

File identification

Resolution of sanctioning procedure no. PS 68 /2022, referring to Ascó City Council.

Background

1. On 29/07/2021, the Catalan Data Protection Authority received a complaint against Ascó City Council, on the grounds of an alleged breach of the regulations on personal data protection.

In particular, the complainant stated that on 07/14/2021 he bought some tickets for a concert by the musical group Oques Grasses, organized by Ascó City Council. He bought the tickets directly from the staff of this City Council and at the municipal offices but, surprisingly, on the same day 14/07/2021 he received an email from the company Eventbrite, unrelated to the City Council, confirming the purchase of your entry. The complainant stated two grounds for complaint:

— On the one hand, he pointed out that: *"at no time did the people who made the sale (.sic) inform me that my data would be transferred to an external company, nor did they ask me for permission."*

— On the other hand, he stated that: *"I (.sic) contacted the municipal data protection officer in order to delete my data since I had not given permission, he told me to contact the company commissioned by the City Council in data protection. On the 14th, I sent an email to said company (...), and to date they have not contacted me, when I spoke to the City Council representative again, he told me that he also spoke -hi and that he doesn't understand that nothing is said to me. (...)."*

The complainant provided copies of two emails:

— On the one hand, the mail that the company Eventbrite sent to the complainant on 14/07/2021, after he had bought the ticket for the concert. It was an automated email, with the subject *"Greetings from Eventbrite"*, which did not accept a reply (noreply@order.eventbrite.com) and which stated the following:

*" Hello (...):
Ascó Batega is using Eventbrite to sell tickets for Oques Grasses | Ascó Batega Festival.
Since this is the first time you've bought a ticket or registered for an event on Eventbrite with (...), here's a quick guide to help you find what you need."*

At the foot of this mail, it was listed as the address of Eventbrite:

" 155 5th St, 7th Floor | San Francisco, CA 94103 "

— On the other hand, an email that the complainant sent that same day (14/07/2021) to the City Council's data protection delegate, with the subject: *"Data protection complaint"*, in which he stated the next:

"(...) For this reason I make the complaint of NO INFORMATION regarding the authorization and subrogation of my personal data to third parties."

For all the above I ask that the appropriate measures be taken and that my personal data be deleted from the file of all the companies where it may have been transferred (...)"

2. The Authority opened a preliminary information phase (no. IP 305/2021), 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. On 06/16/2022, Ascó City Council was required to report on several issues related to the events reported.

4. On 06/07/2022, Ascó City Council responded to the aforementioned request through a letter, in which it stated the following:

— *"The city council is responsible for the treatment as organizer of the Oques Grasses concert."*

— In relation to the story of the events:

"First of all, it must be stated that tickets could only be purchased directly on the EVENTBRITE ticketing platform, as was announced in the BANDO MUNICIPAL and in all the media where it was advertised, and as it was also disseminated on the website of the City Council. In this link you can check this statement (...)

On the other hand, the City Council facilitated support for people not familiar with the new technologies so that they could access the EVENTBRITE platform from a terminal in the municipal offices, guided and assisted by staff contracted from a Plan occupation Precisely, Mr. (...) went to the municipal offices to use the assistance provided by the City Council and for this reason he had to be helped to enter the information that EVENTBRITE requested in his platform

Mr (...) cannot complain about receiving e-mails from EVENTBRITE because this company was handling the purchase of his ticket, as he purchased it, and he cannot say that the council gave in his personal data to a company, without his consent, as he knew that he had purchased the tickets from that company; and this regardless of the fact that the relationship between the city council and EVENTBRITE is one of manager- in-charge, otherwise, and this is a bit surprising, because he himself provided the data to the EVENTBRITE platform with the support of contracted staff by the city council in a terminal enabled for the purpose."

— On the number of people who bought tickets for the Oques Grasses concert organized by Ascó City Council in the summer of 2021, the dates on which the tickets were sold and the date of the concert:

*"Number of people who bought tickets. 496
Dates on which tickets were sold. From 7/11/21 to 8/21/21.
Date of the concert. August 21, 2021"*

— On whether when Ascó City Council collected data from these people, it informed them about the points provided for in article 13 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 movement thereof (from now on, RGPD):

"The city council did not collect, in any case, materially, data from the interested people who bought tickets, despite being responsible for the treatment as concert organizer. Personal information was recorded by each interested person personally on the EVENTBRITE platform when purchasing the ticket.

However, the City Council informed at all times that it was the EVENTBRITE platform that collected the data and, in its case, treated it for the management of ticket sales, and where the information on the treatment of data as in charge and on behalf of the city council."

— About if Eventbrite acted as the person in charge of the treatment, and on whether the City Council had entrusted the aforementioned entity with the resolution of requests to exercise data protection rights, regulated in articles 12 to 23 of the RGPD:

"EVENTBRITE acted as data controller, as it sold tickets for a show organized by the city council as data controller. The commission contract, including the management of the exercise of rights, is part of the documentation formalized by the event organizer..."

— On whether Ascó City Council responded to the request that the complainant made by email dated 07/15/2021, addressed to the data protection delegate (henceforth, DPD) of the Town hall:

"First of all, there was no possibility of exercising the right to delete the data in the material sense of definitive deletion, because the council had not materially processed any personal data of the gentleman (...) and obviously did not have it.

Buyers directly provided their phone number and email address to receive purchased tickets, on the EVENTBRITE ticketing platform.

Secondly, indeed, this DPD tried to contact this person by mobile phone, but communication was not possible".

— About whether the Eventbrite entity responded to the request for deletion of the personal data of the reporting person:

" The city council has no record of either the e-mail message of complaint from Mr. (...) to EVENTBRITE or a possible response from this company."

The City Council did not provide the documentation required by the Authority, consisting of a copy of the data processor contract or equivalent legal document signed with Eventbrite. He also did not provide the documentation proving that he had fulfilled the duty of information provided for in article 13 of the RGPD to the people who bought tickets, nor a copy of the response - from the City Council and EVENTBRITE - to the data deletion request made by the reporting person.

5. On 10/25/2022, the Authority's Inspection Area again carried out several checks on the internet.

On the one hand, it was found that the web address mentioned by the City Council in its written response corresponded to a news item published on 25/06/2021 in the digital newspaper *Marfanta*, with the title *"Ascó wants to bat with the Stay Homas, Buhos, El Kanka, Oques Grases, Suu and el Pot Petit"*, in which the following was pointed out, among other things (the remark is ours):

"The Department of Culture, Festivals and Traditions of the Ascó City Council has made public the entire program of the Ascó Batega brand. A high-level cultural proposal between the months of July and September (...).

Ascó Batega is presented in three different formats. First of all, Ascó Batega Cultura 2021 will be on July 3, 17, 24 and 31. The programming of this variant of the brand from Ascona will have the participation of artists such as the Balkan Paradise Orchestra, the Symphony Orchestra of the Real Cercle Artístic de Barcelona or a cantada of habaneras along the Ebro with Les Anxovetes. A very varied cultural proposal, so that the summer nights in the month of July are quite special. Tickets are now on sale through the EVENTBRITE platform (...)"

On the other hand, the website of the company Eventbrite was consulted (www.eventbrite.es/), and specifically the section corresponding to the privacy policy, updated on 07/02/2022, in which the following information was provided, as far as is now relevant:

— (section 3)

"3 Information collected from Consumers.

(...)

Information You Provide Through the Eventbrite Properties or Applications: If you register for a paid event, you will provide financial information (for example, credit card number, expiration date, billing address, etc.) and some of these data may be Personal Data. (...). When you register in or otherwise provide information to Eventbrite related to an event or an activity of an Organizer, whether that information is yours or that of a third party, related to a purchase, registration or exchange, that Organizer will receive it (...)"

— (section 4)

"4. How we use your personal data.

(...)

4.5 Organizer's e-mails.

We allow the Organizers to use our email tools to contact Consumers about their current and past events, so it is possible that you receive email messages from said Organizers from our system and that we send in his number (...). The Organizer, and not Eventbrite, is responsible for sending these emails."

— (section 5)

"5. How we disclose and transfer your personal data.

(...)

5.5 Organizers.

In addition, when you register for an event (...) or enter your personal data (for example, through a web form) to communicate with an Organizer or participate in an event of the Organizer, said Organizer will receive that information. For example, if you enter your number and email address in a web form for an offer, activity or event of the Organizer, this will receive that information (...)

When you buy tickets (...), that Organizer will receive the information you provide, including your personal data and, in cases where a ticket or registration change is made, also the personal data of the person to whom the change is made."

— (section 16)

"Eventbrite as data controller and data processor

(...)

(...) if you register for an event as a Consumer, we will process your Personal Data to help manage that event on behalf of the Organizer (for example, sending confirmation emails, promotions and comments, payment processing, etc.) (...) In these circumstances, Eventbrite simply provides the tools for the Organizers; Eventbrite does not decide what Personal Data is requested in the registration forms, nor is it responsible for the ongoing accuracy of the Personal Data provided. Therefore, any questions you may have regarding your Personal Data and your rights under data protection law should be directed to the Organizer as the data controller, not to Eventbrite."

From the result obtained, a certificate of record was issued.

6. On 03/11/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Ascó City Council, for three alleged infractions: an infraction provided for in article 83.4. a in relation to article 28; another violation provided for in article 83.5. b in relation to Article 13; and a third offense also provided for in article 83.5. b in relation to article 12, all of them of the RGPD. This initiation agreement was notified to Ascó City Council on 11/17/2022.

7. In the initiation agreement, Ascó City Council was granted a period of 10 working days to formulate allegations and propose the practice of the tests it considered appropriate to defend its interests. This deadline was extended, following the request to extend the deadline formulated by the City Council on 01/12/2022, which was granted by agreement of the same date.

8. On 02/12/2022, Ascó City Council made objections to the initiation agreement.

9. On 02/08/2023 and 02/10/2023, the instructor of the procedure carried out new checks on the Eventbrite website following the allegations made by the City Council. Specifically, the part of the website that contained the document that the City Council mentioned in its letter, entitled *Data Processing Annex (DPA) para organizadores, was consulted*, and which, according to the City Council, contained the regulation of the order of treatment. Other sections of the website were also consulted, which contained the documents entitled "*Eventbrite Terms of Service*" and "*Eventbrite Privacy Policy*", with the following result (the noteworthy clauses are transcribed):

— In the section where the commercial agreement appears:

*"1.2 Eventbrite Services. This is a summary of our services: Ticketing Services : We provide Organizers like you with a platform to sell tickets, registrations and other services, and to receive payments for your events (the "Ticketing Services").
Marketing and operations services: (...)
Organizer services: (...)"*

"5.8 Confirmations. You will fulfill the confirmed orders made by the Consumers through Eventbrite

When a Consumer places an order and confirms through Eventbrite, we will generate a confirmation message and issue a unique confirmation number. You must accept, fulfill and complete all commitments to sell tickets, registrations, promotional items and donations that have been confirmed through the Services. It is your responsibility to verify the Consumer's confirmation number or any event restrictions prior to the applicable event."

— In the section titled “Eventbrite Terms of Service”:

“Services and role of Eventbrite

2.1 What we do.

We offer an event management and growth platform that helps Organizers thrive and connect through memorable live experiences. Through our Services, Organizers can create, publish and manage online and in-person events, sell tickets, request donations and maintain a connection with Consumers thanks to a set of marketing tools.”

“6. Exoneration and compensation

6.1 Exoneration. You will not involve us in any dispute between you and any third party.

You hereby agree to release us (collectively with our Affiliates and subsidiaries, and each of our and their respective executives, directors, agents, co-brand partners, licensees, payment system partners, suppliers, other partners, independent contractors and employees, the “Released Eventbrite Parties”) from all damages (whether direct, indirect, incidental, consequential or otherwise), losses, liabilities, costs and expenses of every kind and nature, known and unknown, arising out of or related to in any way with disputes between you and third parties (including other Users) (...)”

“19. Modifications to the Terms or Services. We can modify these Terms from time to time and we will notify you of important changes.

We reserve the right to modify these Terms (including the Privacy Policy, the Commercial Agreement and the Boost Terms and Conditions) from time to time (collectively, “Modifications”). If we consider that any Modification is substantial, we will communicate it to you by one (or several) of the following methods:

publishing the changes through the Services;

updating the “Updated” date at the top of this page; or

sending you an email or message about the Modifications.

Modifications that are substantial will take effect thirty (30) days after the “Updated” date, unless we notify you of a different date in our notification. All other Modifications will enter into force immediately.”

From the result obtained, documents of record were issued.

10. On 02/14/2023, the instructor of this procedure formulated a proposed resolution, by which she proposed that the director of the Catalan Data Protection Authority admonish the Ascó City Council as responsible for three alleged infractions: an infraction provided for in article 83.4. *a* in relation to article 28; a second violation provided for in article 83.5. *b* in relation to Article 13; and a third offense also provided for in article 83.5. *b* in relation to article 12, all of them of the RGPD.

Likewise, in this resolution proposal, the instructor of the procedure proposed requiring the Ascó City Council to adopt the following corrective measures:

“(...) it is proposed to require the City Council of Ascó so that as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of the resolution:

4.1. Make the necessary arrangements for the EVENTBRITE entity to delete and certify the deletion of the personal data of the reporting person.

4.2. Delete the personal data of the reporting person processed by Ascó City Council as a result of the purchase of the ticket to the Oques Grasses concert that he made on 07/14/2021 through the EVENTBRITE platform.

4.3. Subsequently, respond to the deletion request made by the person making the claim, in the sense of informing him of the effective deletion, by EVENTBRITE and the Ascó City Council, of his personal data (...)."

This resolution proposal was notified to the City Council on 02/15/2023.

11. In the proposed resolution, Ascó City Council was granted a period of 10 working days to formulate allegations, which was extended at the request of the City Council.

12. On 16/03/2023, the Ascó City Council has provided the Authority with mayoral Resolution no. 2023-0199, dated 03/16/2023, issued as a result of this sanctioning procedure. In said resolution, the content of the report issued by the DPD of the corporation was incorporated, in which, on the one hand, the numerous actions that had been carried out in order to contact the Eventbrite company were described, the which had been totally unsuccessful; and, on the other hand, the measures taken by the City Council to delete the complainant's data were indicated, and the following was concluded:

"1. In accordance with what was stated in section 1 of this letter, the Ascó city council has proceeded with the elimination of the management data of the participants (affected person) of the order made with number 1790255011.

This deletion of order data has been carried out successfully and the affected person does not appear in the database of the EVENT BRITE company in the user part of the Ascó City Council.

2. Although it has not been possible to modify or completely delete the data of the order itself, it appears in canceled or refunded mode as evidence.

This has a unique identifier and cannot be reused, for this reason it is common for the order to include the buyer's data.

3. When the buyer's data cannot be modified, as an error appears, and cannot contact the company EVENT BRITE, they are left with the original context.

4. The affected person (...), no longer has access to the corporate mailbox and therefore any notice or communication to this person will be unfeasible."

The analysis of these measures will be addressed in the foundation of law 4th.

proven facts

1. As part of the cultural public offer for the summer of 2021, the Ascó City Council commissioned the private company Eventbrite, Inc., with headquarters in the USA, to manage the service of sale of tickets for various concerts, among which was the concert of the musical group Oques Grasses held on 21/08/2021. As a result of this order, people who wanted to buy a ticket to attend one of these concerts had to register on the Eventbrite web platform and pay for the ticket, which entailed the collection of personal data of 'these people, such as name, phone number, email address and financial information to make the payment. After purchasing the ticket, each person received an email from an Eventbrite server, confirming the purchase.

This data processing carried out by the company Eventbrite it was carried out without the City Council certifying that it had signed the corresponding data processor contract or equivalent legal document, in accordance with the requirements provided for in article 28 of the RGPD.

2 . Ascó City Council, despite being responsible for the treatment, did not inform the people who bought tickets to attend, among other events, the Oques Grasses concert held on 08/21/2021, about any of the points provided for in article 13 of the RGPD. Among these people was the complainant, who bought the ticket for this concert on 07/14/2021.

3 . In relation to the treatment of ticket sales through the company Eventbrite, in the framework of the previous information, the City Council, responsible for the treatment, stated to the Authority that "there was no possibility of exercising the right of *deletion of the data*" , because the City Council did not materially process this data and, therefore, did not have it. However, as stated in the background, in the information provided from the Eventbrite website, it is stated that the event organizer receives the information from the personal data entered in the sales platform tickets

On the other hand, the email that Eventbrite sent on 07/14/2021 to the person making the complaint, once he had bought the ticket, it did not accept a reply (noreply@order.eventbrite.com) nor did it contain information or foresee the possibility of exercising ARSOPOL rights, among the which includes the right of deletion.

To the above, it should be added that the complainant requested the City Council to delete his data processed by Eventbrite, first verbally on 07/14/2021 before the data protection officer of the City Council, and then, and by reference to this, by email sent on 07/15/2021 to the City Council's DPD, without obtaining any response.

This set of circumstances, together with the fact that the City Council does not provide any information on the possibility of exercising ARSOPOL rights, constitutes a clear impediment to exercising these rights.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority 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 City Council of Ascó has not made any objections to the proposed resolution, since in the letter presented on 16/03/2023 it has limited itself to setting out the adoption of certain corrective measures, aimed at delete the personal data of the person reporting that appears on the servers of the City Council or in the power of Evenbrite , actions that will be analyzed in the basis of law 4th.

Given, however, that the City Council did make allegations in the initiation agreement, the most relevant part of the instructor's motivated response to these allegations is reiterated below.

2.1. On the proven fact 1st: lack of contract of supervisor.

In the 1st section of its statement of objections, the Ascó City Council stated that it formalized a data processor contract with the company Evenbrite, "*in electronic support and which*

appears as electronic evidence, in through the town hall's registration on the EVENTBRITE platform and clearly visible on its website . "

Specifically, the City Council referred to a document or clause published on the website of Evenbrite, specifically in the *"Help" section* , subsection *"Terms and policies"* and, within this, in the *"Data" section* , which is entitled *"Data Processing Annex (DPA) for organizers"* (hereinafter, annex).

However, the City Council did not provide a copy of this document, although this Authority required it in the preliminary information phase that preceded this sanctioning procedure, bearing in mind that article 28.9 of RGPD establishes that the contract or regulation of the processing order *"must be in writing, including in electronic format"* . The City Council limited itself to transcribing in its statement of objections to the initiation agreement what would correspond to a part of this clause.

Likewise, the City Council did not provide any contractual document signed by both entities, referring to the City Council's adherence to the *commercial agreement* (provided on the website mentioned as the main contract), as well as the *terms and conditions* and the *policy of privacy* , among others, which could be indicative of the City Council's adherence to the aforementioned attached document.

Having said that, as explained in the 8th precedent, following these demonstrations by the City Council, the instructor made several inquiries on the Evenbrite website on 02/08/2023 and 02/10/2023, in that it was observed that the aforementioned annex was published with two different dates of updating the document: 10/25/2021 (in the case of the query made on 02/08/2023) and 01/04/2023 (in the case of the query made on 02/10/2023). Therefore, this documentation to which this Authority has been able to access within the framework of this procedure corresponds to documents dated after the imputed events, between 07/11/2021 and 08/21/2021.

From the analysis of the aforementioned documents, of the two versions of the annex published on the website of Evenbrite, as well as the clauses transcribed by the City Council in its statement of objections, it was made clear that the attached document contained a regulation of the person in charge of the treatment. It was, however, a generic regulation carried out unilaterally by Evenbrite, in the framework of the provision of various services offered by this private entity, based in the USA, to very diverse entities that provide services in numerous countries, and which it did not specify the particularities of the assignment that is analyzed here.

In effect, these are clauses that regulate the commission of the treatment in the regulation of which the City Council, despite being responsible for the treatment - and, therefore, who, among others, should have decided the purposes and the means of treatment—, has not intervened. On the other hand, due to the generic nature of the clauses, it logically does not specify information that is completely relevant in a data processor contract, such as the object of the contract, its duration, nature and purpose details of the treatments carried out, and the personal data collected by Evenbrite they are cited as examples, without specifying which ones.

In relation to the generic or imprecise nature of this clause, the City Council stated that everyone knows *" the difficulty of personalizing an order contract with this type of company"* .

He then points out that, despite this, section 2 of this annex, which is entitled "*Cláusulas de tratamiento de datos*", incorporates a treatment commissioning contract that governs the relationship between the Ascó City Council and Evenbrite, and at the end he adds that, aside from what he considered compliance with the formal aspect, the relationship between the City Council and Evenbrite it had "*materially developed as a relationship between the city council-responsible for the treatment and EVENTBRITE-in charge of the treatment, without any contradiction with the content provided for in an assignment contract*".

As pointed out by the instructor in the proposal, in this respect it must be said that, regardless of how the assigned service had been developed—a question that exceeds the 1st imputed fact—the "formal" fulfillment of the treatment order it required, essentially, that it was the person responsible for the treatment who decided the terms in which the person in charge would process the personal data on the occasion of the entrusted service.

In this sense, the terms in which it appears that the City Council entrusted Evenbrite the provision of the ticket sales service does not meet the requirements set out in article 28 of the RGPD, which requires that it is the person responsible for the treatment who determines the instructions to be followed by the person in charge regarding the treatment of personal data derived from the provision of the entrusted service, and not the other way around, as is the case in this case. This, regardless of the degree of concreteness of these clauses.

Proof of this, for example, is the fact that in the information published on the website entitled "*Eventbrite Terms of Service*", in clause 19a-20a it is established that when accessing or using the services of Evenbrite accept the terms and conditions indicated in this section, which include the privacy policy and the commercial agreement, without the organizer (in this case, the City Council) being able to modify them, in difference of Evenbrite, which may change them at any time, including by making substantial changes.

The above does not preclude recognizing that, in certain specific cases, a data controller may adhere to data controller clauses provided by the data controller, previously accepted by the data controller. But article 28 of the RGPD requires that the contract or additional legal act specify the particularities of the assignment, and that it is the person responsible for the treatment who determines them, both the particularities of the assignment (the object, the duration, the nature and purpose of the treatment, the type of personal data and the categories of interested parties, as well as the obligations and rights of the controller, the data treatments that Evenbrite had to carry out, among others), such as the specific measures that the person in charge had to adopt to guarantee the protection of the rights of the persons affected, or a reference to a recognized national or international standard or framework.

For all this, aside from what was pointed out first about the lack of contribution by the City Council of the documentation certifying the formalization of a commission contract, the clauses of the annex to which referred the council can not protect the task that Evenbrite carried out, on his behalf, for the reasons indicated, which is constitutive of the infringement corresponding to the fact proven 1st.

It is for this reason that this plea is held to fail.

2.2. On proven fact 2: lack of information.

Next, in relation to proven fact 2, in its statement of objections to the initiation agreement, Ascó City Council reiterated the statements it made in the previous phase, when the Authority required that he indicated whether he had informed the affected persons - among them, the person making the complaint - about the points provided for in article 13 of the RGPD.

The City Council, on the one hand, explained that: *"the city council of Ascó informed at the time of registration and ticket purchase that it was the EVENTBRITE platform that collected the data and, in its case, processed it for the management of ticket sales, and where was the information on the processing of the data as in charge and on behalf of the City Council"*. And, on the other hand, he added, in summary, that: *"fulfilment of the duty to provide information verbally is not prohibited by any rule and collected in documents of the control authorities as perfectly valid"*, and also that *"the own company in charge of the treatment informed about the data treatments on its website, as the APDCAT itself has collected in its resolution"*, in allusion to the background section of the initiation agreement .

These allegations were not favorably received, for the reasons set out below.

First of all, it should be noted that the City Council of Ascó, as the person responsible for the treatment, had the obligation to inform the person making the complaint, and in general the people interested in buying a ticket for one of the concerts organized by the City Council, on the circumstances relating to the processing of your data. This, regardless of whether the City Council had commissioned Evenbrite whoever informed the interested parties.

The City Council stated that it informed them verbally and that the applicable regulations did not prohibit it.

Certainly, article 13 of the RGPD does not prohibit that the information referred to in this provision can be provided verbally to interested persons. However, subsequently the person responsible for the treatment - in this case, the City Council - must be able to prove that it has complied with this obligation, which the City Council did not do, despite having expressly requested it.

In relation to the documentation certifying compliance with the duty to provide information, it should be clarified that this documentation must certify that the interested parties were informed at the time when their personal data was requested. Thus, the emails that the interested persons could have received from Evenbrite after having bought the ticket to a concert they would not serve the purpose of fulfilling this obligation. Nor would the information contained in the " Eventbrite privacy policy " web section, corresponding to said entity, serve this purpose if the information collection form did not include this information or a link to a page where the information required by article 13 of the RGPD should be included.

In addition, Article 12.1 of the GDPR states that this information under Article 13 of the GDPR must be provided in clear and simple language, concisely, transparently, intelligibly and easily accessible. Regarding this, without going into a detailed analysis because it is not a question relevant to the maintenance of the imputation, it should be added that it does not seem that the information on this website could be used to comply with the duty of information , considering that it contains 19 subsections, with a very small font, which in print comprises 16 sheets.

On the other hand, the fact that Eventbrite it was the entity that was in charge of the service of buying and selling tickets for the concerts, on behalf of the City Council, and that, therefore, acted as the person in charge of the treatment, it is information that, as good as it can provide information to the interested person about the entity that materially processed their data, is not among the information that article 13 of the RGPD indicates must be provided to fulfill the duty of information. Therefore, in any case the information about the identity of the person in charge of the treatment, which the City Council states that it provided through the municipal ban, media and municipal website, apart from the fact that it would not have provided it at the time requesting the data could not contribute to the fulfillment of the duty of information provided for in article 13 of the RGPD.

In accordance with what has been set out, it is estimated that this allegation cannot succeed.

2.3. On proven fact 3rd: failure to respond to deletion request.

The City Council of Ascó did not make any allegation referring to the infraction charged in point 3 of the section of alleged facts of the initiation agreement, referring to the City Council's lack of response to the deletion request that the complainant made to the council on July 14 and 15, 2021.

Having said that, it is not superfluous to point out that subsection 2.1.7 of the part of the document *"Data processing appendix (DPA) for organizers"* that appears on the Eventbrite website, which the City Council transcribed in its letter of allegations, contains a regulation that could correspond to the regulation of ARSOPOL rights, which include the right of deletion exercised by the reporting person. In this subsection, Eventbrite points out that it will assist the organizing entity (in this case, the Ascó City Council) so that it responds to requests to exercise rights, unless the request is for the deletion of data and is presented directly to of Eventbrite, in which case it would be Eventbrite who would delete the data. And he adds that it is the organizing entity (the City Council) that must inform Eventbrite of any request to exercise rights that Eventbrite must comply, as follows:

"2.1.7 Provide reasonable assistance to the Organizer to respond to requests for rights under applicable Data Protection Laws, claims or other communications received from any data protection authority or Consumer who is the subject of any Personal Data processed by Eventbrite on behalf of the Organizer. In the event that a Consumer submits a request for deletion of Personal Data to Eventbrite, the Organizer hereby instructs and authorizes Eventbrite to delete or anonymize the Consumer's Personal Data on behalf of the Organizer; If necessary, the Organizer will inform Eventbrite of any other individual rights requests that Eventbrite must comply with, and will provide the necessary information for Eventbrite to comply with the request."

From the above it is concluded that Ascó City Council, as the person responsible for the treatment, was obliged to respond to the right of deletion exercised by the person making the complaint (art. 17.1 and 12.2 RGPD). However, in the context of the present sanctioning procedure, he has not proven that he has done so (either directly or indirectly through Eventbrite), despite having been required to do so in the previous phase. And from the documentation that the City Council transcribed in its statement of objections to the initiation agreement, regarding the regulation of the assignment, it can be inferred that the City Council has the obligation to inform Eventbrite of the deletion request made by the person making the complaint, to delete this data, a referral that the Authority is not aware of that the City Council has carried out, nor has the council alleged.

2.4. On the allegations referred to the principle of guilt.

Next, in its statement of objections to the initiation agreement, the City Council stated that: "*there is no subjective responsibility for the commission of the alleged violations, nor even for failure to comply with the rule by of the city council*" and that "*at no time has the City Council had the will to infringe the regulations for the protection of personal data*".

These allegations were not favorably received, for the reasons set out below. Article 28 of Law 40/2015, of October 1, on the legal regime of the public sector (LRJSP), establishes in section 1 that:

"1. Only natural and legal persons, as well as, when a law recognizes their capacity to act, groups of affected persons, unions and entities without legal personality and independent or autonomous estates that be responsible for those by way of grief or guilt."

This precept includes the jurisprudential doctrine, according to which the action or omission classified as an administratively punishable offense must in any case be attributable to its author, due to grief or imprudence, negligence or inexcusable ignorance.

Without questioning the statement made by the City Council regarding the absence of intent in the infringing behaviors that are imputed to it, the truth is that the City Council's actions show a lack of due diligence required as the person responsible for the treatment and due to its legal nature, both with regard to the knowledge of the obligations derived from the data protection regulations (as is the case of the lack of response to the deletion request), and of the election and regulation of the entity in charge of the treatment.

With regard to this last issue, we cannot fail to warn about some aspects of data processing that are included in the Eventbrite document, and that the City Council partially transcribed in its statement of objections in the initiation agreement. Thus, among others, clauses 1.2, 2.2 and 3.1 provide that the organizing entity (in this case, Ascó City Council) accepts, without the option of refusing, the possibility that Eventbrite analyzes the personal data collected, to later provide them with "recommendations" (which could be advertising acts), as well as the subcontracting of the service (initially, to "current" subcontractors, leaving open the possibility of subcontracting the service to "additional" subcontractors " or "substitution"), such as the possibility of making international transfers of the collected data, as follows:

"1.2 (...)

With respect to certain treatments of Consumer Personal Data, Eventbrite can act as the Controller or Company, for example, when the Consumers have been involved in aspects of the Eventbrite Applications beyond those related to the Organizer's event or when Eventbrite Process Consumers' Personal Data to carry out research and analysis that allows Eventbrite to improve its products and functions as well as to provide targeted recommendations. In relation to this treatment, Eventbrite is an independent data controller, and not a joint data controller with the Organizer.

(...)

2.2 By this document, the Organizer gives its consent and authorizes Eventbrite to disclose or transfer Personal Data or allow access to Personal Data to the current subcontractors of Eventbrite (that is, those cited on the website of Eventbrite on the Date of entry into force of this DPA or the Agreement, whichever is later) ("Actual subcontractors") to process personal data on behalf of the Organizer.

2.3 By this document, the Organizer gives its consent for Eventbrite to designate additional and replacement subcontractors ("Substitution Subcontractors") to process Personal Data in its name (...).

(...)

3.1 The Organizer accepts that Eventbrite may transfer Personal Data of Consumers to various locations in connection with the provision of the Services."

That is why these allegations cannot deserve a favorable reception.

2.5. On the allegations referred to the future commitments acquired by the City Council in the matter of data protection.

Lastly, in its statement of objections to the initiation agreement, the City Council referred to a series of commitments it stated it had adopted to improve compliance with data protection regulations.

In this regard, the set of measures that the City Council stated it would carry out, on the recommendation of its data protection delegate, is very positively assessed. However, this does not alter either the declared facts proven in this procedure or their legal qualification.

3. Legal qualification of proven facts

3.1. Proven fact 1st: lack of contract of agent.

In relation to the conduct described in point 1 of the proven facts section, relating to the commission of the service to the company Eventbrite without signing an agent contract or equivalent document, it is necessary to go to sections 3 and 9 of article 28 of the RGPD, which provide for the following (the redaction is ours):

"3. The processing by the controller 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 controller with respect to the controller and establishes the object, duration, nature and purpose of the processing, 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."

This fact is considered proven on the basis that the City Council has not provided in the present actions any contract or legal act regulating the commission of the treatment, according to the requirements of article 28 of the RGPD. This fact constitutes an infringement, according to the provisions of article 83.4. a of the RGPD, which typifies as such the violation of *"the obligations of the person in charge 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 of the RGPD.

The conduct addressed here has been included as a serious infringement in article 73. k of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (from now on, 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."

3.2. Proven Fact 2nd: Lack of Information.

In relation to the conduct described in point 2 of the proven facts, regarding the lack of information, it is necessary to refer to article 13 of the RGPD, which provides for the following:

"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, as the case may be;

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 adequate or appropriate guarantees and the means to obtain a copy of these or to the place where they have been made available.

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, the following information necessary to guarantee a 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 in charge of 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 requirement necessary 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 profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

3. When the controller plans the further processing of personal data for a purpose other than that for which they were collected, he will provide the interested party, prior to said further processing, with information on that other purpose and any additional information relevant to of section 2.

4. The provisions of sections 1, 2 and 3 will not be applicable when and to the extent that the interested party already has the information."

The lack of information on these points to the affected people who bought concert tickets through the Eventbrite platform is considered proven, since during the procedure the City Council has not provided any document proving that it has provided these people the information established in article 13 of the RGPD, which constitutes an infringement, as 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".

The conduct addressed here has been included as a very serious offense 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."

3.3. Proven fact 3rd: Failure to respond to deletion request.

In relation to the conduct described in point 3 of the proven facts, it is necessary to refer to article 12 of the RGPD, which, among other things, provides for the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended

another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and to exercise judicial actions."

The 3rd proven fact constitutes an infringement, according to the provisions of 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.*"

The conduct addressed here has been included as a very serious offense in article 72.1. k the LOPDGDD in the following form:

" The impediment or the obstruction or the repeated non-attendance of the exercise of the rights established by articles 15 to 22 of Regulation (EU) 2016/679".

4. Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the 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 similar terms 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 accordance with the precepts transcribed, it is necessary to require the City Council to adopt the following corrective measures within the period indicated in each of the sections:

4.1. Regarding the deletion of the reporting person's data:

As indicated in the antecedents, as a result of the proposed resolution, Ascó City Council carried out several actions that are included in the Mayor's Resolution no. 2023-0199, dated 03/16/2023. This resolution, after detailing each of the actions carried out by the City Council in order to make effective the deletion requested by the person making the complaint, concludes the following:

"1. (...) the town council of Ascó has proceeded with the elimination of the management data of the participants (affected person) of the order made with number 1790255011.

This deletion of order data has been carried out successfully and the affected person does not appear in the database of the EVENT BRITE company in the user part of the Ascó City Council.

2. Although it has not been possible to modify or completely delete the data of the order itself, it appears in canceled or refunded mode as evidence.

This has a unique identifier and cannot be reused, for this reason it is common for the order to include the buyer's details.

3. When the buyer's data cannot be modified, as an error appears, and cannot contact the company EVENT BRITE, they are left with the original context.

4. The affected person (...) no longer has access to the corporate mailbox and therefore any notice or communication to this person will be unfeasible. [it is understood that by the company EVENT BRITE]"

In accordance with the above, the City Council of Ascó would have deleted the personal data of the complainant processed by said corporation as a result of the purchase of the ticket for the Oques Grasses concert that he made on 14 /07/2021, through the Eventbrite platform. Likewise, the City Council has certified that it made several arrangements in order to Eventbrite deleted the affected person's data, although without achieving its total elimination, which he justified because he could not contact this company.

This Authority considers the measures taken by the City Council to delete the complainant's data to be appropriate — both on the part of Eventbrite and on the part of the City Council. Having said that, it is considered appropriate to require the City Council to, within a maximum period of 10 days, starting from the day after the notification of this resolution, carry out the following additional actions to ensure that, as far as this institution is concerned, the controversial data has been completely deleted:

— Linked to point 3 of the conclusions: the City Council, as manager or organizer of the act or event (the concert), could modify/delete the data of the buyer (here complainant) and replace them with any text that does not included personal data (for example, replacing your first and last name with a sequence of the same letter "aaaaa"), and also changing your email address to another without any personal data (for example aaa@aaa.es). At this point, the City Council should take care not to have the option to send a confirmation email checked, because this Authority has verified that, if it was left checked, the system gave the same error as the DPD of the City Council had indicated in its report.

— In the event that the action indicated in the previous point is not possible, the City Council, as manager or organizer, could delete the event, which would delete all the personal data linked to it (among them, those of the complainant). This, as long as the City Council does not have to keep the data in order to respond to eventual responsibilities.

4.2. Once it has carried out the previous actions, and within the maximum period of the following 10 days, the City Council must respond to the deletion request made by the complainant and inform him of the actions taken to implement the your right

Once the City Council has adopted the measures described in the period indicated, within the next 10 days it must inform the Authority, without prejudice to the inspection powers of this Authority to carry out the corresponding checks.

resolution

For all this, I resolve:

1. Admonish the Ascó City Council as responsible for three infringements: an infringement provided for in article 83.4. *a* in relation to article 28; another violation provided for in article 83.5. *b* in relation to Article 13; and a third offense also provided for in article 83.5. *b* in relation to article 12, all of them of the RGPD.
2. To require the City Council of Ascó to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to Ascó City Council.
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 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the Ascó City Council can file, with discretion, an appeal for reinstatement before the director of the Catalan Authority of Data Protection, 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 City Council of Ascó expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

Likewise, Ascó City Council can file any other appeal it deems appropriate to defend its interests.

The director