the sanction consisting of a fine of 2,000.- euros (two thousand euros), as jointly and severally responsible for an infringement provided for in article 83.5.a) in relation to the article 6, as well as the penalty consisting of a fine of 1,000 euros (one thousand euros), in both cases as jointly and severally responsible for an infringement provided for in article 83.5.b) in relation to article 13; and thirdly, to admonish the entities of the TMB group as jointly and severally responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c); all of them from the RGPD.

16. This resolution proposal was notified on 02/13/2020 and a period of 10 days was granted to formulate allegations.

17. On 02/19/2020, the entities of the TMB group submitted a letter in which they acknowledged their responsibility for the alleged acts and certified that they had made the voluntary advanced payment of the monetary penalty proposed by the instructing person, once applied the reductions provided for in article 85 of the LPAC (4,200 euros).

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

1. Through the TMB website, the affected people were not properly informed in the following cases:

- 1.1. On 09/11/2018 the inspector staff found that in the news section of the TMB website (noticies.tmb.cat), users were offered the possibility of sharing the contents of this website with third parties people via email. For this purpose, the entities of the TMB group collected the data of the sender or person who requested to share that content (name and email address) and of the recipient of the email (email address) through an electronic form . This data was stored in order to generate an email to the recipient with the link to the news section of the TMB website that was to be shared. This e-mail was sent from the address (...)@tmb.cat, so the data provided in the electronic form was kept, at least, until it was sent.

In said data collection, the entities of the TMB group did not give effect to the right of information to the person who shared the content. The duty of information also did not apply to the person who received the message.

On the other hand, in relation to the possibility of sharing content from the rest of the website TMB (alien to the news section) via email, group entities

TMB also did not inform about the treatments carried out by Addthis (Oracle), to whose website it was redirected in order for the user to fill in an electronic form to share a content of the TMB website with another person.

On 26/07/2019 and 31/01/2020, the Authority verified that in order to share content from the TMB website (including the news section), the entities of the TMB group no longer processed personal data.

- 1.2. On 09/11/2018, the inspector staff found that in relation to the treatments linked to the international consultancy, to visiting TMB, to the notice of damage, to the request for access to public information, to lost objects, to complaints, claims and suggestions and when subscribing to the newsletter, the entities of the TMB group collected the data of the affected persons without properly exercising the right to information. Specifically, in the web forms provided for the purpose, the entities of the TMB group referred to the privacy policy to give effect to the right to information. This privacy policy and the legal notice on the TMB website did not include the provisions of Article 13 RGPD. Nor was he informed by any other means of all the provisions of the said precept.

On 07/22/2019, the Authority's inspector staff found that the entities of the TMB group had modified the privacy policy. In turn, on the same date it was also verified that the legal notice (section 8) had been modified, so that it referred to the general privacy policy or the one provided for candidates.

On 01/31/2020, it was found that the general privacy policy also stated that one of the entities jointly responsible for the treatment is also the TMB Foundation.

- 1.3. On 11/12/2018 the inspection staff found that in the collection of data from people who wanted to register for a job offer from TB, FMB and PSM, it was not reported that those entities were co-responsible for that treatment. Specifically, at the time of sending the corresponding form to sign up for an offer from said entities, CIEF informed the affected person that it was responsible for that treatment, among other things.

On 07/22/2019, the Authority's inspection staff found that a new privacy policy had been drawn up for candidates (<https://www.tmb.cat/ca/politica-privacitat-candidats>), in which indicated that the co-responsible for that treatment in order to manage the participation of the affected person in the selection process are TB, FMB and PSM, which can share that information with *"third service providers, essentially agencies recruiting and technology entities that help us manage our IT systems."*

2. On 09/11/2018 the inspector staff found that TB, FMB and PSM collected the data of the people who registered in the "JoTMBé" space, for the following purposes:

- "a. The provision of the JoTMBé service to registered Users with the purpose of offering them a series of services and advantages to improve their mobility experience and learn about and benefit from everything that TMB can offer and present through this community, as well as managing the relationship between USERS and TMB, as well as the rights and obligations arising from it. TMB informs the registered User that it will process their geolocation data for the above purpose. As well as the management of all your requests for information and claims.*
- b. Offer you certain own or third-party products or services, including sending commercial communications to the email address you provide us, and manage your participation in contests, sweepstakes and promotions, as well as to benefit from discounts in establishments, to promote relations with users (without prejudice to the fact that in certain services or activities the registration or cancellation is absolutely voluntary for the member of the community).*

The affected person could not register on "JoTMBé", if he did not consent to the processing of his data for advertising purposes.

On 07/22/2019, the Authority's inspector staff found that, according to the basic information provided when registering in the "JoTMBé" space, the data was no longer collected for advertising purposes.

3. On 09/11/2018 the inspection staff found that through the transparency portal of the entities of the TMB group, it was possible to consult the profile and career of all the members of the TMB Board of Directors through the document " *Career path (CV)*" of the Board members (<https://www.tmb.cat/documents/2018/09/788/Trajectoria+professional+del+Consell+directiu+Nov+2018/1f0cb980-f324-4d19-aaad-d41195cce838>), which contained the handwritten signature of the affected persons.

On 07/26/2019, the Authority's inspector staff found that the data relating to the handwritten signature of all members of the TMB Board of Directors, in the respective profile and professional career, had been removed.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. In accordance with article 85.3 of the LPAC, both the recognition of responsibility and the voluntary advanced payment of the proposed monetary penalty lead to the application of reductions. The effectiveness of these reductions is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

Although the entities of the TMB group submitted allegations to the initiation agreement, they have not formulated allegations to the proposed resolution, since they have accepted the options to reduce the amount of the penalties. In this regard, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations made before the initiation agreement.

2.1. About the sanctioning regime.

In the 1st section of their statement of objections to the initiation agreement, the imputed entities considered that the sanctioning regime provided for in article 77 of Organic Law 3/2018, of 5 of December, of Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), given that in his opinion they would be considered entities that make up the local administration (article 77.1.c LOPDGDD).

Article 2 of Law 40/2015, of October 1, on the legal regime of the public sector (hereinafter, LRJSP), referring to the subjective scope of this rule, has the following:

"1. This Law applies to the public sector, which includes:

- a) The General Administration of the State.*
- b) The administrations of the autonomous communities.*
- c) The entities that make up the local administration.*
- d) The institutional public sector.*

2. The institutional public sector is made up of:

- a) Any public bodies and entities under public law linked or dependent on public administrations.*

b) Private law entities linked to or dependent on public administrations, which are subject to the provisions of the rules of this Law that specifically refer to those, in particular to the principles provided for in article 3, and in any case, when exercising administrative powers.

c) Public universities, which are governed by their specific regulations and, additionally, by the provisions of this Law.

3. Public administrations are considered to be the General Administration of the State, the administrations of the autonomous communities, the entities that make up the Local Administration, as well as the public bodies and public law entities provided for in letter a) of section 2."

In accordance with the precept transcribed, it is necessary to differentiate the entities that make up the local administration (art. 2.1.c LRJSP), from the entities that make up the institutional public sector (art. 2.1.d

LRJSP). Within the entities that make up the institutional public sector are private law entities linked or dependent on public administrations, as provided for in article 2.2.b of the LRJSP.

Consequently, it must be concluded that private law entities, such as the commercial companies that make up the TMB group or the TMB Foundation, have no place in the concept of entities that make up the local administration, given that they fit into the concept of entities that are members of the institutional public sector, and in particular, the type of entities referred to in article 2.2.b) of the LRJSP, which means that they are not considered public administrations.

2.2. On the right to effective judicial protection.

Subsequently, the accused entities alleged in their statement of objections to the initiation agreement that *"they have not had the documentation relating to the events reported" transferred* and added that the complaint was filed making an abusive use of the right by the reporting person.

First of all, with respect to access to prior information actions, as indicated by the instructing person in the resolution proposal, it should be noted that in accordance with article 55 of the LPAC, prior actions or information are not they are considered an administrative procedure, given that these can be opened prior to the start of it.

As stated by this Authority in the IAI report 20/2019, it is *"consolidated jurisprudential criteria that reserved information does not properly constitute an administrative procedure (among others, STSJM 471/2006, of May 24), as well as that its reserved nature (its knowledge can lead to clear damage to the outcome of the same) prevents access to its content during its processing (among others, STS 21/2018, of February 15). And this even affects the person being investigated (among others, STSJC 1212/2005, of November 25)"*.

It is for this reason that the procedural safeguards of the LPAC (such as access to the file) do not apply until the procedure is initiated by agreement.

Having said that, it is worth saying that given the request made by the imputed entities in their letter of allegations, once the sanctioning procedure had already started, they were given access to the previous actions.

On the other hand, regarding the abuse of the right, it is necessary to go to article 7.2 of the Spanish Civil Code:

"The Law does not protect the abuse of the right or the antisocial exercise of it. Any act or omission that by the intention of its author, by its object or by the circumstances in which it is carried out manifestly exceeds the normal limits of the exercise of a right, with damage to a third party, will give rise to the corresponding compensation and the adoption of the judicial or administrative measures that prevent the persistence of the abuse."

As indicated by this Authority in opinion CNS 46/2012, on the figure of abuse of right, for illustrative purposes, mention can be made of the STS of 20/05/2002, according to which:

"(...), the abuse of the right or the antisocial exercise of the same that the law does not protect (art. 7.2 CC), supposes that, even respecting the formal limits, there is a violation of the values or of the axiological idea that forms part of the content of the subjective right or of the norm whose exercise is in question."
(Fundamentals of law 5th)

It should be borne in mind, in any case, that the abuse of rights only occurs exceptionally, when certain objective and subjective circumstances come together, as shown in the STS of 06/20/2008:

"(...) collect the jurisprudential characterization of the abuse of the right and the interpretation that has earned this Court not only the second section of article 7 of the Civil Code, but also its first section, which imposes the obligation that the rights exercise according to the requirements of good faith. With respect to this, the Chamber has highlighted that good or bad faith constitutes a legal concept that is based on the assessment of conduct deduced from facts, so that assessment, which moves in the legal field, is based in an appreciation of a factual nature, excluded from the cassational review, if the narrow channel that opens the complaint of the error of law in the assessment of the evidence is not feared. Moreover, it is a repeated doctrine that good faith is presumed, and behavior must be considered adjusted to it, as long as bad faith is not proven (...).

Regarding the abuse of the right, it should be noted, with the Sentence of September 21, 2007, that it constitutes a limit to the subjective right, and hence its character as an extraordinary remedy, its exceptional nature and its singularly restrictive scope. It is only necessary to invoke it and, consequently, to appreciate it, as an institution of equity, when the right is exercised with a well-defined intention to cause damage to another or by using it in an abnormal or contradictory way of harmonious social coexistence. Its appreciation requires, then, that the factual basis reveals the objective circumstances (abnormality in the exercise) and the subjective ones (willingness to harm or absence of legitimate interest) that characterize its existence, which is determined by the subjective circumstance of absence of serious and legitimate purpose in the exercise of the right, and for the objective of excess in its exercise (Judgment of December 14, 2007, which cites those of October 14, 2004 and May 8, 2006, among the most recent). "

In the same sense, the STS 18/05/2005 indicated that:

"The abuse of right, (...) requires, according to reiterated jurisprudential doctrine in order to be appreciated, that the requirements are met that although it may be an apparently correct action, nevertheless it actually represents an extralimitation to which the Law does not grant any protection, generating negative effects (the most common damages and prejudices), as the subjective circumstance of absence of serious and legitimate purpose is evident, as well as the objective of excess in the exercise of the right (Judgments of 8-7-1986 , 12-11-1988, 11-5-1991 and 25-9-1996)." (Foundation of law 1st).

Well, in the present case the imputed entities have not proven the concurrence of the abuse of the right by the person making the complaint. Specifically, they limited themselves to stating that the reporting person did not prove to have a legitimate interest or was not affected by any of the issues reported (this statement was made despite not knowing the reporting person's identity).

In this sense, it is appropriate to go to article 62.1 of the LPAC which provides that *"Complaint is understood as the act by which any person, in compliance with a legal obligation or not, brings to the attention of a body administrative the existence of a certain fact that can justify the ex officio initiation of an administrative procedure."*

That being the case, the presentation of the complaint does not require the concurrence of a legitimate interest in the person making the complaint, nor that the reported facts directly affect him.

That said, as the Supreme Court has stated, good faith is presumed until the contrary is proven.

In short, as the instructing person explained in the resolution proposal, there is no abuse of rights in the attitude of the person making the complaint, who limited himself to bringing to the attention of the Authority some facts that could be contrary to the regulations on data protection.

2.3. About proportionality.

Next, the accused entities stated in their statement of objections to the initiation agreement that *"as soon as it received the request for information, it immediately proceeded to amend all the extremes in to which reference was made"*, which they considered that, along with other criteria, they should allow replacing the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2.b) RGPD.

Leaving aside the fact that, as indicated in the imputed facts section of the initiation agreement, the entities of the TMB group had not corrected all the situations that could be contrary to the regulations on data protection (specifically , the lack of information remained when content was shared through the news section of the TMB website or the omission in the privacy policy of said website of the TMB Foundation as the entity co-responsible for the treatment), such

as the instructing person highlighted in the resolution proposal, it is worth highlighting the actions of the entities of the TMB group to correct the majority of situations that could contravene the aforementioned regulations, at the time when this Authority requested information about it in the framework of the previous information.

It is also worth noting that, within the framework of the present sanctioning procedure, the entities of the TMB group diligently completed the correction of the rest of the constitutive aspects of the infringement.

This circumstance, as stated by the instructing person, had to be particularly decisive for the penalty to be imposed.

2.4. On the lack of breakdown of the amount of the proposed sanctions.

The accused entities made it clear that the agreement to initiate the present sanctioning procedure did not indicate the specific amount of the proposed sanctions, nor the factors that would have led the Authority to determine that figure.

In this sense, as set out in the initiation agreement, the amount of the penalty would be specified in this resolution proposal, once all the elements to be taken into account for its graduation

In turn, article 64.2.b) of the LPAC establishes that the initiation agreement in the procedures of a sanctioning nature must include, for what is of interest here, *"The facts that motivate the initiation of the procedure, the his possible qualification and the sanctions that may correspond, without prejudice to what results from the instruction."*

For its part, article 89.3 of the LPAC, referring to the resolution proposal in sanctioning procedures, provides that:

"In the resolution proposal, the facts that are considered proven and their exact legal classification must be determined in a motivated manner, the offense that, if applicable, those constitute, the person or persons responsible and the sanction that is proposed, the assessment of the tests carried out, especially those that constitute the basic foundations of the decision, as well as the provisional measures that, if applicable, have been adopted. When the instruction concludes that there is no infringement or liability and the power provided for in the first section is not used, the proposal must declare this circumstance." [the underlining is from this Authority]

In accordance with the above, it is in the proposed resolution that the proposed sanction should be determined.

2.5. Regarding the imputed fact 1.1 in the initiation agreement (not making effective the right of information to the person who shared the content, nor to the person who received the message).

In relation to this imputed fact, the entities of the TMB group explained that *"at no time does TMB save or use the data that the user enters to share the news or information"*, so they considered that there was no processing of personal data. And then they stated that *"TMB through its website gave the possibility for users to share news or information that was interesting to them with other people and they could do so by entering the data through the communication channel that they wanted to use, and this data was deleted immediately as soon as the desired shipment had been made, without at any time TMB storing any type of personal data."*

Well, in the statement of objections to the initiation agreement itself, the entities of the TMB group came to recognize that certain data was collected from the users of the website and from the recipient of the shipment; as well as that these were deleted *"as soon as the desired shipment had been made"*.

Therefore, in order to share content, certain personal data were collected from the person who wanted to share a content from the TMB website (name and email address) and from the recipient of the email (email address) through an electronic form.

And this data was kept or stored, at least, until the e-mail was sent.

Therefore, these operations on personal data fall within the concept of treatment, which the RGPD (Article 4.2) defines as *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction"*.

On the other hand, with regard to the measures implemented to correct the effects of the infringement, it is worth saying that this circumstance does not distort the imputed facts, nor does it modify their legal classification.

2.6. Regarding the imputed fact 1.2 in the initiation agreement (failure to give effect to the right of information to the persons affected in the collection of personal data through the existing forms on the TMB website).

In this regard, the accused entities admitted in their statement of objections to the initiation agreement that *"in the legal texts (legal notice and privacy policy) and due to a lack of proper internal coordination, there has not been incorporating the acronyms of the FMB Foundation, a company that may also be jointly responsible for data processing."* They then explained that there was no intention and that there was no *"minimum direct or indirect damage to any"*

of the users of the website, as evidenced by the fact that no user has exercised the right to request more information, access, opposition or limitation of any of the treatments.”

In advance, as stated by the instructing person, it should be noted that the imputed fact that is addressed here, referred to the omission of the right to information in a series of web forms. That is to say, that the affected person was not informed of any of the ends provided for in article 13 RGPD.

This situation, as indicated in the initiation agreement, was amended by the entities of the TMB group as part of the prior information, so that from then on the right to information became effective. However, the information provided did not state that the TMB Foundation was also one of the entities jointly responsible for the treatment.

Having established the above, as has been advanced, the entities of the TMB group stated that no harm would have been caused to the persons concerned, a demonstration which they supported in the fact that no person had exercised the rights provided for by the regulations on protection of data. In this regard, it should be emphasized that, precisely, among the information that must be provided to the persons interested in the collection of their personal data is the right to request from the data controller access to the personal data relating to interested party, to rectify or delete them, to limit their processing or to oppose them, as well as the right to data portability (Article 13.2.b of the RGPD). Therefore, it is not plausible to invoke as a cause to try to demonstrate the lack of damage to the affected persons, who have not exercised their rights, when the co-responsible had not informed them about this end in the collection of their personal data as GDPR requires.

Likewise, it should also be remembered that the Constitutional Court in its judgment no. 292/2000, of November 30, stated that *"characteristic elements of the constitutional definition of the fundamental right to the protection of personal data are the rights of the affected person to consent to the collection and use of their personal data and to know about them.*

And they are indispensable to make this content effective the recognition of the right to be informed of who has their personal data and for what purpose, and the right to be able to object to that possession and use by requiring the corresponding person to put an end to the possession and use of the data. That is, demanding from the owner of the file that the report of what data he puts on his person, accessing his appropriate records and records, and what destination they have had, which also reaches potential assignees; and, where appropriate, require him to rectify or cancel them.”

That being the case, it can be concluded that the right to information is part of the essential core of the fundamental right to the protection of personal data.

With regard to the corrective measures implemented by the entities of the TMB group, it is appropriate to refer to what has already been explained in the previous section.

2.7. Regarding the alleged fact 1.3 in the initiation agreement (failure to inform in the data collection of the people who wanted to register for a job offer from TB, FMB and PSM, that those entities were jointly responsible for the treatment).

At this point, the entities of the TMB group stated that *"this form did not properly inform who was responsible for the data and what was done with the data that was collected, since it was a form that was redirected, and which therefore could also comply with the content in the response to the candidate."*

Well, apart from the fact that the accused entities had not certified that any other information on the processing of data was facilitated *"with the content in the response to the candidate"* (which was noted in the statement of allegations as a mere possibility), it should be pointed out that article 13.1.a) of the RGPD would also be violated, given that during the collection of the data it was reported that the person responsible for that treatment was the person in charge of the treatment (CIEF), instead of providing the identity of the co-responsibles (FMB, TB and PSM).

With regard to the corrective measures implemented, it is also appropriate to refer to what has already been explained in section 2.5.

2.8. On imputed fact 2 in the initiation agreement (on the non-specific consent to process the data of the people who registered in the "JoTMBé" space for various purposes).

Firstly, the accused entities stated that the effects of the infringement were corrected by modifying the information clause.

In this sense, reference is also made to what has already been explained in section 2.5.

In the last one, the imputed entities stated that *"It is obvious and obvious that if a user registers in a communications and contests portal, their data will be processed for commercial purposes."*

In the present case, the possibility of processing the data collected for advertising purposes is not questioned. Indeed, what is alleged is that when consent was requested for more than one purpose, this was not specific.

2.9. On the imputed fact 3 in the initiation agreement (lack of contract in charge).

As has been advanced in the factual background, on 23/01/2020, the entities of the TMB group contributed the contract of in charge signed between FMB, TB and PSM with CIEF on 02/05/2018.

Given the above, as stated by the instructing person in the resolution proposal, the imputation made in the initiation agreement regarding this imputed fact cannot be maintained.

2.10. On imputed fact 4 in the initiation agreement (publication on the transparency portal of the profile and career of all the members of the TMB Board of Directors, where their handwritten signatures were included).

In the statement of objections to the initiation agreement, it was pointed out that *"This party admits and rectified by removing the handwritten signature from the documents and the transparency portal"*.

The Authority has already ruled on handwritten signatures on previous occasions (among others in opinions CNS 34/2016, 58/2018, 1/2019 and 38/2019). In the opinion CNS 34/2016, the Authority noted the *"handwritten signature consists of a graphic outline (name, surname and rubric) that a person shapes in a document with his fist and handwriting, to give it authenticity or to express that you approve of its content. Through this rubric, the person develops his own and personal traces that identify him."*

For this reason, as indicated by the Authority in the report of conclusions on the audit to verify compliance with the legislation on the protection of personal data in active advertising on the portals of the transparency of entities in the field of action of the APDCAT (Audit 1/2018), the signature is included in the category of identifying data, in addition to connecting with the right to personal and family privacy due to the fact that the person uses it, also, in his sphere private

And it was added in the said audit report that *"it must be borne in mind that the publication of the handwritten signature entails the risk that anyone who has access to the signed document may end up reproducing it. In the case of public positions, this is compounded by the fact that the signature can easily be included in several of the documents subject to active publicity, which increases its exposure and the risk that it can be accurately reproduced."*

The Authority has been considering that the publication of the DNI or the handwritten signature to achieve the purpose of transparency, is contrary to the principle of data minimization, as it is data that is not strictly necessary to be able to carry out the identification of people affected (CNS 58/2018, 1/2019 and 38/2019).

Lastly, regarding the allegation that *"Without a person specializing in data protection, TMB could not know for certain that the mere handwritten signature could be data to be protected"*, it is sufficient to warn that this circumstance does not it would exempt compliance with the regulations on personal data protection, and in particular, the principle of data minimization. In fact, the only thing this invoked circumstance would highlight is the lack of proactive responsibility of the imputed entities.

3. In relation to the conduct described in point 1 of the proven facts section, all derived from the collection of personal data from the TMB website, it is necessary to refer to article 13 of the RGPD, which provides that :

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection officer, if applicable;
- c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;
- d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in your case;
- f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, with the following information necessary to guarantee fair and transparent data processing:

- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;
- b) the existence of the right to request from the person responsible for the treatment access to the personal data relating 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 the portability of the data ;
- c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;
- d) the right to present a claim before a control authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party. (...)"

As indicated by the instructing person, during the processing of this procedure the three behaviors described in point 1 of the proven facts section have been duly proven, the

which are constitutive of three infringements, all of them provided for in article 83.5.b) of the RGPD, which typifies as such the violation of *"the rights of the interested parties pursuant to articles 12 to 22"*.

At this point, it should be specified that although the conduct described in section 1.2 of the proven facts refers to several forms, these are constitutive of a single infringement given that those forms referred to the same privacy policy.

Having said that, the conduct described in sections 1.1 and 1.2 of proven facts have also been included as a very serious infringement in article 72.1.h) of the LOPDGDD, in the following form:

"h) The omission of the duty to inform the affected person about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 016/679 and 12 of this Organic Law."

And with regard to the conduct described in section 1.3 of proven facts, it has also been recorded as a minor infraction in article 74.a) of the LOPDGDD, in the following form:

"a) Breach of the principle of transparency of information or the right of information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679"

4. With regard to the fact described in point 2 of the proven facts section, it is necessary to refer to article 6.1.a) of the RGPD, which provides that the treatment will be lawful if *"the interested party gives his consent for the treatment of his personal data for one or several specific purposes"*.

Article 4.11 of the RGPD defines the consent of the interested person as *"any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the treatment of data personal that concern him"*.

In accordance with what has been presented, as indicated by the instructing person, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.a) of the RGPD, which typifies as such, the violation of *"the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*.

In turn, this conduct has also been included as a very serious infraction in article 72.1.b) of the LOPDGDD, in the following form:

"b) The processing of personal data without any of the conditions for legality of the processing established by Article 6 of Regulation (EU) 2016/679."

5. With regard to the fact described in point 3 of the proven facts section, it is necessary to refer to article 5.1.c) of the RGPD, which regulates the principle of data minimization, providing that these will be

"adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

In accordance with what has been presented, as indicated by the instructing person, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.a) of the RGPD, which typifies as such, the violation of *"the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*

In turn, this conduct has also been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

6. As the entities of the TMB group are private law entities, the general sanctioning regime provided for in article 83 of the RGPD applies.

Article 83.5 of the RGPD provides for the infractions provided for there, to be sanctioned with an administrative fine of 20,000,000 euros at most, or in the case of a company, an amount equivalent to 4% as a maximum of the global total annual business volume of the previous financial year, opting for the higher amount. This, without prejudice to the fact that, as an additional or substitute, the measures provided for in clauses a) ah) ij) of Article 58.2 RGPD may be applied.

6.1. Regarding the conduct described in the 1st proven fact (right to information)

As explained by the instructing person, in the present case the possibility of replacing the sanction of an administrative fine with the sanction of reprimand provided for in Article 58.2.b) RGPD should be ruled out, given that the infringement affects the essence of the obligation to provide the right to information.

Once the application of the reprimand as a substitute for the administrative fine has been ruled out, it is necessary to determine the amount of the administrative fine sanction that must be imposed for each of the imputed conducts.

6.1.1. Regarding the conduct described in sections 1.1 and 1.2 of proven facts.

According to what is established in article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, a penalty of 2,000 (two thousand euros) should be imposed for each of these two ducts (that is, 4,000 euros as a whole). In both cases, this quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The lack of intentionality (83.2.b RGPD).
- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (arts. 83.2.k RGPD and 76.2.c LOPDGDD).
- Have, when not mandatory, a data protection delegate (arts. 83.2.k RGPD and 76.2.g LOPDGDD).
- And, especially, the measures adopted by the entities of the TMB group in the framework of the prior information, which have been complemented by the measures implemented in the context of this sanctioning procedure, consisting in making effective the right to information or modify the informative clauses. These measures entail that the effects of the infringement have been corrected (83.2.k).

On the contrary, as aggravating criteria, the following elements must be taken into account:

- The nature and seriousness of the infringement (art. 83.2.a RGPD).
- Linking the activity of the infringing entities with the practice of treatments of personal data (arts. 83.2.k RGPD and 76.2.b LOPDGDD).

6.1.2. Regarding the conduct described in section 1.3 of proven facts.

According to the provisions of article 83.2 of the RGPD, and also in accordance with the principle of proportionality, a penalty of 1,000 (one thousand euros) should be imposed. This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The nature and seriousness of the infringement (art. 83.2.a RGPD).
- The lack of intentionality (83.2.b RGPD).
- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (arts. 83.2.k RGPD and 76.2.c LOPDGDD).
- Have, when not mandatory, a data protection delegate (arts. 83.2.k RGPD and 76.2.g LOPDGDD).
- And, especially, the measures adopted by TB, FMB and PSM in the framework of the previous information, consisting of modifying the information clause that was provided in the collection of data to people who wanted to register in a job offer of these entities
These measures entail that the effects of the infringement have been corrected (83.2.k).

On the contrary, as aggravating criteria, the following elements must be taken into account:

- Linking the activity of the infringing entities to the practice of processing personal data (arts. 83.2.k RGPD and 76.2.b LOPDGDD).

6.2. Regarding the 2nd proven fact (non-specific consent)

In the present case, it is also necessary to rule out the possibility of replacing the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2.b) RGPD, given that the imputed infraction also affects the essence of the conditions for awarding the consent

Once the application of the reprimand as a substitute for the administrative fine has been ruled out, the amount of the administrative fine to be imposed must be determined. In accordance with article 83.2 of the RGPD and the principle of proportionality, a penalty of 2,000 (two thousand euros) should be imposed. This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The lack of intentionality (83.2.b RGPD).
- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (arts. 83.2.k RGPD and 76.2.c LOPDGDD).
- Have, when not mandatory, a data protection delegate (arts. 83.2.k RGPD and 76.2.g LOPDGDD).
- And, especially, the measures adopted by the entities of the TMB group in the framework of the prior information, consisting in not collecting the data of the people who register in the "JoTMBé" space for advertising purposes (so that now only are collected for a purpose), which result in the effects of the infringement being corrected (83.2.k).

On the contrary, as aggravating criteria, the following elements must be taken into account:

- Linking the activity of the infringing entities to the practice of processing personal data (arts. 83.2.k RGPD and 76.2.b LOPDGDD).

6.3. Regarding the proven fact 3rd (publication on the transparency portal of the handwritten signature of the members of the Board of Directors of TMB)

In the present case, the sanction of an administrative fine should be replaced by the sanction of admonition provided for in article 58.2.b) RGPD, given the concurrent circumstances. In particular the number and category of those affected (only the members of the TMB Board of Directors) and the measures taken by the entities of the TMB group within the framework of the previous information, consisting of withdrawing the publication of the handwritten signature.

7. On the other hand, in accordance with article 85.3 of the LPAC and as stated in the initiation agreement, if before the resolution of the sanctioning procedure the accused entity acknowledges its responsibility or does the voluntary payment of pecuniary penalties, a 20% reduction should be applied on the amount of provisionally quantified penalties. If the two aforementioned cases occur, the reduction is applied cumulatively (40%).

As has been advanced, the effectiveness of the aforementioned reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of the LPAC, *in fine*).

Well, as indicated above, by means of a letter dated 19/02/2020, the entities of the TMB group have acknowledged their responsibility. Likewise, on 18/02/2020 they have paid 4,200 euros (four thousand two hundred euros) in advance, corresponding to the amount of the resulting penalties once the cumulative reduction of 40% has been applied.

8. Given the findings of the violations provided for in art. 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, empowers the director of the Authority for the resolution declaring the infringement to establish the appropriate measures so that its effects cease or are corrected. In the present case, as explained by the investigating person in the resolution proposal, no corrective measures should be required given that the accused entities have already implemented the necessary measures to correct the effects of the alleged infringements.

resolution

For all this, I resolve:

1. Impose on Ferrocarril Metropolità de Barcelona, SA; Transports de Barcelona, SA; Mobility Projects and Services, SA; Transports Metropolitans de Barcelona, SL and the TMB Foundation two sanctions consisting of a fine of 2,000.- euros (two thousand euros) each (4,000 euros in total), as jointly and severally responsible for two violations provided for in article 83.5. b) in relation to article 13, all of them of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 8th legal basis.

2. To impose on FMB, TB and PSM, in the first place, the sanction consisting of a fine of 2,000.- euros (two thousand euros), as jointly and severally responsible for an infringement provided for in article 83.5.a) in relation with article 6; and secondly, the sanction consisting of a fine of 1,000.- euros (one thousand euros), as jointly and severally responsible for an infraction provided for in article 83.5.b) in relation to article 13, all of them of the 'RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 8th legal basis.

3. Once the reduction provided for in article 85 of the LPAC has been applied, the amount resulting from the set of sanctions indicated in points 1 and 2 is 4,200 euros (four thousand two hundred euros), an amount already paid by the entities of the TMB group.

4. Admonish the entities of the TMB group as jointly and severally responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c); both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 8th legal basis.

5. Notify this resolution to the entities of the TMB group.

6. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,