Procedure No: PS/00016/2022
IMI Reference: A60DD 403656 – A61VMA 298021 – Case Register 79805

FINAL DECISION ON PENALTY PROCEEDINGS

From the actions taken by the Spanish Data Protection Agency and based on the following

FACTS

FIRST: [redacted] (hereinafter the complainant) lodged a complaint with the Commission Nationale de l'Informatique et des Libertés (hereinafter, 'French data protection authority'). The complain is directed against VACACIONES EDREAMS, S.L., with VAT B61965778 (hereinafter, EDREAMS). The grounds on which the complaint is based are as follows:

The complainant has asked EDREAMS by e-mail for access to the recording of all telephone exchanges with the company, but after one month no reply has been received.

Date on which the facts claimed took place: 5 January 2021

In addition to the complaint, ***he*** provides:

Copy of an email sent by the complainant to *customerservice-fr@contact.EDREAMS.com* and *service.client@EDREAMS.com* dated 5 January 2021 in the complaint concerning a purchase made in Canadian dollars and requesting access to all discussions between the complainant and the EDREAMS customer service on 14 August 2020, 26 October 2020, 17 November 2020 and 28 December 2020, and provide the following information for identification: Name, date of birth and last four digits of the credit card.

SECOND: Via the 'Internal Market Information System' (hereinafter the IMI System), governed by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 (IMI Regulation), which aims to promote cross-border administrative cooperation, mutual assistance between Member States and the exchange of information, on 21 May 2021, this complaint was received by this Spanish Data Protection Agency (AEPD). This complaint is forwarded to the AEPD in accordance with Article 56 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27/04/2016 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data (hereinafter GDPR), taking into account its cross-border nature and the fact that this Agency is competent to act as lead supervisory authority, given that EDREAMS has its registered office and single establishment in Spain.

According to the information incorporated into the IMI system, pursuant to Article 60 of the GDPR, in addition to the data protection authority of France, act as 'concerned supervisory authority' the authorities of Portugal, Italy, Lower Saxony (Germany) and Denmark. All of them

pursuant to Article 4 (22) (b) GDPR, since data subjects residing in these Member States are likely to be substantially affected by the processing at issue in these proceedings.

THIRD: The complaint lodged by the complainant was declared admissible on 1 June 2021.

FOURTH: The General Subdirectorate for Data Inspection carried out preliminary investigations to clarify the facts in question, in accordance with the powers of investigation conferred on the supervisory authorities in Article 58 (1) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter 'GDPR'), and in accordance with Title VII, Chapter I, Section II of the Spanish Organic Law 3/2018 of 5 December on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), having knowledge of the following:

Reply to a request for information submitted on behalf of EDREAMS with entry register ***O00007128e2100036021***, received at the AEPD on 27 August 2021, in which, inter alia, the following information is provided:

1. A statement that they have not received any request from the complainant via the privacy form on their website and has therefore not been processed by a specialised agent but has been processed by the customer service.

2. A statement that an error occurred in this request because the customer service agent who responded to this request closed it manually without managing it in accordance with internal processes. These internal processes indicate that these requests have to be answered by referring to the privacy form or by scaling up the exercise of rights internally.

3. A statement that they have answered to the complainant after becoming aware of the complaint. They provide a copy of an email addressed to the complainant in French (and its translation into Spanish), indicating that the recordings are attached.

4. As regards the causes of this incident, a statement that this occurred due to a human error that occurred in a situation where the customer service was tripled in the number of requests received due to cancellations caused by COVID-19 travel agency.

5. Declaration that the following measures have been taken: Reminder in *the weekly newsletter* to customer service agents on the centralisation of attention to data protection rights in the Privacy Formulation to be served by specialised agents; Advance data protection training including the case of this complaint as a practical case in the training; Inform the officer who dealt with the application and his manager at a meeting about what happened; And include a reminder of the existence of the Privacy Form in the email received automatically by data subjects in response to the emails received by the customer service.

On 30 December 2021, a search was made on the website *https://web.archive.org* for the historical data contained in the privacy policy of the EDREAMS website addressed to the Spanish public (*https://www.EDREAMS.es/politica-de-privacidad/*) on 13 January 2021 and addressed to the French public (*https://www.EDREAMS.fr/politique-confidentialite/*) on 20 January 2021, giving the following information:

6. Both privacy policies indicate that their last update took place in June 2019.

7. In both privacy policies, two means of exercising the rights are indicated: Via an online form, or via a postal address. Specifically, the privacy policy in Spanish states the following: "*To be able to exercise your rights, click here or send your application by post to the following address: Data protection — Calle Bailén, 67, 08009 Barcelona, Spain, European Union. In your application you must clearly indicate your identity, specifying your full name and the e-mail address you used to make the purchase or create an account, and the rights you wish to exercise.*"

FIFTH: The Director of the AEPD adopted a proposal for a draft decision to initiate penalty proceedings on 12 January 2022. Following the process set out in Article 60 of the GDPR, this proposal was transmitted through the IMI System on 09 February 2022 and informed supervisory authorities concerned that they had two weeks from that time to comment. Within the time limit for this purpose, supervisory authorities concerned made their comments on the matter.

SIXTH: On 24 May 2022, the Director of the AEPD adopted a draft decision to initiate penalty proceedings. Following the process set out in Article 60 GDPR, this draft decision was transmitted through the IMI system on 02 June 2022 and the supervisory authorities concerned were informed that they had four weeks from that time to raise relevant and reasoned objections. Within the deadline for this purpose, the supervisory authorities concerned did not raise any relevant and reasoned objections in this regard and therefore all authorities were considered to agree with and were bound by the draft decision in accordance with Article 60 (6) GDPR.

On 25 May 2022, this draft decision was notified to EDREAMS in accordance with Spanish Law 39/2015 of 1 October 2015 on the Common Administrative Procedure of Public Administrations (hereinafter LPACAP), as stated in the acknowledgement of receipt in the file.

SEVENTH: On 15 July 2022, the Director of the Spanish Data Protection Agency agreed to initiate penalty proceedings against EDREAMS, in accordance with the provisions of Articles 63 and 64 of the Spanish LPACAP, for the alleged infringement of Article 15 of the GDPR, as defined in Article 83.5 of the GDPR, in which it was indicated that it had a period of ten days to submit arguments.

This agreement, which was notified to EDREAMS in accordance with the rules established in the Spanish LPACAP, was collected on 18 July 2022, as stated in the acknowledgement of receipt in the file.

EIGHTH: On 30 July 2022, the Spanish Agency received allegations from EDREAMS, in which it submitted the followings arguments to the agreement to initiate penalty proceedings:

FIRST. — EXERCISE OF RIGHTS IN EDREAMS IN ACCORDANCE TO LAW.

EDREAMS centralises the management of the exercise of rights (including the right of access) through its Privacy Form. In this way, users are facilitated the exercise of these exercises,

through this easily accessible tool, linked in our Privacy Notice and managed by a defined process and by a team formed and dedicated to this purpose.

The Privacy Form allows in turn to automate part of the process, in order to provide a better and faster response.

Initially, the data subject exercises his/her right through the Privacy Form. This request is exclusively conditional on the agents specialised in the management of these rights being able to confirm the information and there are sufficient guarantees that the person claims to be who they are or that the representation of a third party is sufficiently accredited (usually the confirmation passes because the client, who receives a verification email, confirms in his/her personal email registered in our systems that he/she has requested the corresponding right).

After this confirmation, it connects with the appropriate departments, to execute the corresponding actions based on the right exercised. Finally, once the necessary actions have been carried out, we proceed to respond to the data subject according to an internal guide (in this case, the guide to the right of access).

This process is carried out in accordance with our Privacy Notice and our Internal Privacy Policy (see Appendix 1 – Index and applicable section of the Internal Privacy Policy), as well as internal procedures; specifically, the Internal Guide on the Exercise of the Right of Access (see Annex 2 – Internal Guide on the Exercise of the Right of Access) and the Data Protection Regulations:

Article 12 GDPR: 'The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication under Articles 15 to 22 and 34 relating to processing to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.'

Article 11(1) LOPDGDD: ' When personal data are obtained from the data subject, the controller may comply with the information duty established in article 13 of Regulation (EU) 2016/679, providing the data subject with the basic information referred to in the next section and with an e-mail address or another means which enables an easy and immediate access to the remaining information'.

Article 12(2) LOPDGDD: 'The controller shall be obliged to inform the data subject about the means available to exercise their rights. Such means shall be easily accessible by the data subject. The exercise of the right may not be denied on the sole ground that the data subject chooses a different means.' In this regard we would like to insist that we do not deny the exercise of the right (which would also have been managed if it was exercised by the Privacy Form by the team and process dedicated to this purpose) but that the situation of exceptionality and a human error in an agent led not to reiterate once again to the CUSTOMER, in accordance with our Privacy Notice, the availability of the Privacy Form for the exercise of their rights. We will elaborate on this point in the second allegation. We will also establish why and how we have mitigated the risk of this happening again.

European Commission – How should we deal with requests from individuals exercising their data protection rights?: "When personal data is processed by electronic means, you must provide means for applications to be submitted electronically."

AEPD – Exercise your rights: The person responsible is obliged to inform you about the means to exercise these rights. These means must be accessible and this right cannot be denied on the sole ground that you opt for another means.

In addition, EDREAMS is aware that customers can contact us through different ways for different purposes. Therefore, we train our Customer Service agents and carry out awareness actions regarding the exercise of rights. In the same way, we provide a response guide to which we will refer below, in order to know how to detect the exercise of rights and know how to reiterate the information already contained in our Privacy Notice, regarding the Privacy Form as a means to exercise the rights.

SECOND.- EDREAMS MAKES EXTRA EFFORTS IN GENERIC CUSTOMER SERVICE CHANNELS IN ORDER TO PROVIDE THE BEST SERVICE TO ITS CUSTOMERS.

First, it is necessary to confirm that after internal investigations we verify that the CUSTOMER did not exercise their right in accordance with our Privacy Notice, through our Privacy Form (mentioned in the first allegation and by which it is guaranteed that a specialised agent manages the corresponding request). Secondly, we have analysed generic Customer Service mailboxes and verified that we received a request from the CUSTOMER.

We have contacted the Customer Service team that has informed us that the agent manually closed the ticket without properly managing it based on our internal processes that guarantee the corresponding management of such request, referring to our Privacy Form (as indicated in the internal process of managing data protection rights) or to escalate the exercise of rights internally to the specialised department that is responsible for it. This manual error of the agent occurs upon receipt of the communication on January 5, 2021, in which the agent does not open internal response ticket and therefore does not instruct the CUSTOMER to exercise the right in the Privacy Form, as they should have done at that time.

In addition, this occurs in a context of exceptional situation in which EDREAMS was found given the unprecedented saturation of requests in our Customer Service email boxes that we received due to the situation caused by COVID-19.

We have asked the Customer Service team for the number of emails received in our General Customer Service email boxes and that we provide confidentially to the Spanish Data Protection Agency: in the month in which the CLIENT's communication to the Customer Service department occurred, and due to the entire COVID-19 crisis, we had a communication reception traffic consisting of ***an increase of 450 %*** *compared to the communications received the same month of the previous year; in particular, we received a total of* ***63.837*** *communications in January 2021, this being an unprecedented exceptional saturation.*

Despite these devastating circumstances both economically and organizationally, we have tried to continue to respond in the best possible way to all the requests of our clients, getting internal support from other teams for this management and we have tried to get out of these months as best as possible.

In these customer service channels we try to answer as soon as possible but there is no fixed deadline for response, since it depends on the filtering of topics and the prioritisation of them, which is done manually by the Customer Service team and that entails risks of incorrect manual categorisation unlike what happens when they are exercised by the appropriate means and provided for the exercise of rights (the Privacy Form).

And it is precisely for this reason that a specific medium (through the Privacy Form) was created, complying with data protection regulations and in order to be able to offer a mature and as guaranteed and transparent process as possible for customers to exercise their data protection rights.

In addition, we have automated this process with a specialised privacy tool (OneTrust), to reduce risks and improve our responses, and it is managed with alerts to prevent deadlines and respond to customers as soon as possible and with a maximum period of thirty days.

Proof of the same is the management of the priority and immediate response to the exercise of the CLIENT's right with maximum speed since we became aware of it: ***he*** *was assigned to a senior specialist to process this exercise of right immediately, performing all internal actions in our systems, timely checks and the CUSTOMER as responded.*

To our regret, the CUSTOMER's case did not correctly address the timely information and Privacy Form. The exceptional circumstances and the manual error of the agent, as well as the measures implemented (which we convey to them below), make the risk of replicating this case remote.

THIRD.- CONTINUOUS IMPROVEMENT OF TRANSPARENCY ON THE EXERCISE OF RIGHTS

We take advantage of this case (produced by not exercising the right correctly and through the appropriate means as well as by a manual error of the agent who did not follow our internal policies and guidelines, in a context besides exceptionality) as an opportunity to analyse all the causes and circumstances of this case, referred to above in the second allegation, and that have allowed us to take extra measures to prevent similar situations from occurring.

We would like to emphasise that we believe that our compliance program in the area of privacy and data protection is based on continuous monitoring and continuous improvement and learning in order to increase levels of regulatory compliance.

In this context of exercising rights, we also maintain the same philosophy and take the rights of datasubjects very seriously, not only as a fundamental compliance action, but because it is the best way to guarantee the trust of our customers.

That is why we have a dedicated and specifically trained team, as well as an internal process of exercising data protection rights, to ensure the best possible response to our clients, through the Privacy Form, and internal coordination systems to deal with such requests in accordance with the regulations.

Likewise, as an extra effort to guarantee and safeguard the exercise of rights, Customer Service agents are formed and instructed so that in case of receiving any matter of protection of personal data, they must direct the customer to the Privacy Form so that the latter can exercise their rights.

Despite understanding that this case occurs in the exceptional circumstances mentioned above, and having received several manual errors from Customer Service agents in generic channels of that service, we have taken the opportunity to implement a Customer Support Form, which customers will access, either through the Customer Service Help Center, or by sending an email to the generic Customer Service mailboxes still available.

This form has assessed categories, among which is the option of exercising rights that redirects him/her to our Privacy Form (as the only means that must be used for the exercise of any rights of the data subjects for the protection of personal data; as it is managed by a specialised team dedicated to this purpose (see Annex 3 – Customer Service Form and Annex 4 – Help Center and FAQ).
In this way, we guarantee a specialised and guaranteed procedure, while also redirecting our customers to contact us by other means (such as the general contact means of Customer Service) in order to have a system that allows those who want to exercise their rights, can do so without problems and mitigating the risks of manual errors of customer service agents.

We also train annually on a mandatory basis in terms of data protection and specialised in the exercise of rights, including practical cases such as the present case, as well as awareness-raising actions by the Customer Service team (see Annex 5 – Awareness articles on the exercise of rights), such as covering topics such as "what is an exercise of data protection rights" and "how to accompany customers to exercise them through the Privacy Form".

On the other hand, we have carried out in recent months a migration of the tool of the Privacy Form and rights management, going from a generic one to one specialised in privacy (as it is ***OneTrust****) in which apart from being managed by a specialised and highly qualified team and sensitised in data protection, we work on an automation of processes to be more agile and reduce risks of human errors.*

We are sorry for what happened in this exceptional case. At the same time, we understand that in the circumstances and measures described above, EDREAMS complies with the data protection regulations as well as with the guidelines of the AEPD itself (previously referred to in the first allegation) and that the closure of the penalty proceedings against EDREAMS with a reprimand entails a disproportionate interpretation of the data protection regulations, in a context of a global pandemic with unexperienced effects. Especially for the tourism industry in which the company carries out its activity, as well as for the efforts made by it, especially when we have mitigated that the risk of cases similar to this again, with a Customer Service Form that guides customers in the event that, without having read or ignored the Privacy Notice, they want to exercise their rights, and can be guided accordingly and their rights managed, through the Privacy Form.

We reiterate the commitment of the EDREAMS team to work tirelessly with respect to learning and continuous improvement of our processes, with the aim of not only complying with the regulations, but also strengthening the trust of our customers in us. And in this context, we will continue to monitor and continuously improve the policies, processes, actions and measures referred to here.

NINTH: On 02 September 2022, the instructor of the penalty proceedings made a proposal of resolution, in which it is proposed that the Director of the AEPD address a reprimand to EDREAMS, with VAT B61965778, for an infringement of Article 15 of the GDPR, as defined in Article 83.5 of the GDPR.

This proposal for a resolution, which was notified to EDREAMS in accordance with the rules establishes in the Spanish LPACAP, was collected on 02 September 2022, as stated in the acknowledgement of receipt contained in the file.

TENTH: On 16 September 2022, the Agency received allegations from EDREAMS in which it submitted arguments to the proposal for a resolution in which it stated that:

"UNIQUE.- EXERCISE OF RIGHTS IN EDREAMS IN ACCORDANCE WITH THE LAW.

EDREAMS reiterates its previous submissions and understands that it complies with the regulations in the terms described below.

On the one hand, it has an official channel, the Privacy Form (Annex 1 – Privacy Form), which is transparently informed and made available to data subjects in our Privacy Notice, resulting in easy access for the data subject (Annex 2 – Privacy Notice: exercise of rights).

On the other hand, it has processes, tools, training materials and other appropriate measures in which it is contemplated that the hypothetical exercise of rights cannot be denied simply because it is exercised through other channels than the official channel.

*In the latter direction, EDREAMS works tirelessly on the continuous improvement of the measures referred to above, and which were substantiated in accordance with the third argument in our reply to the agreement to initiate penalty proceedings dated 29 July 2022 (registration number **O00007128e22P0006395**), so that in all its customer service channels the customers are redirected to the official channel and dedicated for the management of them (the aforementioned Privacy Form), in the event that they were used for the exercise of rights.*

We share that an organisation must have an official channel that collects a guarantee procedure in the terms collected by the data protection regulations, as well as appropriate measures that guide the action of any employee of the same to inform any data subject about how to exercise their data protection rights. However, an interpretation requiring the same degree of diligence that the official channel must have (provided it is transparently informed in the Privacy Notice) to any other channel of the organisation, would entail, on the one hand, an overload and dedication of disproportionate resources of the organisation and, on the other, we believe that it would be contrary to the fact that the regulations require an official channel for the exercise of rights.

The above interpretation is based on the fact that the rule in question (Article 12.2 LOPDGDD) clearly states that the controller can determine an official channel, provided it is easily accessible (as in our case).

It is clear that the rule has wanted to go further and therefore requires organisations to cooperate more effectively in order to enhance the effectiveness of rights and, therefore, it has been stated that the organisations cannot hide in the fact that the corresponding right had been exercised by another channel of the officer, to directly deny it without having internal controls in this regard (in Article 12(2) LOPDGDD).

But does that mean that an organisation must have in any channel a system of filtering and ticket management that, not only is it very urgent – due to the urgent nature of the period of exercise of rights contained in data protection regulations – but that is also infallible, because otherwise it opens penalty proceedings against the organisation, despite having appropriate measures for those channels not specially dedicated to the exercise of rights (despite having an official channel, which is transparently informed in the Privacy Notice and easily accessible according to the regulations, as well as measures to reduce the risk of a possible manual error of an agent who manages an unofficial channel)?

EDREAMS considers an interpretation that would lead to a positive answer to the previous question disproportionate and therefore asks that that interpretative position be reconsidered, on the understanding that that conclusion cannot be drawn that, in practice, it would result in the absence of an official channel, but that any channel of communication of the company would automatically become an official channel of exercise of rights.

If the law had intended such a conclusion, requiring the same level of diligence for any channel of the organisation, the draft should have included the following position: 'The controller shall be obliged to inform the data subject of the fact that in any means of contact the organisation may exercise its rights and provide the list thereof.'

In the present case, it is necessary to insist that these customer service channels are intended for consumer purposes, and, therefore, you cannot have an expectation of privacy channel due to their nature and demand the same high level of diligence that a channel dedicated to the exercise of rights supports.

Even so, in order to try to ensure that the data subject has the Privacy Form at hand even in spite of a possible exceptional mistake of a customer service agent, we have implemented a footnote to our generic Customer Service emails, in which the customer is again informed of the existence of the Privacy Form for a simple management of the exercise of rights and that allows the correct verification of the identity of the data subjects (Annex 3 – Footnote of the Customer Service emails).

For all these reasons, EDREAMS considers that the provision in question requires a reasonable, but not maximalist duty of care. And, in this logic, without prejudice to the previously recognised position regarding the interpretation of the precept in question, we would like to insist that we feel what happened in this exceptional case, and we reiterate EDREAMS's commitment to continue working tirelessly on the continuous improvement of its processes, tools, and training in all its customer service channels so that, in the event that they are used for the exercise of rights, it is directed to customers to the special channel dedicated for the management of them (the aforementioned Privacy Form).

For final clarification purposes, we understand that in the motion for a resolution there is an error in the reference to Article 112.1 of the LPACAP (which refers to the final resolution), with

only Article 89(2) of the LPACAP (which refers to the proposal for a resolution) being applicable and, according to it, we present the present argument here.

For all these reasons, this part:

REQUESTS

1. To have this claim submitted in due time and in a timely manner.
2. That it is good in the final resolution, taking into account that this is an exceptional manual error of non-compliance with our internal policies and procedures, caused by not having exercised the right of access by the channel intended and described in our Privacy Notice (Privacy Form) having addressed generic channels of Customer Service in which the expectation of response to exercise of rights cannot be the same as being intended for consumer issues. Likewise, it should be noted that EDREAMS has acted and acts diligently in the respect, defense and exercise of the rights of the data subjects and always in a collaborative way with the AEPD and that all this is not diminished by this exceptional case".

The actions taken in these proceedings and the documentation contained in the file have shown the following:

PROVEN FACTS

FIRST: On 5 January 2021, the complainant sent e-mails to *customerservice-fr@contact.EDREAMS.com* and ***service.client@edreams.com***, where ***he*** complained about a purchase made in Canadian dollars and requested access to all discussions between the complainant and EDREAMS customer service on 14 August 2020, 26 October 2020, 17 November 2020 and 28 December 2020, and provided the following data for identification: first and last name, date of birth and last four digits of ***his*** credit card.

SECOND: EDREAMS did not provide the complainant with access to the recording of all telephone exchanges with the company, without the complainant having received any response within one month.

THIRD: According to EDREAMS in its arguments, the lack of attention to the exercise of the right of access occurred because *'... the agent mistakenly closed the ticket without having properly managed it... This manual error of the agent occurs upon receipt of the communication on 5 January 2021, in which the agent does not open an internal reply ticket'.*

FOURTH: According to the search carried out on 30 December 2021, on the website https://web.archive.org of the historical data appearing in the Privacy Policy of the EDREAMS website addressed to the Spanish public on 13 January 2021 and addressed to the French public on 20 January 2021, the following information was obtained:

- Both privacy policies indicate that their last update took place in June 2019.

- In both privacy policies, two means of exercising the rights are indicated: through an online form, or through a postal address. Specifically, the privacy policy in Spanish states the following: In*order to exercise your rights, click here or send your request by post to the following address: Data protection – Calle Bailén, 67, 08009 Barcelona, Spain, European Union. In your request you must clearly state your identity, specifying your full name and the e-mail address you used to make the purchase or create an account, and the rights you wish to exercise*.

LEGAL GROUNDS

I
Competence and applicable law

In accordance with Article 58 (2) of Regulation (EU) 2016/679 of European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on free movement of these data (GDPR), and as set out in Articles 47, 48.1, 64.2, 68.1 and 68.2 of Organic Law 3/2018 of 5 December 1995 on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) the Director of the Spanish Data Protection Agency is responsible for initiating and deciding on this procedure.

In addition, Article 63(2) of the LOPDGDD provides that: "*The procedures handled by the Spanish Data Protection Agency shall be governed by the provisions of Regulation (EU) 2016/679, of this organic law, by the regulatory provisions dictated in their development and, insofar as they are not contradicted, alternatively, by the general rules on administrative procedures*".

II
Preliminary remarks

In the present case, in accordance with Article 4 (1) of the GDPR, there is a processing of personal data, since EDREAMS collects and stores, among others, the following personal data of natural persons: first and last name, email and recordings of calls, among other processing.

EDREAMS carries out this activity in its capacity as controller, since it is the controller who determines the purposes and means of such activity, pursuant to Article 4 (7) of the GDPR. In addition, it is a cross-border processing, since EDREAMS is established in Spain, although it serves other countries of the European Union.

Article 56(1) of the GDPR provides for cases of cross-border processing, as provided for in Article 423 thereof, in relation to the competence of the lead supervisory authority, that, without prejudice to Article 55, the supervisory authority of the main establishment or the single establishment of the controller or processor shall be competent to act as the primary supervisory authority for cross-border processing carried out by that controller or processor in accordance with the procedure laid down in Article 60. In the case examined, as explained above, EDREAMS has its single establishment in Spain, and the Spanish Data Protection Agency therefore is competent to act as the lead supervisory authority.

For its part, the right of access to personal data is regulated by Article 15 of the GDPR.

III
Reply to the allegations made by EDREAMS

With regard to the allegations in response to the decision to initiate the present penalty proceedings, we will respond to them in the order set out by EDREAMS:

1.- EXERCISE OF RIGHTS IN EDREAMS IN ACCORDANCE WITH LAW.

The existence of a "Privacy Form", through which EDREAMS centralises the management of the exercise of rights, should not prevent a request for the exercise of rights regarding the protection of personal data from being addressed when it is presented by other means. As EDREAMS itself states in its submissions, Article 12(2) of the LOPDGDD provides that: '*The controller shall be obliged to inform the data subject about the means available to exercise their rights. Such means shall be easily accessible by the data subject. The exercise of the right may not be denied on the sole ground that the data subject chooses a different means'*.

The negligence of the employee in attending to the request for the exercise of the right of access does not exempt EDREAMS from liability. The liability of the company for the negligent act of an employee that supposes the infringement of the data protection regulations has been confirmed by the jurisprudence of the Spanish Supreme Court. In this regard, reference should be made to the Spanish Supreme Court Judgment No. 188/2022 (Dispute Chamber, Section 3) of 15 February 2022 (rec. 7359/2020), for which the Fourth Legal Ground provides: '*The fact that it was the negligence of an employee does not relieve it of its responsibility as responsible for the correct use of the security measures which should have ensured the proper use of the data recording system designed. As we argued in STS No 196/2020 of 15 February 2021 (rec. 1916/2020) the processor is also responsible for the actions of their employees and cannot excuse itself in its diligent action, separately from the actions of its employees, but is the 'guilty' of those employees, as a result of the infringement of existing security measures that underpins the liability of the company in the area of penalties for acts "own" of their employees or positions, not of third parties.*

The ruling continues by arguing about the liability of legal persons in our legal system: '...*It simply happens that, being admitted in our Administrative Law the direct liability of legal persons, to whom it is therefore recognised, the subjective element of the infringement is reflected in these cases differently from that of natural persons, so that, as pointed out in the constitutional doctrine outlined above -SsTC STC 246/1991, of December 19 (F.J. 2) and 129/2003, of 30 June (F.J. 8) – the direct reproachability derives from the legal asset protected by the rule that is infringed and the need for such protection to be genuinely effective and because of the risk that the legal person who is subject to compliance with that rule must therefore assume*.'

2.- EDREAMS MAKES EXTRA EFFORTS IN GENERIC CUSTOMER SERVICE CHANNELS IN ORDER TO GIVE THE BEST SERVICE TO ITS CUSTOMERS.

The measures taken by EDREAMS in order to ensure due compliance by their employees with data protection regulations, without undermining their responsibility in the facts, together with

the prompt attention to the exercise of the right of access on the occasion of the request for information made by this Agency, have been taken into account for the purpose of deciding the corrective power to apply, considering the reprimand as more appropriate than an administrative fine.

3.-CONTINUOUS IMPROVEMENT OF TRANSPARENCY ON THE EXERCISE OF RIGHTS

As stated in response to the above argument, the measures taken by EDREAMS to facilitate the exercise of data protection rights, without calling into question the liability arising from the commission of the infringement, have been taken into account for the purpose of deciding the corrective power to be applied, considering the reprimand as more appropriate than an administrative fine.

Once the proposal for a resolution was made, arguments were presented by EDREAMS reiterating its previous arguments. It should be noted that the need for requests for the exercise of the right of access to personal data not to be limited to requests made through a given channel is a shared criterion with the European Data Protection Board (hereinafter EDPB), which, in fulfilment of the objective of ensuring the consistent application of the General Data Protection Regulation (as attributed to it by Article 70 GDPR), is developing guidance to provide a clear and transparent basis on the exercise of the right of access (Guidelines 01/2022 on the rights of data subjects – the right of access) "*Guidelines 01/2022 on data subject rights – Right of access*".

Paragraph 3.1.2 (paragraphs 52 to 57) of the version subject to public consultation of the abovementioned Guidelines (https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf) states the following concerning the requirements for the application for the exercise of the right of access:

'52. As noted previously, the GDPR does not impose any requirements on data subjects regarding the form of the request for access to the personal data. Therefore, there are in principle no requirements under the GDPR that the data subjectsmust observe when choosing a communication channel through which they enter into contact with the controller.

53. The EDPB encourages the controllers to provide the most appropriate and user-friendly communication channels, in line with Art. 12(2) and Art. 25, to enable the data subject to make an effective request. Nevertheless, if the data subject makes a request using a communication channel provided by the controller, which is different from the one indicated as the preferable one, such request shall be, in general, considered effective and the controller should handle such a request accordingly (see the examples below). The controllers should undertake all reasonable efforts to make sure that the exercise of data subject rights is facilitated (for example, in case the data subject sends the request to an employee who is on leave, an automatic message informing the data subject about an alternative communication channel for its request could be a reasonable effort).

54. It should be noted that the controller is not obliged to act on a request sent to a random or incorrect email (or postal) address, not directly provided by the controller, or to any communication channel that is clearly not intended to receive requests regarding data subject's rights, if the controller has provided an appropriate communication channel, that can be used by the data subject.

55. The controller is also not obliged to act on a request sent to the e-mail address of a controller's employee who may not be involved in the processing of requests concerning data subjects' rights (e.g. drivers, cleaning staff, etc.). Such requests shall not be considered effective, if the controller has clearly provided the data subject with appropriate communication channel. However, if the data subject sends a request to the controller's employee who deals with the data subject's affairs on a daily basis (single contact of a customer, such as e.g. personal account manager), such contact should not to be considered as a random one and the controller should make all reasonable efforts, to handle such a request so that it can be redirected to the contact point and answered within the time limits provided for by the GDPR.

56. Nevertheless, the EDPB recommends, as good practice, that controllers introduce, where possible, mechanisms to improve internal communication between employees on requests received by those who may not be competent to deal with such requests. In order to facilitate the exercise of data subjects' rights.

57. Date of receipt of the request by the controller triggers, as a rule, the one month period for the controller to provide information on action taken on a request, in accordance with Art. 12(3) (further guidance on timing is provided in section 5.3). The EDPB considers as good practice for the controllers to confirm receipt of requests in writing, for example by sending e-mails (or information by post, if applicable) to the requesting persons confirming that their requests have been received and that the one month period runs from day X to day Y.'

These criteria determine a broad interpretation as regards the acceptance of requests for the exercise of the right of access addressed by a data subject to the controller. In general, the request for the exercise of the right of access to personal data should be considered effective and the controllers should therefore make all reasonable efforts to ensure that the exercise of the rights of data subjects is facilitated. The complainant sent the request to two emails belonging to EDREAMS, namely to its customer service. This service cannot be understood as excluded from the obligation to attend to requests for the exercise of rights made by EDREAMS customers, either directly or by transfer to the corresponding unit. According to paragraph 55 of Guide 01/2022, the controller is not obliged to respond to a request, sent to the e-mail address of its employees, who cannot participate in the processing of requests relating to the rights of data subjects, such as drivers or cleaning service. However, a department whose activity is the attention to the public, such as the customer service of EDREAMS, which performs functions that involve the processing of personal data of citizens, cannot be excluded from the obligation to attend to the requests of its customers in the exercise of the right of access to their personal data. Thus, EDREAMS itself, as explained in its SECOND claim, has internal processes for the customer service team to manage requests for the exercise of data protection rights, which did not apply to the request made by the complainant: "...*We have contacted the Customer Service team who informed us that the agent manually closed the ticket by mistake without properly managing it based on our internal processes that guarantee the corresponding management of that request, referring to our Privacy Form (as indicated in the internal data protection rights management process) or to escalate the exercise of rights internally to the specialised department that is responsible for it."*

In the present case, despite the measures referred to in EDREAMS, the failure to respond to the complainant's exercise of the right of access within one month of receipt of the request has been substantiated in the present proceedings. Those arguments do not call into question any

of the facts established, having been taken into account for the purposes of assessing the circumstances concurrent in the commission of the infringement.

In the light of the above, all the allegations are rejected.

IV
Right of access

Article 15 '*Right of access by the data subject*' of the GDPR provides:

'1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:
(a) the purposes of the processing;
(b) the categories of personal data concerned;
(c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
(d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
(f) the right to lodge a complaint with a supervisory authority;
(g) where the personal data are not collected from the data subject, any available information as to their source;
(h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

2.Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

3.The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

4.The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.'

In the present case, it has been established that the complainant sent an email to *customerservice-fr@contact.edreams.com* and *service.client@edreams.com* on 5 January 2021 complaining about a purchase made in Canadian dollars and requesting access to all discussions between the complainant and eDreams' customer service on 14 August 2020, 26 October 2020, 17 November 2020 and 28 December 2020. EDreams responded to that request only after receiving the request for information from the Spanish Agency.

Therefore, in accordance with the evidence available in this final decision to end penalty proceedings, we consider that the facts known constitute an infringement of Article 15 GDPR, attributable to eDreams.

V
Classification of the infringement under Article 15 GDPR

The aforementioned infringement of Article 15 GDPR lead to the commission of the infringements defined in Article 83 (5) of the GDPR which, under the heading *'General conditions for imposing* administrative fines', provides:

'Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines of up to 20 000 000 EUR or, in the case of an undertaking, up to 4 % of the total worldwide annual turnover of the preceding financial year, whichever is higher:

(...)

(b) the data subjects' rights pursuant to Articles 12 to 22; (...)'

In this regard, Article 71 ('Infringements') of the Spanish LOPDGDD, states that: *'The actions and behaviours referred to in sections 4, 5 and 6 of Regulation (EU) 2016/679, as well as those which are contrary to this organic law, shall constitute infringements'*.

For the purposes of the limitation period, Article 74 *'Infringements considered to be minor'* of the Spanish LOPDGDD states:

'In accordance with sections 4 and 5 of article 83 of Regulation (EU) 2016/679, any infringement consisting on merely formal lack of compliance with the provisions mentioned therein, especially the ones listed below, shall be considered a minor infringement and its limitation period shall be one year:

(...)

(c) Failing to attend to the requirements to exercise any of the rights established by articles 15 to 22 of Regulation (EU) 2016/679, unless this results from the implementation of article 7.2.k) of this organic law. (…)'

VI
Sanction for the infringement of Article 15 GDPR

Without prejudice to Article 83 GDPR, Article 58 (2) (b) 'Powers' provides that:

'Each supervisory authority shall have all of the following corrective powers:

(...)

(b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation; (...)"

Recital 148 GDPR states:

'(…) In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor..'

In accordance with the evidence available at the time of this final decision to end penalty proceedings, it is considered that the infringement in question is minor for the purposes of Article 83 (2) GDPR, given that in the present case, there is no record in this Agency of penalties imposed to eDreams for not complying the provisions of the GDPR for similar infringements in the year preceding the facts, given that the complainant sent the request to the customer service e-mail addresses instead of the one indicated in the privacy policy or through the form to that effect, and the request for access in question was met diligently after receiving this Agency's request for information, all of which makes it possible to consider a reduction of the fault in the facts and it is therefore considered to be lawful, not to impose a penalty consisting of an administrative fine and to replace it by issuing a reprimand to eDreams.

Having regard to the abovementioned provisions and others of general application and assessed the criteria for the graduation of penalties whose existence has been established, the Director of the Spanish Data Protection Agency DECIDES:

FIRST: TO ISSUE a reprimand to VACACIONES EDREAMS, S.L., with VAT B61965778, for an infringement of Article 15 of the GDPR, as set out in Article 83.5 of the GDPR.

SECOND: Notify this resolution to VACACIONES EDREAMS, S.L.

In accordance with Article 50 of the Spanish LOPDGDD, this Resolution shall be made public once it has been notified to the interested parties.

In accordance with Article 48.6 of the Spanish LOPDGDD, and in accordance with Article 123 of the Spanish LPACAP, interested parties may, by way of option, lodge an appeal against this decision with the Director of the Spanish Data Protection Agency within one month of the day following notification of this decision or direct administrative appeal to the Administrative Appeals Chamber of the National High Court, in accordance with Article 25 and paragraph 5 of the Fourth Additional Provision of Spanish Law 29/1998 of 13 July on Administrative Jurisdiction, within two months of the day following notification of this act, as provided for in Article 46 (1) of that Law.

Finally, we would point out that, in accordance with Article 90.3 (a) of the Spanish LPACAP, the final administrative decision may be suspended as a provisional measure if the interested party indicates their intention to lodge an administrative appeal. If this is the case, the interested party must formally inform the Spanish Data Protection Agency of this fact by submitting it via the Spanish Agency's electronic register [https://sedeagpd.gob.es/sede-electronica-web/] or through one of the other registers provided for in Article 16.4 of Spanish

Law 39/2015 of 1 October. It shall also forward to the Spanish Agency the documentation proving that the administrative appeal has actually been lodged. If the Spanish Agency is not aware of the lodging of the administrative appeal within two months of the day following notification of this decision, it shall terminate the provisional suspension.

938-120722

Mar España Martí
Director of the Spanish Data Protection Agency