

## File identification

Resolution of sanctioning procedure no. PS 4/2023, referring to the Viladecans Mediterrània Municipal Private Company, SL (VIMED).

## Background

1. On 12/31/2021, the Catalan Data Protection Authority received a letter of complaint against Viladecans City Council, due to an alleged breach of the regulations on personal data protection. Specifically, the complainant (B) stated that the Viladecans Housing Office (OHV) had processed the renewal of his registration in the Register of Housing Applicants with Official Protection of Catalonia (RSHPO), without having requested it, without their consent and without the City Council having communicated it to them. And he added that the aforementioned office had, by mistake, sent an email confirming this renewal of his registration to a third person (A); this email contained personal details of the complainant and his partner, such as the DNI number and private address. In order to substantiate his complaint, he provided copies of several messages that this third person had sent him, specifically:
  - An email sent by (A) to the reporting person. This email contained a copy of an email sent on 29/11/2021, at 8:30 a.m., by the Housing Agency of Catalonia from the address `registre@gencat.net` to the address of email from (A), with the subject "Renewal of registration in the Register of HPO Applicants". In the body of this message, the following was indicated: "the request has been processed correctly and your registration has been renewed".
  - Some Instagram messages sent on 29/11/2021 by (A) to the complainant, through which he communicated that he had received the email mentioned in the previous paragraph, regarding the renewal of the registration in the RSHPO, which contained a lot of his (B's) personal data; that he had communicated the error to the OHV, which had replied that they had several erroneous details of the person making the complaint (the email address and the contact telephone number). (A) added that she had requested the renewal of the registration at the RSHPO, but that instead she had not received any confirmation from the OHV.
2. The Authority opened a preliminary information phase (no. IP 530/2021), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 05/12/2022 the Viladecans Town Council was required to report on several issues related to the events reported.
4. On 12/19/2022, the Viladecans City Council responded to the above-mentioned request in writing in which it stated the following:

"The Local Housing Office (hereafter OLH) of Viladecans is managed by the SPM VILADECANS MEDITERRÀNIA, SL, (VIMED) on behalf of the Viladecans Town Council.

VIMED acts as processor, on behalf of the Housing Agency of Catalonia, in relation to the processing of applications (and renewals) for registration in the RSHPO, in compliance with the Agreement signed between the City Council and the AHC.

VIMED uses the tool made available by the AHC to register the requests registration in the Registry. Once an applicant has been registered by VIMED, the data appearing in the Register can only be modified by the AHC. Communications to applicants are always made by the AHC.

On the other hand, the processing tool is located on a server owned by the Agency of Housing of Catalonia.

Renewal applications can be made in two ways: either the applicant does it directly through the AHC website, or the applicant goes to the offices of the OLH where they are helped to fill out an instance that is incorporated into the file that the applicant has in the Registry.

Applicants' personal data can be entered into the management tool by the authorized staff of VIMED and also by the staff of the Catalan Housing Agency.

On July 9, 2021 (...), (A) went to the Local Housing Office, from where she was helped to fill out the instance requesting the renewal. Erroneously, this one instance was attached to the reporting person's file (B) instead of to the applicant (A).

From the instance incorporated in the file, it is the Housing Agency of Catalonia who email address of (A) , and making the corresponding communications to the former. VIMED has not incorporated the erroneous data into any other file. The correct data has been incorporated into a Register owned by VIMED.

Given that the RSHPO renewal resolutions are issued directly by the AHC, not by the OLH, we cannot verify when they were made, and in no case the private communications (via Whatsapp application) between ( A ) and (B) once the 1st resolution has been received in relation to the 2nd registration.

Ms. (A) went to the local housing office in person to inform her that she had not been notified of the resolution of her renewal file, but that of another user, from this Office she went proceed to incorporate the instance that contained the renewal request in its file in the Registry.

Having received the notification from the Catalan Data Protection Agency, in relation to the complaint made by (B) , on December 13, 2022, VIMED has formally notified the technician responsible for the Housing Agency of Catalonia , the need to proceed with the amendment and correction of erroneous personal data, which motivated the

complaint. As soon as the Agency informs us of the correction of errors, VIMED will let the affected people know.

VIMED has also contacted the two people affected and both have thanked VIMED for the quick response, which has summoned them in order to process this year's renewal in the Register in person. At the same time, as of today, they have been formally notified by email, at the same time that they have been informed of the correction of data in the complainant's file, which is evidenced by a copy of the communication made.

In any case, reiterate that the Viladecans OLH has not communicated personal data from one user to another user (...)."

The Viladecans City Council accompanied its letter with the following documentation:

- On the one hand, a report issued on 19/12/2022 by the Security Commission in the matter of personal data-DPD of the City Council, from which the following information regarding a collaboration agreement and the Viladecans Mediterrània Municipal Private Company, SL (VIMED) :

"1 . Collaboration Agreement between the Housing Agency of Catalonia and the Viladecans Council regarding the Local Housing Office of this municipality for the year 2019, approved by plenary agreement dated May 2 of 2019.

2. This agreement has been extended annually and, in this sense, the local Government Board of April 20, 2022, has approved the extension addendum to this collaboration agreement for the year 2022.

3 . Given that the management of the Local Housing Office of the municipality of Viladecans (OLH) corresponds to the commercial company SPM Viladecans Mediterrània, SL (VIMED), by virtue of Agreement no. 12 adopted by the Municipal Plenum, in the regular session held on April 30, 2020, in the following sense:

" AGREEMENT NO. 12.- Approve the Action Framework Program (PMA) 2020-2023

with the Private Municipal Viladecans Mediterrània, SL, as well as the Economic Annex for the year 2020". (Exp. No. 1/2020/C00160)."

The Viladecans Town Council in exercise of the power of self-organization i functional decentralization of powers, through the aforementioned PMA 2020-2023, proceeded to assign and transfer to the private municipal company Viladecans Mediterrània, SL (VIMED), certain actions, activities and functions in order to provide services to the citizens of the municipality of Viladecans in the matters that come determined depending on the social object, among them and for what is now of interest, the management of the Local Housing Office of Viladecans and the programs in matters of housing that are determined, which will take term the commercial VIMED, as a decentralized functional entity of the Viladecans Town Council."

- On the other hand, two e-mails sent by VIMED to the person reporting already (A) , respectively, through which he communicated to them, in essence, the error committed and its correction.

In the email sent on 14/12/2022 to (A) , VIMED stated, among other things, the following:

"(...) the communication of data was carried out by the Housing Agency of Catalonia , the body that manages renovations and other procedures related to the Registry.

To announce that, in any case , we have proceeded to request from the Housing Agency of Catalonia on December 12, 2022, the correction of the erroneous data that appeared in the other user's file (telephone and electronic address ) , which the Agency did that same morning."

In the email sent on 12/14/2022 to the complainant, VIMED stated, among other things, the following:

"(...) as we mentioned via telephone, the error occurred when the renewal request document of another user was incorporated into a file that was not yours but yours. Based on that error, the Housing Agency of Catalonia, the body that manages renovations and other procedures, modified the data on her file and made different communications with that user .

In the first instance, when we found out that the renewal request of the other user was not in her file, we proceeded to incorporate it.

On the other hand, on December 12, 2022, we proceeded to request from the Housing Agency of Catalonia, the correction of the erroneous data; and we are pleased to inform you that, on the same day, the Agency made the correction, as we can confirm through the "screen" of the Registry page where your data appears: (...)."

5. On 12/28/2022, the Authority's Inspection Area carried out a series of checks via the internet on the facts reported. Thus, the following was established:

In 2019, the current collaboration agreement was formalized between the Housing Agency of Catalonia -attached to the Department of Social Rights of the Generalitat- and Viladecans City Council, relating to the Local Office of Housing located in this municipality. The purpose of the agreement is to establish the terms and conditions of the collaboration between the parties for advice and management of services in the field of housing with respect to various tasks under the competence of the Administration of the Generalitat. The agreement has been extended for the years 2020, 2021 and 2022, through the formalization of extension addenda.

Among the functions entrusted to the Local Housing Office of Viladecans, there is the reception and transfer to the Housing Agency of Catalonia of applications for registration in the Register of Applicants for Housing with Protection Official of Catalonia; this registration gives the right to opt for the allocation of a home with official protection. Registration is valid for one year and is subject to renewal, which can also be processed through the Viladecans Local Housing Office. In relation to said Register, the Housing Agency of Catalonia is the entity responsible for the treatment.

As of 2019, the entity that fully manages the Local Housing Office is the municipal private company Viladecans Mediterrània, SL (VIMED), which, therefore, would act as sub-responsible for the treatment with regard to functions entrusted by the Housing Agency of Catalonia to Viladecans Town Council, by virtue of the aforementioned collaboration agreement.

From the result obtained, a due diligence was carried out.

6. On 01/17/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against VIMED for an alleged infringement provided for in article 83.5. a , in relation to article 5.1. d , both 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 (RGPD ). This initiation agreement was notified to VIMED on 01/19/2023.

Likewise, on the same date, the Director of the Authority agreed to initiate a sanctioning procedure against the Housing Agency of Catalonia, of the Department of Social Rights of the Generalitat .

7. In the initiation agreement, VIMED 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.
8. On 02/02/2023, VIMED goes make objections to the initiation agreement .
9. On 11/04/2023, the director agreed on a change of instructor.
10. On 26/04/2023, the instructor of the procedure formulated a resolution proposal, by which she proposed that the Director of the Authority sanction VIMED with a fine of 3,000 euros, as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. d , both of the RGPD.

This resolution proposal was notified to VIMED on 04/26/2023 , and it was granted a period of 10 days to formulate allegations .

11. On 05/12/2023, VIMED submitted a letter in which it acknowledged its responsibility for the alleged acts and stated that it had made the advanced payment of the penalty proposed by the instructor.
12. The Authority has noted that on 11/05/2023 VIMED made the advanced payment of the penalty (1,800 euros).

**proven facts**

1. On 07/09/2021, (A) submitted a letter to the Local Housing Office of the Viladecans City Council, which managed VIMED, through which he requested to renew his registration in the Register of Applicants of Housing with Official Protection of Catalonia, for which the Housing Agency of Catalonia and VIMED, subcontractor, are responsible for the treatment.
2. VIMED, as sub-responsible for the treatment, started the procedure for renewing the registration in said register, but by mistake incorporated this request in the file that (B) (complainant) had in the said Register.
3. As a result of this erroneous link, the Housing Agency of Catalonia issued an erroneous renewal resolution, in which it renewed the registration of (B) instead of that of the person who had requested it (A). For the same reason, he mistakenly changed the telephone number and contact address of the reporting person on his record in the Registry, replacing it with the telephone number and contact address of (A).
4. Given this modification of the complainant's contact details, on 29/11/2021 the Housing Agency of Catalonia sent an email to the email address of (A), informing her about the renewal of your registration in the aforementioned Register. In reality, however, it contained a document indicative of the renewal of the registration of the reporting person, in which personal data of that person and their partner appeared, with the consequent disclosure of this data in (A).
5. On the same day 29/11/2021, (A) called the Local Housing Office of Viladecans and reported on this mistake and on the receipt of documentation with personal data of the person making the complaint. However, VIMED - which managed the aforementioned office - did not at that time request (A) to delete the documentation relating to the person making the complaint. He also did not inform the complainant that his registration in the Registry had been erroneously renewed, nor did he notify the Housing Agency of Catalonia to correct the erroneous data contained in the complainant's file in the Registry.
6. It wasn't until 12/12/2022 - once it had received, on 12/07/2022, the Authority's information request following the opening of the previous information - that VIMED alone apply to the Housing Agency of Catalonia for the correction of the erroneous data that appeared in the reporting person's file (the telephone number and e-mail address for the purposes of notifications). These erroneous data would have remained until 12/12/2022, when VIMED stated that the Housing Agency of Catalonia had corrected them, and provided a screen print of the computer application in which the number is displayed correct phone number and email address of the reporting person.

**Fundamentals of law**



## 1. competition

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. Analysis of the allegations in the initiation agreement

Faced with the resolution proposal, VIMED has not formulated allegations but, through a letter dated 05/12/2023, has expressed its willingness to accept the two penalty reductions provided for in article 85 of the LPAC. Therefore, on the one hand, he has acknowledged his responsibility for the alleged acts and, on the other hand, he has stated that on 11/05/2023 he made the advanced payment of the proposed pecuniary penalty, which this Authority has noted. This fact means the end of the administrative procedure, as set out in the 5th legal basis.

On the other hand, VIMED has also referred to the adoption of several corrective measures and has provided various documentation, which is analyzed in the 6th legal basis.

Apart from this, it is considered illustrative to reiterate below the reasoned response of the instructor to the allegations that VIMED made before the initiation agreement.

In the second allegation of its letter, VIMED was dissatisfied with the imputation of the infringement related to the violation of the principle of accuracy, and pointed out that VIMED was only "aware that (A) had received the communication from the resolution of another file, but VIMED was not aware that the Housing Agency had modified the data of the complainant, and therefore if it was not aware it could not adopt the corresponding measures, and consequently it cannot be imputed to it the commission of this infringement in the field of data protection."

As pointed out by the instructor in the proposal, these allegations should not be accepted for the reasons set out below.

The infringement attributed to VIMED is not due to the inaccurate data processing carried out by the Housing Agency of Catalonia - in respect of which the Authority has processed a sanctioning procedure against this Agency -, but to the fact that VIMED incorporated due to an error in the file of the Register of Housing Applicants with Official Protection of Catalonia corresponding to the person reporting a request to renew the registration in said Register, which had been submitted by another person to the Office of the 'Habitatge de Viladecans (OHV)'. This led to the initiation of the renewal procedure in respect of the reporting person. This is a fact that VIMED has repeatedly recognized in its writings.

This information regarding the reporting person constitutes inaccurate data, since this person had not requested the renewal. As it was also an inaccurate data (in the sense of not updated) that the person who promoted the renewal of his registration in the Register - presenting an instance before the OHV - was not listed as a renewal applicant. The treatment of this inaccurate data contravenes the principle of accuracy provided for in article 5.1. d of the RGPD, according to which the data entered must be accurate and, to this end, all reasonable measures must be taken to delete or rectify inaccurate data.

VIMED does not deny the inaccuracy of the recorded data, but would point out that these facts are unimputable, because it considers that it acted quickly, since it was not until 12/05/2022 - when it received the request from this Authority following of the complaint submitted by the complainant - who became aware that the Registry contained inaccurate information about the complainant, and that on 12/12/2022 he communicated this to the Housing Agency of Catalonia .

As the instructor pointed out in the proposal, these allegations do not have the intended effect, for the reasons set out below.

Without denying the actions carried out by VIMED based on the communication made to it by this Authority regarding the receipt of a complaint that originates the present sanctioning procedure, it should be noted, at the outset, that VIMED has acknowledged that it processed data inaccurate This constitutes, in essence, the conduct typical of the offense with which he is charged.

Secondly, regarding the assessment of VIMED's actions when it became aware of the inaccuracy, it should be noted that VIMED's statements about the fact that it was not aware of the facts until 05/12/ 2022. In this regard, VIMED has recognized (precedent 4th) that the applicant addressed this entity to communicate that he had received the resolution of the Housing Agency of Catalonia referring to another person. Although VIMED has not specified the date on which this error was communicated to him, the reporting person stated that it took place on 11/29/2021 and, in order to prove it, together with the report he provided some messages that the applicant sent him via Instagram on 29/11/2021 (1st record), in which this person already informed him that he had communicated the error to VIMED. Some of these messages sent on 11/29/2021 are reproduced below:

"Hello (...), look, I'm writing to you because I received a communication in my email from the Local Housing Office about the request for VPO flats."

"I contacted them to tell them that there is an error in the contact email, but they told me that the phone is also down and that they have no way to contact you"

"So I try to put it here"

"It's because I think there has been a cross-over of the data because they haven't managed my renewal"

"But wow, why are all your data..."

On the other hand, in some of the messages the complainant asked the applicant to forward the email he had received from the AHC with his personal data. The reporting person accompanied his report with a screen print showing the forwarding of this mail to the requesting person, and from the latter to the reporting person. In view of the facts analysed, veracity is granted to all the messages.

from the facts presented that on 29/11/2021 VIMED became aware of the error it had committed, and of the effects that derived from it. And in the face of this knowledge, he limited himself to incorporating the request in the file of the Registry of the person who had actually formulated it. Therefore, as already explained in the imputed facts section of the initiation agreement, he did not inform the Catalan Housing Agency that this entity had issued an erroneous resolution (referring to a person who had not requested the renewal), nor the mistake that VIMED had made in the said Register (incorporating one person's



request in another's file). Nor is it recorded that he had investigated the reason why the renewal resolution referring to the reporting person had been sent to the email address of the person requesting the renewal; this circumstance was due to the erroneous modifications that the Housing Agency of Catalonia had subsequently carried out in the mentioned Register, which would have been detected quickly if on 11/29/2021 VIMED had reviewed the contact details of the person complainant that appeared on their file in the Registry. Equally, it is not known that on a date close to 11/29/2021 he had informed the person making the complaint that his registration in said Register had been erroneously renewed, nor that he had asked the person requesting to delete the personal data of the reporting person.

This is why it is considered that VIMED treated inaccurate data and that it did not act with the diligence that was required of it as sub-responsible for the treatment which, in addition to what was indicated, also required it to adopt measures aimed at preventing the initial error.

On the other hand, with regard to the first allegation made by VIMED, referring to the public nature of the service provided and the entity's capital, as well as the fact that it does not obtain any economic benefit from the management of the 'OHV, it should be noted that these are considerations that do not question the facts that have been imputed to him. In any case, they are relevant in the grading of the penalty, so we refer to what is indicated in the 4th legal basis, where the request for the imposition of a warning penalty is also answered - instead of 'a financial penalty', as well as the mitigating criteria for the penalty, which are invoked in the last section of the pleadings ("Request").

### 3. Legal qualification of the proven facts

In relation to the facts described in the proven facts section, you must go to article 5.1 . d of the RGPD , which includes the principle of accuracy and provides that the personal data must be: "exact and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed."

During the processing of this procedure, it has been proven that VIMED has processed inaccurate data - for the reasons indicated in the legal basis 2n -, which is considered to constitute the infringement provided for in article 83.5. a of the RGPD, which typifies the violation of: "the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9."

The conduct addressed here has been included as a very serious offense in article 72.1. a of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD), as follows:

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

### 4. Penalty imposed on VIMED

Given that the imputed facts refer to the actions of VIMED as the person in charge of the treatment, in accordance with article 70 of the LOPDGDD, it remains subject to the sanctioning regime provided for in the RGPD. In particular, given that VIMED does not fall under any of the

subjects provided for in article 77.1 of the LOPDGDD, the general sanctioning regime provided for in article 83 of the GDPR applies .

In the "Request" section of the statement of objections to the initiation agreement, VIMED requested, as a subsidiary request, that a reprimand penalty be imposed and not a financial penalty , given " the character of public housing service that the society provides through the OLH, from which it does not obtain any profit but is financed through contributions from the Generalitat, and in the part of the cost that it does not cover, from the City Council of Viladecans." In order to prove this, he provided a certificate issued on 02/02/2023 by the financial director of the Municipal Enterprises Group of Viladecans (VIGEM), in which it was stated, in addition to the above, that the service provided by VIMED "does not generate income, but is in deficit", and that VIMED "does not obtain profits for the management of this public service". And in section 1 of this statement of objections, VIMED also stated that it is " a company with wholly municipal capital (on the one hand directly and on the other through the head company of the Viladecans Group of Companies , VIGEM)."

As the instructor pointed out in the proposal, in this case the possibility of replacing the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2 should be ruled out. *b* of the RGPD, given that, among other reasons, it takes into account the fact that the incorporation by VIMED of inaccurate data in the said Register led to the issuance of an erroneous resolution (referring to another person ) and that personal data be disclosed to third parties.

Once the application of the reprimand as a substitute for the administrative fine has been ruled out, the amount of the administrative fine to be imposed must be determined.

Article 83.5 of the RGPD provides that violations, among others, of the basic principles for the treatment, are sanctioned with an administrative fine of 20,000,000 euros at most, or if it is a company , of an amount equivalent to a maximum of 4% of the global total annual business volume of the previous financial year, and you must opt for the higher amount.

Article 83.2 of the RGPD determines the following, regarding the graduation of the amount of the administrative fine:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an additional or substitute for the measures contemplated in article 58, section 2, letters a) ah) yj). When deciding the imposition of an administrative fine and its amount in each individual case, the following shall be duly taken into account:

- a) the nature, severity and duration of the infringement, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the person responsible or in charge of the treatment to alleviate the damages and losses suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, given the technical or organizational measures that have been applied by virtue of articles 25 and 32;

- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the control authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the control authority became aware of the infringement, in particular if the person in charge or the manager notified the infringement and, if so, to what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in relation to the same matter, the fulfillment of said measures;
- j) adherence to codes of conduct under article 40 or certification mechanisms approved under article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the losses avoided, directly or indirectly, through the infringement."

In turn, article 76.2 of the LOPDGDD provides that, apart from the criteria established in article 83.2 RGPD, the following can also be taken into account:

- "a) The continuing nature of the infringement.
- b) Linking the offender's activity with the practice of processing personal data.
- c) The profits obtained as a result of the commission of the infringement.
- d) The possibility that the conduct of the person affected could have led to the commission of the offence.
- e) The existence of a merger process by absorption subsequent to the commission of the infringement, which cannot be imputed to the absorbing entity.
- f) Affecting the rights of minors.
- g) Have, when not mandatory, a data protection delegate.
- h) The submission by the person in charge or person in charge, voluntarily, to alternative conflict resolution mechanisms, in cases where there are disputes between them and any interested party."

According to what is established in articles 83.2 of the RGPD and 76.2 of the LOPDGDD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, a penalty of 3,000 euros ( **three** thousand euros). This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

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

- The fact that it is an isolated event, which has affected a small number of people and which has led to the disclosure of third-party data to a single person (art. 83.2. GDPR ) .
- The Authority is not aware that VIMED has committed another infringement (art. 83.2 e RGPD).
- VIMED has cooperated with the Authority in order to remedy the infringement (art. 83.2. f RGPD).

- The absence of economic benefits with the commission of the offense (art. 83.2. k RGPD).

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

- Personal data that was ultimately disclosed to a third party, which, although not part of the special categories of data, implicitly disclosed other information that emerged from the fact that the reporting person and their partner were registered in the Register of Housing Applicants with Official Protection of Catalonia; that is, the desire to acquire a home with official protection, but also that they met the requirements to apply for registration in said Registry, among which is having an income limit and not having a home in ownership or a adequate housing

With regard to the mitigating criteria mentioned by VIMED that have not been evaluated for that purpose, in addition to the considerations that have been set forth in the 2nd legal basis, it should be noted that the fact that the person making the complaint did not request any moment in VIMED the exercise of its right of rectification does not affect the assessment of VIMED's performance and its degree of negligence. In addition, the eventual exercise of the right of rectification by the reporting person would not have prevented their data from being disclosed, given that they were precisely aware of this communication of data by the person to whom it was communicated.

#### 5. VIMED welcomes the reduction of the penalty

As set out in the 13th antecedent, by letter dated 05/12/2023 VIMED has expressed its willingness to accept the two penalty reductions provided for in article 85.3 of the LPAC, since it recognizes his responsibility in the imputed facts and states that on 11/05/2023 he made the advanced payment of the penalty proposed by the instructor, as this Authority has noted.

Consequently, a 40% reduction should be applied on the amount of the initial penalty of 3,000 euros. Therefore, the final amount of the penalty is **1,800 euros** , which corresponds to the advanced payment made by VIMED.

In accordance with article 85.3 of the LPAC in fine , the effectiveness of the aforementioned reductions is conditional upon the withdrawal or waiver of any action or administrative appeal against the penalty. Therefore, this fact means the end of the administrative procedure, without prejudice to the corrective measures that, where appropriate, are required.

#### 6. Corrective measures taken

Faced with the finding of the infringement provided for in article 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010 empowers the director of the APDCAT so that the resolution declaring the infringement establish the appropriate measures so that their effects cease or are corrected.

With regard to the need to adopt corrective measures, as set out in precedent 4, in the preceding phase VIMED stated that on 12/12/2022 the ACH had rectified the person's erroneous data reporting that they appeared in the Register of Housing Applicants with

Official Protection of Catalonia (RSHPO). To this end, he submitted a letter dated 12/14/2022 that VIMED addressed to the complainant, which contained a screen printout of the database form of the said Registry, in which it is observed that in the file corresponding to the reporting person shows his telephone number and contact address, instead of those of the third person, which shows that the inaccuracy has already been corrected.

Even so, the criterion of the instructor is followed here, who proposed to require VIMED to carry out several actions, which VIMED has certified that it has implemented with several documents. The corrective measures proposed to be required were two:

- 6.1. That VIMED ask the person who had requested the renewal of the registration in the RSHPO (A) to delete the personal data of the person reporting that appeared in the resolution of the Housing Agency of Catalonia , which it received by email on 11/29/2021.

In this regard, VIMED has provided the Authority with a copy of the letter addressed to the aforementioned person asking him to delete the data, as well as the burofax proof of an unsuccessful notification attempt ("Ha resultado : Not delivered . Notice left ").

This is why it is considered necessary **to require** VIMED to, within ten working days, starting from the day after notification of this resolution, provide proof of effective notification of this letter to the Authority.

- 6.2. That VIMED adopt the necessary technical or organizational measures to prevent a request to renew the registration being incorporated into the file of said Registry corresponding to another person.

Regarding this, VIMED has provided the Authority with a document dated 05/05/2023, entitled "Protocol of registrations, renewals and cancellations in the Register of Housing Applicants with Official Protection", which in section 4 , and specifically in sections VII and VIII, includes various organizational measures to the indicated effect.

Apart from valuing the approval of these measures very positively, as well as the fact that this makes it unnecessary to require corrective measures to be adopted, it is considered appropriate to express the desirability of revising the wording of headings VI and VII - in the latter, it is pointed out that: "When the documentation is attached, it is verified that the name and surname of the card holder is the same as that which appears in the documentation provided", in order to assess whether it would be better to review the coincidence of the name and surname , before incorporating the documentation in a file of the said Registry (and not once the documentation has been incorporated). This apart from the fact that, after incorporating it, a final check was made.

## **resolution**

For all this, I resolve:

1. To impose on the Private Municipal Viladecans Mediterrània, SL (VIMED) the sanction consisting of a fine of 3,000 euros (three thousand euros), as responsible for an

infringement provided for in article 83.5. a in relation to article 5.1. d , both of the RGPD.

2. Declare that VIMED has made effective the advance payment of 1,800 euros (one thousand eight hundred euros), which corresponds to the final amount of the penalty once a 40% deduction has been applied, in accordance with the provisions of article 85 of the LPAC.
3. Require VIMED to certify effective compliance with the corrective measure indicated in legal basis 6.1.
4. Notify this resolution to VIMED.
5. Order that the 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of the Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

If VIMED 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, VIMED may file any other appeal it deems appropriate to defend its interests.

The director