File identification

Resolution of sanctioning procedure no. PS 57/2022, referring to the Pension Plan Control Commission of the Department of the Presidency .

Background

1. On 02/16/2021, the Catalan Data Protection Authority received a letter from an ex-employee of the Administration of the Generalitat de Catalunya in which he filed a complaint against the Department of Digital Policies and Public Administration - from now on, the PDA Department - (according to the denomination in force at that time), due to an alleged breach of the regulations on personal data protection .

In particular, the complainant explained that 11 years ago he worked for the Generalitat de Catalunya and that he had recently received a communication from VidaCaixa in which he was informed of the evolution of the joint promotion pension plan within the scope of the Generalitat of Catalonia. The complainant claimed that he was unaware of the existence of this pension plan and that it was opened without his consent.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 66/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 01/03/2021 the PDA Department was required to report on the legitimation that would enable the treatment subject to complaint (registration as a participant).

4. On 05/03/2021, the PDA Department responded to the aforementioned request through a letter from the Office of Attention to Participants and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia, in which exposed, among others, the following:

- That, on 01/09/2010, the complainant worked in the Extraordinary Plan program (...). On that date, the promoting entity (which it did not specify) prepared the communication prior to discharge as a participant in the joint promotion employment pension plan of the Generalitat de Catalunya, where reported that on 01/09/2010 there were 30 days of effective work left to register him in the Pension Plan, in accordance with what is foreseen in the specifications of this Plan.
- That, on 09/30/2010, the complainant stopped providing services, thereby ceasing to fulfill an indispensable element of the requirements (he was one day short of completing a year of seniority).
- That, on 29/09/2010, the promoting entity interrupted the communication prior to the discharge as a participant in the Pension Plan.
- That, on 01/01/2011, the complainant returned to providing services to the Generalitat de Catalunya. On 08/03/2011, the promoting entity generated the communication prior to the

discharge as a participant in the Pension Plan. According to the GIP, this communication is recorded as not sent.
- That, on 03/29/2011, according to the GIP, the complainant resigned from his job.
- That it is not recorded that the promoting entity had sent the prior notice of registration to the reporting person.
- That the management entity of the plan, VidaCaixa , informs that the complainant was registered in the Plan on 04/26/2013 [it is inferred that there is an error in the identification of the year, which should be in 2011, given that the requirements to be part of the plan were fulfilled then] by the promoting entity (Servei d'Ocupació de Catalunya).
- That according to internal regulations, shareholders are not sent notices of movements if there are none, except for changes or important news that there is a legal obligation to communicate to shareholders.
- That given that the complainant did not make any type of contribution to the pension plan and had 0 consolidated rights since she was registered, she has not received any information.
- That following the new EU Directive 2016/2341 of the European Parliament and the Council, VidaCaixa sent a statement to all participants. In the case of the person reporting this first communication was made on 01/26/2021.
- That article 6 of Organic Law 15/1999, of December 13, on the protection of personal data (hereafter LOPD), regulated the cases in which the consent of the affected person was not necessary.
- That article 11 of the LOPD enabled the communication of data when it was authorized by law (art. 11.2.a), when the data was collected from sources accessible to the public (art. 11.2.b) or when the treatment responds to the free and legitimate acceptance of a legal relationship whose development, compliance and control necessarily involve the connection of this treatment with third-party files (art. 11.2.c).
- That article 10 of the Regulation of the specifications of the joint promotion employment pension plan of the Generalitat de Catalunya (hereafter, the plan Regulation) establishes that any employee who accredits a stay of at least 12 months in the service of the promoting entities, in active service or similar situations; as well as that people who meet the requirements established to be participants will be registered and automatically incorporated into the plan, unless, within 20 calendar days following their automatic incorporation, they notify the entity promotes expressly and in writing its desire not to join it.
- That this precept also establishes that it is the sponsoring entity's obligation to notify the participant of his enrollment in the plan at least one month before the date on which he meets the seniority requirement provided for in point 1 above.
- That on 03/23/2006 the representatives of the pension plan and VidaCaixa signed a contract stipulating that the management entity and the depository entity would only have access to the personal data of the participants and beneficiaries precise to comply with the functions provided for in the specific regulations.
- That the joint promotion employment pension plan of the Generalitat de Catalunya originates from a collective agreement or equivalent provision (Working Conditions Agreement) that has the force of law between the parties that sign it and is binding for all the workforce and have been included in the Budget Laws of the Generalitat de Catalunya as possible deferred remuneration.
- That the reporting person can resign from the pension plan at any time.

5. In this information phase, on 01/06/2022, it was requested from the Department of the Presidency (which currently includes the Office of Attention to Persons Participating and

Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia) to provide a copy of the contract signed by the representatives of the pension plan and VidaCaixa on 03/23/2006; copy of the manager contract signed with the VidaCaixa entity , in the terms established by article 12 of the LOPD; and, in the case that a contract had been signed under the terms provided for in article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD), a copy of that contract.

6. Public Employment Service of Catalonia (hereafter SOC) , the promoter of the complainant's pension plan, was requested , in order to bring a copy of the agent contract signed with the VidaCaixa entity .

7. On 06/15/2022, the SOC responded to the request by means of a letter in which it indicated that it did not have the required documentation, given that it is the Directorate General of Public Service of the Department of the Presidency that manages the documentation relating to the pension plan

8. On 15/06/2022, the Department of the Presidency (which currently includes the Office of Attention to Persons Participating and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia) responded to the request to through a letter in which he pointed out the following:

- That, with regard to the treatment order contract, after consulting the Office of Attention to Participating and Beneficiary Persons, it is found that it has not been formalized.
- That, when signing the contract, it was considered that VidaCaixa was acting as responsible for the treatment and that the departments and entities of the Generalitat communicated the data of the personnel in their service so that it was VidaCaixa who offered the service.
- That it would, therefore, be a communication of data carried out in compliance with a contract.

The Department of the Presidency provided a copy of the contract signed on 03/23/2006 between the representatives of the pension plan (the Pension Plan Control Commission) and the management and depository entities of the Plan; as well as the annex formalized on 10/10/2014, between the Pension Plan Commission, the management entity, the depository entity until then and the new depository entity.

9. On 22/09/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of the Presidency (the Control Commission of the Joint Promotion Employment Pension Plan of the Scope of the Generalitat), for an alleged infringement provided for in article 83.4.a), in relation to article 28; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 09/23/2022.

On the other hand, on 22/09/2022 a decision to archive the previous information no. IP 66/2021, referring to the SOC, regarding the rest of the reported conduct linked to the

registration of the reporting person as a participant in the pension plan and the access to the data by VidaCaixa . In that resolution, the reasons that have led to its archive are justified.

10. In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

11. On 10/10/2022, at the request of the Department of the Presidency, an extension of the deadline granted to the entity was granted to formulate allegations in the initiation agreement.

12. On 17/10/2022, the Department of the Presidency made objections to the initiation agreement , which are addressed in section 2 of the legal foundations. The accused entity provided various documentation with its letter.

13. On 17/01/2023, the director of the Authority, for reasons of internal order, agreed to replace the person initially appointed instructor of the procedure and proceed to appoint Mrs (...), a replacement that was notified to the imputed entity on 01/19/2023.

14. On 01/24/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Department of the Presidency (Commission for Control of Joint Promotion Employment Pension Plan of the Generalitat) as responsible for an infringement provided for in article 83.4.a) in relation to article 28, all of them of the RGPD.

This resolution proposal was notified on 24/01/2023 and a period of 10 days was granted to formulate allegations.

15. The deadline has passed and no objections have been submitted.

proven facts

On 03/23/2006, the Pension Plan Control Commission, currently part of the Department of the Presidency, signed a contract with VidaCaixa , SA and the Caixa d'Estalvis i Pensions de Barcelona (hereafter, La Caixa) for the provision of management and deposit services, whereby VidaCaixa assumed the functions of manager in relation to the employment pension plan jointly promoted by the Generalitat; and La Caixa the depository functions. This contract involved VidaCaixa and La Caixa accessing data of public employees in the Generalitat area who met the requirements to be part of the pension plan.

The Control Commission ordered these benefits without signing the corresponding contract in the terms provided for in article 12 of the LOPD.

Subsequently, on 10/10/2014, an annex to said contract was formalized between the Control Commission, VidaCaixa (management entity), Caixabank , SA (previously called "La Caixa" and until then depository entity of the pension plan) and Cecabank , SA (depository entity from then on). By means of this document, the Control Commission approved the replacement of the depository institution of the pension plan (La Caixa by Cecabank), at the proposal of the institution managing the pension plan.

On 06/15/2022, the corresponding data processor contract had not yet been signed with the pension plan's management and depository entities, under the terms provided for in article 28 of the RGPD.

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 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. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

As a premise, it should be noted that the allegations presented by the Department of the Presidency to the initiation agreement are composed of two documents, one drawn up by the Department of the Presidency itself, and the other, by the Plan Control Commission of Pensions, which in turn is integrated into the Department of the Presidency.

In this sense, it is necessary to differentiate the arguments put forward by the Department of the Presidency itself, based on the figure of co-responsibility for the treatment, from those of the Pension Plan Control Commission, which denies its role as responsible or co-responsible for the processing of the data .

The Department of the Presidency in its statement of objections assumes the status of responsible for the treatment, given that it recognizes that the entity is responsible for the Personnel Management System, and who communicates to the managing entity, the data of the public employees who will be beneficiaries of the Plan. He also points out that through the Plan Control Commission, he monitors the Plan and has the power to modify the operating rules. However, the Department also places VidaCaixa and Cecabank , the entities managing and depository of the pension plan , as responsible for the treatment .

In this sense, the entity invokes Directive 7/2020, of July 7, 2021, of the European Data Protection Committee, on the concepts of "responsible" and "in charge" of the treatment in the RGPD, which states that one of the indicators to determine the existence of co-responsibility " *is the impossibility of treatment without the participation of both parties, in the sense that the treatments by the different parties are inseparable from each other because they are indissolubly united* ". On this, he states that, in the case of pension plans and funds, this requirement is met since "it *is not possible to carry out the treatment without the participation of the promoting, managing and depository entities* ."

Well, the first thing to indicate is that, in accordance with article 4.7 of the RGPD, the data controller is the natural or legal person, public authority, service or any other body that, alone or together with others , determine the purposes and means of treatment; if the law of the Union or of the member states determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the law of the Union or of the member states.

In this sense, it is necessary to take into account the legal provisions that the public sector contract regulations contain in this regard.

On the one hand, the first two sections of additional provision 31a of Law 30/2007, of October 30, on Public Sector Contracts (in force on 03/23/2006), regarding the protection of personal data, established:

"1 . The contracts regulated in this Law that involve the processing of personal data must fully respect Organic Law 15/1999, of December 13, on the Protection of Personal Data, and its implementing regulations.

2. In the event that the contracting involves the contractor's access to personal data for whose treatment the contracting entity is responsible, that person will be considered the person in charge of the treatment. (...)"

In turn, in terms similar to Law 30/2007, the additional provision 25a of Law 9/2017, of November 8, on public sector contracts, by which the directives of European Parliament and Council 2014/23/EU and 2014/24/EU, of February 26, 2014, stipulates the following:

"1. The contracts governed by this Law that involve the processing of personal data must fully respect Organic Law 15/1999, of December 13, on the protection of personal data, and its implementing regulations.

2. In the event that the contracting involves the contractor's access to personal data for the treatment of which the contracting entity is responsible, that entity is considered to be in charge of the treatment. (...)"

Therefore, when the public sector contract regulations are applied - the current and the previous one -, it must be taken into account that this provides that if the contract involves the contractor's access to personal data, the processing of for which the contracting entity is responsible, the contractor is considered to be in charge of the treatment.

In this regard, it should be noted that, in the contract for the provision of management and deposit services, signed on 23/03/2006, between the Pension Plan Control Commission and VidaCaixa , SA and La Caixa (which was replaced by Cecabank in 2014), it was foreseen that the managing and depository entities would access data of public employees in the Generalitat area who met the requirements to be part of the pension plan (clause 15a). Therefore, in accordance with what has been explained so far, the management and depository entities would be considered to be in charge of the treatment, and the awarding entity the condition of responsible for the treatment.

Likewise, it should be added that, beyond the legal imposition of the status of responsible and person in charge of the treatment established by the public sector contract regulations, the entities managing and depository of the pension plan could hardly fit within the description of responsible of the treatment of article 4.7 of the RGPD. The condition of responsible for the treatment is a *sine qua non requirement* to combine joint responsibility in the processing of personal data, since according to article 26 of the RGPD, joint responsibility occurs when two or more responsible jointly determine the objectives and means of treatment.

This is not the case in the present case, where the Pension Plan Control Commission of the Department of the Presidency and the entities managing and depositing the pension plan are

not on an equal footing in determining the objectives and means of the treatment. In this regard, it is appropriate to quote Directive 7/2020, according to which " *The person responsible for the treatment determines the ends and means of the treatment; This is the why and how of the treatment. He must decide both on the ends and on the means .”* As things stand, it cannot be considered that said management and depository entities can be considered as responsible for the treatment, given that their participation in the pension plan is within the framework of the provision of the services for which they have been contracted, and therefore, following the stipulations established by the contracting entity. Likewise, it should be noted that the Control Commission is also the body that approves the " *Regulation of specifications of the joint promotion employment pension plan for the area of the Generalitat de Catalunya",* provided in the phase of the ·legations, and in which the specifications that regulate the legal relations of the Plan are established pensions Neither the management entity nor the depository of the pension plan participate in the preparation and approval of said Regulation. Therefore, the main requirement to be co-responsible for the treatment established in article 26 of the RGPD is not met here either.

At this point, it is necessary to refer to the allegations presented by the Control Commission, which points to " *the promoting entities and the management and depository entities* " as being responsible for the treatment.

In this regard, it should be noted that the Department of the Presidency, which includes the said Control Commission, in its statements does recognize its status as responsible for the treatment. In this regard, it should be noted that from the point of view of the regulations on data protection, the eventual responsibility for the imputed facts falls on the Department of the Presidency, in which the said Control Commission is integrated, as it was collect in the initiation agreement of this sanctioning procedure.

Having said that, it should also be noted that the Department of the Presidency states in its statement of objections that the entities promoting the Plan (including all the Departments of the Generalitat) were represented by the Control Commission . Indeed, the Control Commission is the signatory party to the contract dated 03/23/2006, and it states that the said Control Commission is made up of the representatives of the different promoting entities. The Control Commission is also the one that approved the " *Regulation of specifications for the employment pension plan for joint promotion within the scope of the Generalitat de Catalunya".* It is also necessary to make a point about the statement of the Control Commission which defends that it cannot be responsible for the treatment when it has not had access to the personal data of the participants or the beneficiaries of the pension plan. In this regard, it should be noted that according to Directive 7/2020 " *it is not necessary for the data controller to have real access to the data they are processing. Someone who outsources a treatment activity and, in doing so, exercises a determining influence on the end and the (essential) means of the treatment (...) should be considered responsible for the treatment, even if they never have access to the data.”*

Lastly, regarding the reference made by the Control Commission to the response of the Spanish Data Protection Agency to a query submitted by the entity Caixabank , just indicate that the case consulted concerns the possibility of making payments of received through the financial institution, a case that differs from that which is the subject of the present sanctioning procedure, without prejudice to recalling that the criteria and decisions of the Catalan Data Protection Authority are not subject to those of the remaining control authorities .

In accordance with the foregoing, and given the concurrent circumstances in this case, it is considered that it is the Department of the Presidency, in which the Control Commission is integrated, that holds the status of responsible for the treatment taking into account, for on the one hand, the existence of the contract dated 03/23/2006, where the Control Commission holds the status of awarded entity, and, on the other, the approval by this Commission of the referenced Regulation, where the objectives and means of processing the data of people participating in the pension plan are stipulated.

3. In relation to the facts described in the proven facts section, it is necessary to refer, first of all, to article 12.2 of the LOPD which, with regard to access to data on behalf of third parties, established that:

> *"2. The carrying out of treatments on behalf of third parties must be regulated in a contract that must be in writing or in some other form that allows the agreement and content to be accredited, and it must expressly establish that the person in charge of the treatment must only process the data in accordance with the instructions of the person in charge of the treatment, who cannot apply or use them for a purpose other than that stated in the aforementioned contract, nor communicate them to other people, not even to preserve them.*
>
> *The contract must also stipulate the security measures referred to in article 9 of this Law that the person in charge of the treatment is obliged to implement"*

For its part, the first two sections of additional provision 31a of Law 30/2007, of October 30, on Public Sector Contracts (in force on 03/23/2006), regarding the protection of personal data , established:

> *"1. The contracts regulated in this Law that involve the processing of personal data must fully respect Organic Law 15/1999, of December 13, on the Protection of Personal Data, and its implementing regulations.*
>
> *2. In the event that the contract involves the contractor's access to personal data whose treatment the contracting entity is responsible for, that person will be considered the person in charge of the treatment.*
>
> *In this case, access to these data will not be considered data communication, when the provisions of article 12.2 and 3 of Organic Law 15/1999, of December 13, are met. In any case, the provisions of article 12.2 of said Law must be stated in writing.*
>
> *When the contractual provision ends, the personal data must be destroyed or returned to the contracting entity responsible, or to the data processor that it had appointed.*
>
> *The third party in charge of the treatment will keep the data properly blocked as long as responsibilities could arise from their relationship with the entity responsible for the treatment."*

As of 05/25/2018, the RGPD came into force, which in sections 3 and 9 of article 28, provides for the following:

> *" 3. The processing by the manager will be governed by a contract or other legal act in accordance with the Law of the Union or the Member States, which binds the manager with respect to the manager and establishes the object, duration, nature and purpose of the treatment, the type of personal data and categories of interested parties, and the obligations and rights of the person in charge. Said contract or legal act will stipulate, in particular, that the manager:*
> *a) will treat personal data solely following the documented instructions of the person in charge, including with respect to the transfer of personal data to a third country or an international organization, unless it is obliged to do so by virtue of the Law of the Union or of the Member States that applies to the person in charge; in such a case, the manager will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of public interest;*
> *b) will guarantee that the persons authorized to treat personal data have committed to respect confidentiality or are subject to a confidentiality obligation of a statutory nature;*
> *c) will take all the necessary measures in accordance with article 32;*
> *d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;*
> *e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that he can comply with his obligation to respond to requests aimed at the exercise of the rights of the interested parties established in chapter III;*
> *f) will help the manager to ensure compliance with the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the manager;*
> *g) at the choice of the person responsible, will delete or return all personal data once the provision of the treatment services is finished, and will delete the existing copies unless the conservation of personal data is required under Union Law or member states;*
> *h) will make available to the person in charge all the information necessary to demonstrate compliance with the obligations established in this article, as well as to allow and contribute to the performance of audits, including inspections, by the person in charge or another auditor authorized by said responsible*
> *In relation to what is provided in letter h) of the first paragraph, the person in charge will immediately inform the person in charge if, in his opinion, an instruction infringes the present Regulation or other provisions in the area of data protection of the Union or the Member States. (...)*
> *9. The contract or other legal act referred to in sections 3 and 4 shall be in writing, including in electronic format."*

In terms similar to Law 30/2007, the additional provision 25a of Law 9/2017, of November 8, on public sector contracts, by which the directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of February 26, 2014, stipulates the following:

"1. The contracts governed by this Law that involve the processing of personal data must fully respect Organic Law 15/1999, of December 13, on the protection of personal data, and its implementing regulations.

2. In the event that the contracting involves the contractor's access to personal data for the treatment of which the contracting entity is responsible, that entity is considered to be in charge of the treatment.

In this case, access to this data is not considered communication of data, when the provisions of article 12.2 and 3 of Organic Law 15/1999, of December 13, are met. In any case, the provisions of article 12.2 of the aforementioned Law must be in writing.

When the contractual provision ends, the personal data must be destroyed or returned to the contracting entity responsible, or to the person in charge of the treatment that it has designated.

The third party in charge of the treatment must keep the data properly blocked to the extent that responsibilities can be derived from its relationship with the entity responsible for the treatment. (...)"

On the other hand, the transitional provision 5a of the Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), in relation to the contracts in charge of the treatment, determines what:

"Processor contracts signed before May 25, 2018 under the provisions of Article 12 of Organic Law 15/1999, of December 13, on the protection of personal data, maintain the valid until the expiry date they indicate and in case it has been agreed indefinitely, until May 25, 2022.

During these terms, either party may require the other party to modify the contract in order for it to comply with the provisions of Article 28 of Regulation (EU) 2016/679 and Chapter II of Title V of this Organic Law ."

Therefore, from 26/05/2022, all contracts or legal acts of data controller, even those signed before the application of the RGPD, must comply with article 28 of the RGPD.

The facts described in the proven facts section are considered a permanent violation. In infringements of this nature, the conduct to be prosecuted is consumed in an instant, but the infringement remains during the space of time in which the illegal behavior lasts .

For its part, article 30.2 of Law 40/2015, of October 1, on the legal regime of the public sector (hereafter, LRJSP) provides that *"In the case of continuous or permanent infringements, the term it begins to run from the time the offending conduct ended."*

Therefore, in the case of a permanent infringement, the limitation period does not start until the infringing action ceases.

During the processing of this procedure, the fact described has been duly certified in the section on proven facts, which is constitutive of the violation provided for in article 83.4.a) of

the RGPD, which typifies as such the violation of *"the obligations of the responsible person and of the person in charge pursuant to articles 8 , 11, 25 to 39, 42 and 43"* , among which there is that provided for in article 28 RGPD.

The conduct addressed here has been included as a serious infraction in article 73.k) of the LOPDGDD, in the following form:

> *"k) Entrust the processing of data to a third party without the prior formalization of a contract or other written legal act with the content required by article 28.3 of Regulation (EU) 2016/679."*

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

> *"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.*
> *The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."*

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010 , determines the following:

> *"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".*

By virtue of this faculty that is attributed to the director of the Authority, it is necessary to require a
the Commission for Control of the Joint Promotion Employment Pension Plan of the Generalitat (Department of the Presidency), because as soon as possible, and in any case within a maximum period of 1 month from 'following notification of this resolution, formalize a contract or other written legal act with the content required by article 28 of the RGPD with the entities managing and depository of the pension plan.

Once the corrective measure described has been adopted, within the specified period, the Authority must be informed within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks.

For all this, I resolve:

1. Admonish the Department of the Presidency (Commission for Control of the Employment Pension Plan for the Joint Promotion of the Generalitat), as responsible for an infringement provided for in article 83.4.a) in relation to the article 28, both of the RGPD.

2. Request the Department of the Presidency (Commission for Control of the Employment Pension Plan for the Joint Promotion of the Generalitat) to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to fulfill them.

3. Notify this resolution to the Department of the Presidency (Commission for Control of the Employment Pension Plan for Joint Promotion of the Generalitat Area).

4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

5. 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,