

Procedure No: PS/00462/2019

FINAL DECISION ON PENALTY PROCEEDINGS

Of the proceedings conducted by the Spanish Data Protection Agency and based on the following

BACKGROUND

FIRST: Through the ‘Internal Market Information System’ (hereinafter ‘IMI’), governed by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 (the IMI Regulation), the aim of which is to promote cross-border administrative cooperation, mutual assistance between Member States and the exchange of information, a complaint was received by this Spanish Data Protection Agency (AEPD), on 11/09/18, from a data subject to the Commissioner for Data Protection and Freedom of Information of Berlin-Hamburg (hereinafter: berlin).

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 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR); Given its cross-border nature, this Agency is competent to act as lead supervisory authority.

The complaint is made against the website www.iconmobel.de for lack of privacy policy and cookie policy. In addition, the complainant also complains that “the entity refuses to issue an invoice unless it provides a tax identification number”.

The letter stated that:

“Ladies and gentlemen

I hereby wish to lodge a complaint with the following company: <https://www.>

Lack of data protection information or cookie warnings.

In addition, the company refuses to issue an invoice after my purchase unless it gives them a tax identification number.

I suspect that invoices are issued only on demand and that the company is trying to evade taxes.

With our best wishes,

The complainant does not provide any additional documentation or evidence of the facts reported.

The Berlin Supervisory Authority identifies FURNISHICON S.L.U. with its registered office in Spain as responsible and points out that the websites www.muebledesign.com and www.meublesconcept.fr are also dependent on the [supplier](#) FURNISHCONCEPT [S.L.U.](#).

The data processing carried out concerns data subjects in several Member States. According to the information provided in IMI,

Secure Verification Code: Legislation		Date	21/07/2021	<i>n^u</i>] So 0 t
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/			
	Page	1/25		

pursuant to Article 56 GDPR, the supervisory authorities of North Rhine-Westphalia, Rhineland-Palatinate, Lower Saxony, Saarland, Mecklenburg-Western Pomerania, France, Norway and Italy have been identified as interested in these proceedings.

SECOND: In the light of the facts set out above, the Subdirectorate-General for Data Inspection carried out measures to clarify it in case E/1458/2019, in accordance with the investigative powers conferred on the supervisory authorities in Article 57 (1) of the GDPR. On 04/08/19, the websites belonging to FURNISHYOURSPACE, S.L. (CIF: B67094375), which contains the privacy policy accessible from various links. It is also checked that the websites complained of have the option of collecting personal data to open an account and make online purchases. The report on previous inspection measures was issued on 09/04/2019.

With regard to privacy policy, the following facts can be found:

- The privacy policy of the website in Castilian, www.muebledesign.com, [is available at the following links: "Terms and Conditions"; "Privacy Policy" and "Legal Information" at the bottom of the page.](#)
- The privacy policy on the German website, www.iconmobel.de, is available from the links: 'Geschäftsbedingungen'; 'Datenschutzerklärung'; 'Versandinformationen' "Widerrufsrecht" and "Reklamation", located at the bottom of the page.
- The privacy policy of the French website, www.meublesconcept.fr is available from the links: 'Termes et conditions'; 'Politique de Protection de Données'; 'Droit de rétractation' and 'mentions légales', located at the bottom of the page.

The information on the 'Privacy Policy' page, both on the Spanish website, on the German website and on the French website, is the same in any of the three languages. Please find below the information in Spanish:

IDENTIFICATION.

In accordance with the obligation to provide information under Article 10 of the Act 34/2002, of 11 July of the Information Society Services and of Electronic commerce means the operator's information listed below corresponds to the homepage serca.es

*Name of company: FURNISHYOURSPACE SL
Location: Carrer Ecuador 95 3° 08029 Barcelona
Telephone: 931706086
E-mail: Sales@Iconmobel.de
TAX ID: B67094375*

DATA PROTECTION POLICY

In accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of persons with regard to

Secure Verification Code: Legislation		Date	21/07/2021	n ^u] So Ot
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/			
	Page	2/25		



processing of personal data and the free movement of such data and its implementing regulations are used to answer and process your comments and suggestions.

We collect your information when you register on our website or order our products or services. If you voluntarily participate in customer surveys, provide feedback and participate in tenders, information about the client is collected.

The website usage information is stored via cookies.

We store your IP address to diagnose problems on our server and manage the website. An IP address is a number assigned to your computer when using the Internet. This is also used to recognise it during a dedicated visit to the website.

For the purchase to take place, the following information can be requested: Name, address, e-mail, date of birth, telephone number and method of payment.

After completing the contact forms on the website or sending emails or any other request to switch information to Iconmobel, the data subject gives his or her express consent to the processing of personal data and to the sending of advertisements.

Your data will be treated confidentially by Iconmobel and used only for the purposes mentioned above. They shall not be disclosed to third parties without the prior express consent of the customer. The exception is the carrier, who accepts the order. In this case, it will only be received by the carrier who needs it, so that he can process the logistics of sending the orders placed. Such data are only necessary for the processing (name, delivery address and telephone number to be contacted). Icon furniture, in turn, obliges businesses to comply with the requirements of EU Regulation 2016/679.

Iconmobel undertakes to maintain professional secrecy and to take all necessary technical and organisational measures to ensure the information in accordance with the requirements of the above-mentioned Regulation.

Your personal data will be stored in our client register for two years. However, it can revoke access to data for rectification or erasure at any time, as well as revocation of data processing or transferability.

The buyer authorises contact by telephone or e-mail about the details of the customer who has provided Iconmobel as a source of information on the order it has executed.

The user is solely responsible for the accuracy and accuracy of the information provided. In the case of the provision of false information or of third parties without its express permission, Iconmobel reserves the right to destroy the information immediately in order to protect the right of the beneficial owner.

With regard to data, you can log in to your account by email to exercise your rights. The application must be accompanied by an identification document so that we can be sure that you are the owner. Then your rights:

- The right to access your personal information and to know whether or not we are processing your personal information.
- Right to request correction of incorrect information or its deletion if

Secure Verification Code: Legislation	[REDACTED]	Date	21/07/2021	n^u] So Ot
Signed by Verification URL	Director — Mar España Martí			
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.				
https://sedeagpd.gob.es/validar-csv/		Page	3/25	

other things, it is no longer necessary for its original purpose.

- Right to request to restrict the processing of your data. In this case, these are only stored for the exercise or defence of claims.
- The right to object to the processing of your data in certain circumstances and in relation to your personal situation.
- Right to transfer your data.
- The right to revoke consent, without which the revocation affects the lawfulness of the previous data processing that has been approved.
- Right to lodge a complaint with a supervisory authority. If you think your rights have been violated during data processing, you have the right to lodge a complaint with the Spanish Data Protection Agency.

THIRD: On 07/06/2019, the AEPD issued a draft decision proposing to close the proceedings, taking the view that, on the basis of the inspections carried out, the privacy policy in question was in line with the GDPR, and I therefore consider that Article 13 of the GDPR has not been infringed.

FOURTH: On 02/07/2019, the Berlin Supervisory Authority sent a letter stating that the draft decision was incomplete. In summary, points out that privacy policy does not inform about the legal basis of the processing; Whereas no information is provided about the fouling of third party cookies when using the website and the user only has the option to accept them (even it seems that they are installed prior to their acceptance) resulting in disablement to the browser; And finally, that the draft decision does not refer to the claim made that the buyer had requested the tax identification number in order to issue an invoice.

FIFTH: On 17/10/2019, the AEPD issued a first revised draft decision identifying the sections of the privacy policy referring to the legal basis of the processing, providing certain information on the content to be included in simplified invoices, and informing that, with regard to the subject of cookies, information will be required from the requested party and may be sanctioned, where appropriate, in accordance with Spanish law.

On the basis of the above, the AEPD considered that there was no breach of Article 13 GDPR and proposed to close the proceedings.

SIXTH: On 01/11/19, the Berlin Supervisory Authority objected to the revised draft decision on the following grounds:

- Existence of various offences relating to the information to be provided to the data subject because, in accordance with the privacy policy of the website www.iconmobel.de in force on 29/10/2019:

o the legal basis of the processing is not mentioned. This constitutes a breach of Article 13 (1) (c) GDPR.

o the cookie information is incorrect and incomplete. This would constitute a breach of Article 13 (1) (a), (c), (e), (f) and (2) (a) GDPR (if the data has been obtained

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n^u] So O t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page 4/25	



of the data subject) or of 14.1 (a), (c), (e), (f) and (2) (a) of the GDPR (if the data have not been obtained from the data subject).

o A list of third parties uploaded on the website, which implies communication of the IP address to those third parties. Several of these third parties would use the data for marketing purposes. Some of these third parties appear to be based outside the European Economic Area. However, the privacy policy does not mention these third parties as potential recipients of the data, but points out that it only communicates data to the transport company.

Nor does it report that there will be an international transfer of data or the legal basis for such a transfer.

Therefore, there would have been a breach of Article 13 (1) (a), (c), (e), (f) and (2) (a) GDPR (if the data were obtained from the data subject) or Article 14 (1) (a), (c), (e), (f) and (2) (a) GDPR (if the data were not obtained from the data subject). In addition, there would have been an infringement of Article 26 (2) and possibly of Article 44.

o Privacy policy is confusing and language is grammatical and uses terms that do not belong to the common German language. This constitutes a breach of Article 12 (1) GDPR in conjunction with Articles 13 and 14.

o The privacy policy does not mention the right to object to processing under Article 21 (2) GDPR (which constitutes a violation of Article 21 (4)) and refers only to the AEPD as the authority to file a complaint (breach of Article 13 (2) (d)).

- The only way to refuse the installation of cookies is through the browser settings. Therefore, the consent obtained to accept cookies and third party content is invalid as it has not been freely given. Furthermore, the consent collected does not cover the disclosure of data to third parties uploading web content or its use for their own purposes. All this leads to a breach of Article 6 GDPR.

- The Berlin Supervisory Authority does not agree that the tax identification number is required for the issue of a simplified invoice. In addition, information on the requirements for issuing an invoice appears only inconsistently in the section Privacy Policy Terms and Conditions. This would constitute a breach of Article 6 GDPR.

SEVENTH: On 03/06/2020, the AEPD adopted, in accordance with Organic Law 3/2018 of 5 December 2007 on the protection of personal data and the guarantee of digital rights ('LOPDGDD' or Organic Law), a draft agreement to initiate penalty proceedings for alleged infringement of Article 13 of the GDPR.

EIGHT: On 26/06/2020, the AEPD issued a second revised draft decision sharing an overview of the draft initiating agreement with the following content:

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation	[REDACTED]	Date	21/07/2021	n ^u] So O t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		5/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



Summary of the complaint

The Spanish authority received a complaint against Furnishicom S.L.U. as it does not include the necessary information on the Inconmobel.de web site owned by Furnishicom S.L.U. in its views in different languages.

Competition

Article 56(1), Article 58 (2) and (4) and Article 60 GDPR, and in accordance with Article 48(1) and Article 64 of Organic Law 3/2018 of 5 December on the Protection of Personal Data, the Director of the Spanish authority shall have the power to:

ADOPTION OF THIS REVISED DECISION

Enquiry of the Spanish Supervisory Authority

On the web site it has been verified that personal data are collected. The Spanish web site includes Privacy Policies, with other content such as Terms and Conditions of Use, on a page accessible from different links: Three in the INFORMATION section and others from the cookie banner.

Similar is the case on the German page, although in this case there are five links: Terms and conditions Privacy policy Submission information Rejected And the French page from five others.

With regard to the information provided to users, information is provided on:

- the identity and contact details of the responsible person;
- The purposes of the processing for which the personal data are intended and the legal basis for the processing
- The recipients or categories of recipients of personal data
- the period for which personal data will be available
- the existence of the right to request access from the controller of personal data concerning the data subject, rectification, erasure, restriction of processing, objection as well as the right to data portability. And the right to lodge a complaint with a supervisory authority.

A revised draft decision will be included in the system for the exchange of cross-border procedures for preparatory work, including infringements of Article 13 GDPR, failure to include a legal basis for processing, differences in the coverage of privacy policy, information on the right to object, lack of information on the possibility to lodge complaints with other supervisory authorities, and request for a national ID card for simplified invoices. As regards cookies, it is being penalised in accordance with our national legislation.

Supervisory authorities concerned


The following supervisory authorities shall be informed of this draft decision: Or

Pomerania Mecklenburg-West

or France

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation		Date	21/07/2021	n^u] So O t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		6/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



or Italy
 or Lower Saxony
 or North Rhine-Westphalia
 or Norway or Renania-Palatinate
 or Saarland
 or Berlin

Rule alleged to have been infringed

— Transparency and information (Article 13)

Draft decision on the measures to be taken

With respect to The 'Privacy Policy' of the website www.muebledesign.com; www.iconmobilier.de and www.meublesconcept.fr and in application of Article 13 GDPR, the following anomalies have been identified:

— Information is provided on the purposes of the processing of personal data, but not on the legal basis of the processing (Article 6 (1) GDPR).

— According to the German Data Protection Authority, the privacy policy of the website www.iconmobilier.de contains a large amount of grammatical and spelling errors. It uses terms that do not correspond to the terms used in the everyday German language and are therefore entirely intelligible."

— In the Privacy Policy, it only allows the right of data subjects to object to data processing in accordance with Article 21 (1) GDPR, but not to the processing of personal data for direct marketing purposes, the right to obtain the processing of personal data at any time.

— Under the heading "Right to lodge a complaint with a supervisory authority" it is stated that: "If you believe that your rights have been infringed during the processing of the data, you have the right to lodge a complaint with the Spanish Data Protection Agency", even if the users are citizens or are on German or French territory.

The 'D-INVIOING' section of the 'C-ENVÍOS/Delivery' section of the Privacy Policy states that "Furure Design will generate a simplified invoice with payments accepted and received provided that the total order does not exceed EUR 3 000 according to the legislation in force. It will not be possible to process orders in excess of this amount if the DNI or TIN is not notified", but it is not specified that the provision of personal data (in this case TIN or CIF) is a legal or contractual requirement according to Article 13 (2) (e).

These facts could constitute a breach of Article 13 GDPR, which sets out the information to be provided to the data subject at the time of collection of his or her personal data.

It is considered appropriate to impose a "warning" sanction for violation of Article 13 GDPR.

As regards cookies, it is being penalised — in accordance with the Spanish legislation — the results will subsequently be communicated to the supervisory authorities of the Member States that have declared the subjects concerned.

Communications

As lead supervisory authority, the AEPD shall submit this draft decision to the other supervisory authorities concerned in order to receive their views.

C/Jorge Juan, 6
 28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:		Date	21/07/2021	n ^o] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	7/25	



pursuant to Article 60(3) GDPR.

Furthermore, in accordance with Article 64(2) of Organic Law 3/2018 of 5 December on the Protection of Personal Data, this draft decision will be formally communicated to the controller or processor. The adoption of this draft decision will interrupt the limitation period for the infringement. In accordance with Article 64(4) of the Organic Law on Data Protection and the Safeguarding of Digital Rights, the terms laid down in that Article shall be automatically suspended when information, consultation, request for assistance or mandatory ruling has to be obtained from one or more authorities of another Member State in accordance with the GDPR, for the time between the request and the notification of the decision to the Spanish Data Protection Agency.

Once the comments submitted by the supervisory authorities concerned have been analysed, the draft decision to initiate the penalty procedure will be notified to the controller or processor, complying with all the requirements specified in Article 68 of the above-mentioned Organic Law.

Finally, in accordance with Article 112(1) of Law 39/2015 of 1 October 1992 on the Common Administrative Procedure of the Public Administration, there is no right of appeal against this Decision.'

NINE: On 08/07/2020, the Berlin Supervisory Authority objected to this revised draft decision (A60RD 133963).

Third-party content and co-responsibility

'As stated in our second relevant and reasoned objection to the revised draft decision, we found that the icmobel.de website uploads the following servers on a first upload on the homepage:

[...]

Obviously, most of them are third parties, therefore Furnishicon discloses at least the personal data "IP address" to third parties, many of which are located in third countries.

At least some of these third parties, probably most, use the visitor's personal data of the website provided by Furnishicon for monitoring and other marketing purposes. With regard to ECJ case law, at least many of these third-party content inclusions will give rise to joint control between the company operating the website (Furnishicon) and the external provider.

For consideration, in section 6 on 'Terms of service of Google Analytics' (<https://marketingplatform.google.com/about/analytics/terms/us/> in English or <https://marketingplatform.google.com/about/analytics/terms/de/> in German), Google reserves the right to use the personal data of website users for its own purposes. The same applies to Yahoo Analytics (Yahoo Web-Analytics, see <https://policias.yahoo.com/xa/en/yahoo/privacy/topics/analytics/index.htm> in English or <https://policias.yahoo.com/ie/de/yahoo/privacy/topics/webanalytics/index.htm> EN German). Twitter analytics and Twitter Audience are comparable to the Facek Insights service (reference to ECJ, judgment of 5 June 2018 — C-210/16 —

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	8/25	



Wirtschaftsakademie Schleswig-Holstein).

Furnishicon has therefore also breached the second sentence of Article 26 (2) GDPR and Article 44 GDPR (which will be investigated by the LSA).

From the first access to the website, there is a breach of the principle that should exist prior to data processing (EDPB, Guidelines 05/2020 on consent under Regulation 2016/679, recital 90), as 'consent' cannot legitimise the processing. Furthermore, the wording of the later collected "consent" does not cover the current processing. Furthermore, as discussed in detail in our second relevant and reasoned objection, 'consent' is not valid, since it is not given fairly and the continued use of a web site does not constitute valid consent. In fact, such consent would be necessary at least for:

(1) any disclosure of the IP address and other personal data to third parties for whom it should not be ensured that they will not use the data for their own purposes, and

(2) any use of techniques to delay user interaction.

This leads to a breach of Article 6(1) and Article 5(1)(a) GDPR.

Language and structure of privacy policy

"The first sentence of Article 12 (1) GDPR requires that any information referred to in Article 13 and Article 14 GDPR be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

As stated by the AEPD, the Privacy Policy is readable. It contains a large number of grammar and spelling errors, uses terms that do not correspond to the terms used in the GDPR or German law or in the everyday German language and are entirely intelligible.

Furthermore, the structure of the Privacy Policy is flawed. For example, under the title 'cookies', it also deals with social media and data subjects' rights. Outside the Privacy Policy section, under the terms and conditions, there is a section 'Identity of the controller (contact)', which contains the subsections 'Child Protection Policy' (containing a statement not valid for all users minus) and 'Links to other web sites'.

Therefore, the first sentence of Article 12(1) GDPR has also been infringed."

Information on the right to obtain processing under Article 21 (2) GDPR is missing.

"As stated by the AEPD, the Privacy Policy only allows for the modification of the right of data subjects to obtain processing under Article 21 (1) GDPR (and this in a difficult way). Privacy policy does not mention the right of

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation	[REDACTED]	Date	21/07/2021	n ^u] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		9/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



data subjects under Article 21 (2) GDPR and therefore, as is the case for information on the right to object under Article 21 (1) GDPR, is erroneous and misleading.

Furnishicon therefore also violated Article 21 (4) GDPR, which is likely to prevent data subjects from exercising their rights of processing for direct marketing purposes “.”

Obligation to provide the tax identification number.

‘In its second revised draft decision, the AEPD mentions that Furnishicon requires DNI (obviously as a synonym for the tax identification number that Furnishicon requires the applicant) even for simplified invoices on which there is no legal basis for doing so, just as we indicate in our second relevant and reasoned objection.

Furnishicon therefore also violated Article 6 (1) and Art. 5 (1) (a) GDPR.’

Measures proposed

“AEPD proposed to issue a warning against Furnishicon. Since Furnishicon has not substantially changed its illegal behaviour, a warning is not an acceptable measure.

We suggest that the Spanish Data Protection Agency order compliance with the GDPR. The icmobel.de privacy policy is explained in the same way as it is documented in our relevant and reasoned objection, which the AEPD regards as a breach of Article 13 GDPR and which, as indicated above, also violates other provisions of the GDPR. However, when the icmobel.de website is constructed, the same cookie banner appears, which allows the website to be used in full only when the user clicks on ‘Acepto’ (‘Ich akzeptiere’). The other ‘More information’ button (in English only) links to the general terms and conditions, which also face the Privacy Policy, but do not remove the cookie banner. There is no way to rebut the cookie settings except through the browser settings. The wording of the consent collected does not cover the interruption of personal data by integrating third-party content into the website, and there is no other legal basis. Furthermore, as discussed in detail above, Furnishicon has infringed many more provisions of the GDPR and has not yet solved it.

Furthermore, the infringement cannot be considered minor because the illegality of the transfer of personal data to third parties, in particular in third countries, the lack of agreement and information pursuant to Article 26 GDPR and the complete lack of utility of the Privacy Policy pose a significant threat to the data protection rights of the data subjects, affects the very essence of the legal obligations in question and indicates a systemic problem (253). The infringement was intentional (see WP253 III.b)). Furthermore, the specific infringement is not remedied after it has been detected, and has not been remedied to date, and Furnishicon has maintained this situation, even after Furnishicon had become aware of the illegality of its actions and AEPD had intervened (see WP253 III.c), (f)).

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation	[REDACTED]	Date	21/07/2021	n ^u] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		10/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



DECIM: In accordance with the procedure laid down in Article 60 of the GDPR, the Director of the Spanish Data Protection Agency agreed to adopt a draft agreement to initiate penalty proceedings against FURNISHYOURSPACE S.L., and in accordance with the procedure laid down in Article 60 GDPR, the draft decision to initiate proceedings was transmitted via the IMI system to the supervisory authorities concerned and informed them that if they did not raise objections, the mandatory agreement to initiate proceedings would be adopted.

THIRTEENTH: The draft opening of proceedings was submitted to the supervisory authorities concerned pursuant to Article 60 (3) GDPR, no objections were raised within the legal deadline.

THIRTEENTH: On 1 July 2021, the Director of the Spanish Data Protection Agency decided to initiate penalty proceedings against the complainant for alleged infringement of Article 6 of the GDPR, Article 21 of the GDPR and Article 13 of the GDPR, as laid down in Article 83 (5) of the GDPR.

THIRTEENTH: The decision to initiate was notified electronically to the notified party. This is required by Article 14 (2) of Law 39/2015 on the Common Administrative Procedure of Public Administrations (LPACAP), according to which *'In all cases, electronic means shall be required to link with the public administrations in order to carry out any formality of an administrative procedure, at least the following subjects: (a) Legal persons'*

In the file, the certificate issued by the FNMT-RCM Electronic Notifications and Authorised Electronic Address Service, which records the sending of the agreement to initiate, AEPD notification addressed to FURNISHYOURSPACE, S.L., via this medium, the date of making available on the body's website on 02/07/2021 and the date of automatic rejection on 13/07/2021.

Article 43 (2) of the LPACAP provides that where notification by electronic means is mandatory — as in the present case — *'shall be deemed to be refused if ten calendar days have elapsed since the notification was made available without access to its content'*.


It should be added that Articles 41.5 and 41.1, third paragraph, of the LPACAP state, respectively:

'Where the person concerned or his representative refuses notification of an administrative action, it shall be recorded in the file specifying the circumstances of the attempt to notify and the means by which it was attempted, and the procedure shall be deemed to have been carried out and the procedure followed.'

'Notifications shall be valid irrespective of the means used, provided that they make it possible to establish that they have been sent or made available, that they have been received or accessed by the person concerned or their representative, of their dates and times, of their content.'

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation		Date	21/07/2021	<i>n^u</i>] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		11/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



complete, and the true identity of the sender and recipient. Proof of the notification made shall be included in the file.'

Thus, given that the notice of initiation was notified to FURNISHYOURSPACE, S.L., electronically (Article 14 LPACAP), and that the notification was rejected after ten days, as provided for in Article 43 (2) of the aforementioned law, the procedure was considered to have been completed and the procedure continued (exArticle 41 (5) LPACAP).

FOURTEENTH: In accordance with Article 73.1 of the LPCAP, the period for submitting observations on the Agreement of Initiation is ten days from the day following the date of notification.

Article 64.2. LPACAP states that the complainant will be informed of the right to make representations, of the *'right to be heard in the proceedings and of the time limits for exercising it, and of the statement that if he fails to make any observations within the prescribed period on the content of the decision to initiate proceedings, it may be considered a motion for a decision if it contains a precise ruling on the liability charged'*.

The agreement to initiate the penalty proceedings in question contained a precise ruling on the liability of FURNISHYOURSPACE, S.L.. the agreement specified the infringing conduct, the type of sanction in which it was subsumable, the circumstances altering the liability considered to be concurrent and the amount of the penalty that the AEPD considers it appropriate to impose.

In view of the above, and in accordance with Article 64 (2) (f) of the LPACAP, the agreement to initiate the procedure for PS/00462/2019 is considered a motion for a resolution.

In the light of all the foregoing, the Spanish Data Protection Agency in these proceedings considers the following facts to be established:

FACTS

FIRST: The websites www.muebledesign.com: www.iconmobel.de and www.meublesconcept.fr provide information on:

- the identity and the contact details of the controller;
- the period for which personal data will be stored;
- on users' rights, (Right to access their personal information: Right to request correction of information; The right to request restrictions on the processing of your data; The right to object to the processing of your data in certain circumstances; Right to transfer your data; Right to revoke consent and right to lodge a complaint with a Spanish supervisory authority).

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation	[REDACTED]	Date	21/07/2021	n ^u] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		12/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



However, the following shortcomings have been identified:

- On the website www.iconmobel.de, the identity and contact details of the controller are provided under a misleading title (“Güschafszeck”, which seems to mean a commercial purpose).
- The purposes of the processing are not clearly stated. They can only be derived from information given in another context. Spanish law requires that some documents containing personal data of clients for tax purposes are kept by the controller and this information is not included.
- No information is provided on the legal basis for the processing of personal data.
- The period during which the personal data will be stored is only provided with respect to the ‘client register’; Without informing about the period of retention of customers’ personal data for tax purposes.
- The right of data subjects to object to data processing under Article 21 (1) of the GDPR is mentioned but there is no reference to the data subject’s *right under Article 21(2) that “Where the processing of personal data is for direct marketing, the data subject shall have the right to object at any time to the processing of personal data concerning him or her, including profiling in so far as it relates to such marketing”*.
- Information is provided on the right to lodge a complaint with the Spanish Data Protection Agency, even if the users are citizens or individuals on German or French territory. Article 13 (2) (d) refers to *the “right to lodge a complaint with a supervisory authority”*, which means that the complaint may be submitted to any supervisory authority, not only to the Spanish Data Protection Agency.
- The ‘D-FACTURATION’ section of the ‘Terms and Conditions’ states that ‘A simplified invoice shall be generated for the order once the payment has been accepted and received provided that the total order does not exceed EUR 3,000 in accordance with the legislation in force. Orders above this amount cannot be processed if you do not notify your ID card or TIN’, but it is not specified whether providing these personal data (in this case TIN or CIF) is a legal or contractual requirement.

SECOND: The privacy policy on the website www.iconmobel.de is difficult to read and its structure is confusing. It contains a large number of grammatical and spelling errors and uses terms that do not correspond to words used in the daily German language in German law or in the GDPR (completely unintelligible).

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	13/25	

THIRD: There is no information on the right of the data subject to object to data processing where the processing is for the purpose of direct marketing and the information submitted concerning the right to object to processing is drafted in a confusing manner, misleading data subjects. This would make it difficult for data subjects to exercise their right to object to data processing for direct marketing purposes.

FOURTH: FURNISHYOURSPACE, S.L., requests that a tax identification number be provided in order to proceed with the issue of the simplified invoice. The controller informs on his website that simplified invoices will be issued for transactions not exceeding EUR 3,000 and that orders in excess of this amount cannot be processed if a tax identification number is not provided.

GROUNDS

I

Under the powers conferred on each supervisory authority by Article 58 (2) of the GDPR, and as laid down in Articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II.

Article 5 GDPR on the principles governing the processing of personal data mentions among them the principle of transparency. Paragraph 1 of the provision provides: *'Personal data shall be:*

a) *processed lawfully, fairly and transparently in relation to the data subject ('lawfulness, loyalty and transparency')*

Expression of the principle of transparency is the obligation on data controllers to inform, in the terms of Article 13 GDPR, the data subject when the personal data are obtained directly from the data subject:

'1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:

- a) *the identity and the contact details of the controller and, where applicable, of the controller's representative;*
- b) *the contact details of the data protection officer, where applicable;*
- c) *the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;*
- d) *where the processing is based on Article 6(1)(f), the legitimate interests of the controller or of a third party;*
- e) *the recipients or categories of recipients of the personal data, if any;*

Secure Verification Code: Legislation		Date	21/07/2021	n ^u] So O t
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page	
			14/25	
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.				



f) *where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in the case of transfers referred to in Article 46 or 47, or the second subparagraph of Article 49(1), reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.*

2. *In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:*

a) *the period for which the personal data will be stored, or, where that is not possible, the criteria used to determine that period;*

b) *the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability;*

c) *where processing is based on Article 6(1)(a) or Article 9(2)(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent prior to its withdrawal;*

d) *the right to lodge a complaint to a supervisory authority;*

e) *whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and of the possible consequences of failure to provide such data;*

f) *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.*

3. *Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.*

4. *Paragraphs 1, 2 and 3 shall not apply where and insofar as the data subject already has the information.'*

Article 5 (1) (a) GDPR lays down the principle of 'lawfulness, loyalty and transparency, a principle which is the subject of Recital 39: "All processing of personal data must be lawful and fair. It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those data should be easily accessible and easy to understand, and that clear and plain language is used. That principle concerns in particular the

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u] So o t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	15/25	



information of data subjects on the identity of the controller and the purposes of the processing and on the information added to ensure fair and transparent processing with regard to the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed. Individuals should be aware of the risks, rules, safeguards and rights relating to the processing of personal data, as well as how to assert their rights in relation to the processing. In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data. ...'

Recital 60 links the duty to provide information with the principle of transparency, stating that *'The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed. The data subject should also be informed of the profiling and the consequences of such profiling. If personal data are obtained from data subjects, they should also be informed whether they are obliged to provide them and of the consequences if they do not do so [...]'*. In this order, Article 12 (1) GDPR regulates the conditions for ensuring its effective materialisation and Article 13 specifies what information should be provided when the data are obtained from the data subject.

Article 12 (1) GDPR states that *"The controller shall take appropriate measures to provide any information referred to in Articles 13 and 14 and any communication pursuant to 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 any information addressed specifically to a child. The information shall be provided in writing, or by other means, including, where appropriate, by electronic means. At the request of the data subject, the information may be provided orally provided that the identity of the data subject is demonstrated by other means.'*

III.

Part of the complaint relates to the privacy policy included in the web pages of which FURNISHYOURSPACE, S.L.

As regards transparency, as expressed by the Berlin Supervisory Authority, the privacy policy on the website www.iconmobel.de, which is written in German, is difficult to read. It contains a large number of grammatical and spelling errors and uses terms that do not correspond to words used in the daily German language, German law or the GDPR (therefore completely unintelligible).

The structure of privacy policy is also confusing, as, for example, social media and data subjects' rights are also referred to under cookies. Outside the privacy policy, there is a

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation		Date	21/07/2021	n ^u] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		16/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



it contains two subsections on child protection policy and links to other websites.

Based on the above, the privacy policy violates Article 12 (1) GDPR with regard to the duty to provide information in a concise, transparent, intelligible and easily accessible form.


With regard to the 'Privacy Policy' included on [the web pages www.muebledesign.com](http://www.muebledesign.com): HYPERLINK "http://www.meublesconcept.fr" [WWW. iconmobel.de](http://www.meublesconcept.fr) and www.meublesconcept.fr and in application of Article 13 GDPR, it has been found that they provide information on: The identity and the contact details of the controller; The period for which personal data will be stored; And on users' rights, (Right to access their personal information; Right to request correction of information; The right to request restrictions on the processing of your data; The right to object to the processing of your data in certain circumstances; Right to transfer your data; Right to revoke consent and right to lodge a complaint with a Spanish supervisory authority).

However, the following shortcomings, already set out in the established facts, have been identified:

- On the website www.iconmobel.de the identity and contact details of the controller are provided under a misleading title ("Güschäftszeck", which seems to mean a commercial purpose).
- The purposes of the processing are not clearly defined, but can only be derived from information given in another context. In addition, Spanish law requires the controller to keep certain documents containing customers' personal data for tax purposes; This information is missing.
- Information is provided on the purposes of the processing for which the personal data are intended (with some limitations as mentioned above), but not on the legal basis of the processing (Article 13 (1) (c)).
- The period during which personal data will be stored is only provided with respect to the "client register". However, Spanish law requires the controller to keep certain documents containing customers' personal data for tax purposes; This retention period is missing for this treatment.
- The right of data subjects to object to data processing under Article 21 (1) GDPR is mentioned, but there is no reference to the data subject's *right under Article 21 (2) that "Where the processing of personal data is for direct marketing, the data subject shall have the right to object at any time to the processing of personal data concerning him or her, including profiling in so far as it relates to such marketing"*.
- Information is provided on the right to lodge a complaint with the Spanish Data Protection Agency, even if the users are citizens or individuals on German or French territory. Article 13(2)(d) refers to *the 'right to lodge a complaint with a supervisory authority'*, which means that the complaint may be

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:		Date	21/07/2021	n^u] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	17/25	



submitted to any supervisory authority, not only to the Spanish Data Protection Agency.

- The 'D-FACTURATION' section of the 'Terms and Conditions' states that 'A *simplified invoice shall be generated for the order once the payment has been accepted and received provided that the total order does not exceed EUR 3,000 in accordance with the legislation in force. Orders above this amount cannot be processed if you do not notify your ID card or TIN* ', but it is not specified whether the provision of personal data (in this case TIN or CIF) is a legal or contractual requirement, as set out in Article 13 (2) (e).

In those circumstances, the facts known constitute an infringement, attributable to the one complained of, for breach of Article 13 GDPR, which sets out the information to be provided to the data subject at the time of collection of his or her personal data.

The requested person, in its capacity as controller, was obliged under Article 13 GDPR to include on its websites, by which it collects the data of third parties various information which it has completely and completely omitted.

The websites by which you collect personal data violate Article 12 and Article 13 of the GDPR, which is covered by Article 83.5 GDPR, which provides: '*Infringements of the following provisions shall, in accordance with paragraph 2, be subject to administrative fines of not more than EUR 20.000.000 or, in the case of an undertaking, up to 4 % of the total total annual turnover of the preceding financial year, whichever is higher:*

- (...)
- The rights of data subjects under Articles 12 to 22;*"

For the sole purposes of prescription, Article 72 (1) (h) of the LOPDGDD describes as very serious *'the failure to inform the data subject of the processing of his personal data in accordance with Articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law'*. The limitation period for very serious infringements provided for in the LOPDGDD is three years.

IV

Stemming from the fact set out in Legal Basis II and III regarding the lack of information on the right of the data subject to object to data processing where the processing is for the purpose of direct marketing and that the information submitted concerning the right to object to processing under Article 21 (1) is drafted in a confusing manner, data subjects would be misled.

This has the consequence of making it more difficult for data subjects to exercise their right to object to processing of data for direct marketing purposes, and there is therefore an infringement of Article 21 (4), *which states that "The right referred to in paragraphs 1 and 2 shall be explicitly mentioned to the data subject and shall be presented clearly and independently of any other information."*

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u] So ot
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	18/25	

The facts identified constitute an infringement, attributable to the one complained of, for breach of Article 21 GDPR, which provides for the right to object to the processing of your personal data for advertising purposes.

For its part, Article 72 (1) (k) of the LOPDGDD considers that it is very serious, for the purposes of limitation, *'whether the exercise of the rights laid down in Articles 15 to 22 of Regulation (EU) 2016/679 is prevented or hindered or repeatedly neglected'*.

This infringement may be sanctioned by a maximum fine of EUR 20.000.000 or, in the case of an undertaking, up to 4 % of the total overall annual turnover of the preceding financial year, whichever is the higher, in accordance with Article 83 (5) (b) GDPR.

V

As stated above, Article 5 (1) (a) of the GDPR lays down, as one of the principles relating to processing, the obligation for personal data to be processed "lawfully, fairly and transparently in relation to the data subject ("lawfulness, loyalty and transparency") and in order for such processing to be lawful, the data subject must be able to rely on one of the legitimate grounds set out in Article 6 (1) of the GDPR:

'Processing shall be lawful only if and to the extent that at least one of the following applies:


- a) the data subject gave his or her consent to the processing of his or her data personal for one or more specific purposes;*
- b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;*
- c) processing is necessary for compliance with a legal obligation to which the controller is subject;*
- d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;*
- e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;*
- f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.'

In that connection, the applicant's complaint referred to the trader's request for the need to provide a tax identification number in order to issue the invoice. Bearing in mind that, as reported by the controller on his/her website, an invoice will be issued.

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sede.aepd.gob.es

Secure Verification Code: Legislation		Date	21/07/2021	n ^u] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sede.aepd.gob.es/validar-csv/		Page		19/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



simplified for transactions not exceeding EUR 3,000 which cannot be ordered in excess of that amount if a tax identification number is not provided, the fact that the order of the person concerned was processed without the need for such a tax identification number would mean that the person concerned has the right to request a simplified invoice without being asked for the identification number to be issued.

According to the above, the request for a tax identification number made has no legitimate basis, which constitutes a breach of Article 6 (1) and, consequently, of the principle laid down in Article 5 (1) (a) GDPR.

For its part, Article 72 (1) (b) of the LOPDGDD considers that 'the processing of personal data without complying with one of the conditions for lawful processing laid down in Article 6 of Regulation (EU) 2016/679' is very serious for the *purposes of prescription*.

This infringement may be sanctioned by a maximum fine of EUR 20.000.000 or, in the case of an undertaking, up to 4 % of the total overall annual turnover of the preceding financial year, whichever is the higher, in accordance with Article 83 (5) (b) GDPR.

VI

In accordance with the evidence available at the present time, it is considered that the facts set out do not comply with Articles 5.1 (a), 6.1, 12.1, 13 and 21.4 of the GDPR, which implies the commission of the two offences laid down in Article 83 (5) of the GDPR.

The corrective powers available to the Spanish Data Protection Agency, as the supervisory authority, are set out in Article 58 (2) GDPR. These include the power to address a warning (Article 58 (2) (b)), the power to impose an administrative fine under Article 83 of the GDPR — Article 58 (2) (i) — or the power to order the controller or processor to ensure that the processing operations comply with the provisions of the GDPR, where applicable, in a specific manner and within a specified timeframe — Article 58.2 (d).

According to Article 83 (2) GDPR, the measure provided for in Article 58 (2) (d) GDPR is compatible with the sanction in the form of an administrative fine.

In order to determine the administrative fine to be imposed, the provisions of Articles 83.1 and 83.2 of the GDPR must be observed, which state:

'1. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 4, 9 and 6 shall in each individual case be effective, proportionate and dissuasive.

2. Administrative fines shall be imposed, depending on the circumstances of each individual case, in addition to or in place of the measures referred to in the

Secure Verification Code: Legislation		Date	21/07/2021	n ^u] 1 So 0 t
Signed by	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Verification URL	Director — Mar España Martí	Page	20/25	



Article 58(2) (a) to (h) and (j). When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:

- a) the nature, gravity and duration of the infringement taking into account the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;
- b) the intentional or negligent character of the infringement.
- c) any action taken by the controller or processor to mitigate the damage suffered by data subjects;
- d) the degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 25 and 32;
- e) any relevant previous infringements by the controller or processor.
- f) the degree of cooperation with the supervisory 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 manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;
- i) where measures referred to in Article 58(2) have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with those measures;
- j) adherence to approved codes of conduct pursuant to Article 40 or approved certification mechanisms pursuant to Article 42; and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

Article 76 'Penalties and corrective measures' of the LOPDGDD provides :

'1. The penalties provided for in Article 83 (4), (5) and (6) of Regulation (EU) 2016/679 shall be applied taking into account the graduation criteria set out in paragraph 2 of that Article.

2. In accordance with Article 83 (2) (k) of Regulation (EU) 2016/679, account may also be taken of:

- a) The continuous nature of the infringement;
- b) The link between the offender's activity and the processing of personal data.
- c) The profits made as a result of the infringement.
- d) The possibility that the conduct of the person concerned might have led to the commission of the infringement.
- e) The existence of a merger by acquisition after the infringement has been committed, which cannot be attributed to the acquiring entity.
- f) The impact on the rights of minors.
- g) Have, where this is not required, a data protection officer.
- h) The referral by the controller or processor, on a voluntary basis, to alternative dispute resolution mechanisms, in cases where

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u] So O t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	21/25	



there are disputes between them and any interested party.'

In accordance with the provisions set out above, for the purpose of determining the amount of the fines to be imposed in the present case on the defendant, who is responsible for the offences referred to in Article 83 (5) (a) and (b) of the GDPR, the fine to be imposed for each of the alleged infringements should be graduated.

In order to quantify the fines for each infringement, as a mitigating circumstance for all infringements, we must consider it to be a small undertaking.

And as aggravating circumstances of the infringements, we should consider the following:

1. Infringement of Article 12 and Article 13 GDPR as defined in Article 83(5)(b) GDPR:

The following criteria to be taken into consideration are considered to be met:

. The nature, gravity and duration of the infringement, as the lack of information prevents the full extent of the processing of personal data and hinders the exercise of rights by data subjects.

. The continuous nature of the infringement.

. High number of data subjects, as all those who access the pages and whose data are processed from several EU countries are affected.

In the light of the above factors, the amount of the fine for this infringement is EUR 3,000.

2. Infringement of Article 21 GDPR, as defined in Article 83(5)(a) GDPR:

The following criteria to be taken into account are considered to be met:

. The nature, gravity and duration of the infringement, having regard to the nature, scope or purpose of the processing operations concerned, since the exercise of a right of data subjects is effectively prevented.

. The continuous nature of the infringement;


In the light of the above factors, the amount of the fine for this infringement is EUR 1,000.

3. Infringement of Article 5(1)(a) and Article 6(1) GDPR, as defined in Article 83(5)(a) GDPR:

The following criteria to be taken into consideration are considered to be met:

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code: Legislation		Date	21/07/2021	nu] So 0 t	
Signed by	Director — Mar España Martí				
Verification URL	https://sedeagpd.gob.es/validar-csv/		Page		22/25
This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.					



. The nature, gravity and duration of the offence, taking into account the nature, scope or purpose of the processing operations concerned, given that the lack of locus standi in relation to the application for the tax identification number makes it impossible in itself to process personal data.

In the light of the above factors, the amount of the fine for the infringement is EUR 2,000' VII

In accordance with Article 58 (2) (d) GDPR, each supervisory authority *may "order the controller or processor to comply with the provisions of this Regulation, where appropriate, in a specific manner and within a specified time limit..."*.

In this case, having regard to the circumstances expressed in relation to the defects identified, from the point of view of data protection law, it is appropriate to require the controller to:

- Align its privacy policy with Article 12 GDPR in terms of conciseness, transparency and intelligibility, which in particular requires the use of terms used in data protection law or at least in a common language and an easily understandable structure mentioning each information under the correct title;
- Align the information with Article 13 GDPR, which in particular requires to clearly set out:
 - o All purposes pursued with the processing, including processing which the controller is obliged to carry out by law;
 - o The term for which the personal data will be stored, indicated in such a way as to leave no doubt as to what retention period applies to the processing of which data and for what purpose;
 - o The legal basis for each processing, indicated in such a way as to leave no room for doubt on which legal basis applies to the processing of which data and for what purpose;
 - o The right to object to processing for direct marketing purposes;
 - o In what circumstances the customer is obliged to provide his tax identification number and that this follows from Spanish law;
 - o In accordance with Article 13(2)(d) GDPR, they must inform about the right to lodge a complaint with a supervisory authority.
- Not requesting the customer's tax identification number unless the controller has obtained a valid consent or is required by law to process this data in order to include it in an invoice

Give a period of three months from the date of publication of the decision to comply with the above measures.

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n^u] So o t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	23/25	



In addition, any measures that may be taken in the decision terminating the procedure, in relation to the processing activities, the information provided to data subjects and the exercise of the rights, shall apply in all the countries of the European Union in which the requested party operates.

It should be noted that failure to comply with the requests made by that body may be regarded as a serious administrative infringement because it 'does not cooperate with the supervisory authority' in the light of the requests made, and such conduct may be assessed at the time of the opening of an administrative procedure leading to a fine.

Therefore, in accordance with the above, the Director of the Spanish Data Protection Agency RESUELVE:

FIRST: On the basis of the complaint received through the IMI system set out in the background and, in accordance with the facts and points of law contained in this act, adopt a draft decision on the penalty proceedings against FURNISHYOURSPACE, S.L., which will lead, where appropriate, to the adoption of the following agreements:

1. Penalise the entity FURNISHYOURSPACE, S.L., for an infringement of Articles 12 and 13 of the GDPR, which is defined in Article 83 (5) (b) and classified as very serious for the purposes of limitation in Article 72 (h) of the LOPDGDD, with a fine of EUR 3,000 (three thousand euros).
2. Penalise the entity FURNISHYOURSPACE, S.L., for an infringement of Article 21 (4) GDPR, referred to in Article 83 (5) (b) and classified as very serious for the purposes of limitation in Article 72 (k) of the LOPDGDD, with a fine of EUR 1,000 (thousand euros).
3. Penalise the entity FURNISHYOURSPACE, S.L., for an infringement of Article 5 (1) (a) and (6) of the GDPR, laid down in Article 83 (5) (a) and classified as very serious for the purposes of limitation in Article 72 (1) (b) of the LOPDGDD, with a fine of EUR 2,000 (two thousand euros).
4. To request FURNISHYOURSPACE, S.L. to comply, within three months, with the rules on the protection of personal data, the processing operations which it carries out, the information provided to its clients, to the extent stated in Article VII of Law. This should also be implemented in all the countries of the European Economic Area in which FURNISHYOURSPACE operates.

SECOND: In accordance with the procedure laid down in Article 60 of the GDPR, this draft penalty decision is transmitted through the IMI system without delay to the supervisory authorities concerned, informing them that, if no objections are raised within four weeks of the consultation, the necessary decision on the penalty procedure will be adopted, in which the infringements referred to in the

C/Jorge Juan, 6
28001 — Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n^u] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	24/25	



Legal grounds, with the imposition of the sanctions and measures indicated.

In accordance with Article 123 of Law 39/2015 of 1 October on the Common Administrative Procedure of Public Administrations (LPACAP), interested parties may, in accordance with Article 46 of Law 29/1998 of 13 July on the Common Administrative Procedure of Public Administrations, lodge an appeal for reconsideration with the Director of the Spanish Data Protection Agency within one month of the date of notification of this decision or a direct administrative appeal before the Administrative Chamber of the Spanish Data Protection Agency, in accordance with the additional provision of the Spanish Data Protection Law, in accordance with the date of notification of this decision or a direct administrative appeal before the Administrative Chamber of the Fourth Section of the Audiencia, in accordance with the additional provision of the Spanish Data Protection Law, in accordance with Article 25 (5), as from the day following the notification of this decision or a direct administrative appeal before the Administrative Chamber of the National High Court, in accordance with the Spanish Law, in accordance with (1).

Finally, we would point out that, in accordance with Article 90.3 (a) of the LPACAP, the final administrative decision maybe suspended as a precautionary measure if the person concerned indicates his intention to bring an administrative appeal.

Mar España Martí
Director of the Spanish Data Protection Agency

C/Jorge Juan,
6 28001 —
Madrid

www.aepd.es
sedeagpd.gob.es

Secure Verification Code:	[REDACTED]	Date	21/07/2021	n ^u]] So 0 t
Legislation	This document incorporates the electronic signature recognised in accordance with Law 6/2020 of 11 November regulating certain aspects of electronic trust services and Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.			
Signed by	Director — Mar España Martí			
Verification URL	https://sedeagpd.gob.es/validar-csv/	Page	25/25	

