

□ Procedure No.: PS/00454/2020

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on the following

BACKGROUND

FIRST: MUNICIPAL INSTITUTE OF CONSUMPTION OF ***LOCALITY.1 (hereinafter, the claimant) dated June 26, 2020 filed a claim with the Agency Spanish Data Protection.

The claim is directed against BEST HOME 2000, S.L. (hereinafter, the claimed).

The reasons on which the claim is based are the non-compliance of the website ***URL.1 to lack of Privacy Policy

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), with reference number E/06544/2020, transfer of said claim to the claimed, on August 13, 2020, to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the data protection regulations, without the date recorded answer in this regard.

THIRD: On February 11, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent presented on February 17, 2021, brief of allegations in which, in summary, it stated that it has already updated the data protection policy of its web page, sending a link to verify it.

FIFTH: On February 24, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the previous investigation actions, E/06544/2020, as well as the documents provided.

SIXTH: On March 1, 2021, a resolution proposal was formulated, proposing that is imposed on BEST HOME 2000, S.L., with CIF B88312194, for an infringement of the article 13 typified in article 83.5 of the RGPD, a sanction of warning.

SEVENTH: On March 10, 2021, arguments are presented to the proposal of resolution, noting that the errors indicated on its website have been corrected.

PROVEN FACTS

FIRST: A claim is filed for the alleged breach of the regulations of data protection on the website ***URL.1.

SECOND: Allegations are presented on February 17, 2021, sending a link to access your new data protection policy on your website, to certify that It already complies with current regulations on this matter.

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THIRD: On March 1, 2021, it is verified that in the privacy policy of the site website object of this claim indicates the following:

“BEST HOME 2000 S.L, informs users that the processing of data of a personal nature that is made through this website is subject to the provisions by current legislation on data protection, Organic Law 15/1999, of Protection of Personal Data (hereinafter, LOPD) and other regulations of application, in order to guarantee the privacy of the users at all times, as well as such as the secrecy and security of your personal data.

This privacy policy may vary depending on the possible changes that are made.

originate, either in terms of content and organization of the website itself as of regulatory nature, in accordance with the current legislation on the matter in each moment.

The access and use of this website implies the acceptance of this privacy policy. privacy detailed below.

In compliance with the provisions of article 5 of the LOPD, BEST HOME 2000 S.L informs that the collection and processing of personal data that is carried out through this website has the sole purpose of providing the services provided in it, as well as those required by the users, and will go accompanied by the mandatory duty of information defined in article 5 of the Law Organic 15/1999, of December 13, Protection of Personal Data.

The personal data that is provided by users by email, as well as those that they provide through the different forms or requests enabled for this purpose on this website will be treated in the terms described in the informative clauses that appear at the bottom of the same, in which, as provided in the mentioned article 5 of Organic Law 15/1999, of December 13, on the Protection of Personal Data, they will be informed of the existence of a file or processing of personal data, the purpose of its collection and the recipients of the information, of the possible transfers of data, of the identity and address of the person responsible for the file, as well as the possibility of exercising the rights of access, rectification, cancellation and opposition to your data and how to exercise them.

The data requested from users will be strictly necessary, adequate and pertinent for the purpose for which they are collected, indicating in the time of collection, its voluntary or mandatory nature, as well as the consequences of obtaining them or the refusal to supply them.

These data will be incorporated into the corresponding personal data files.

registered with the Spanish Agency for Data Protection whose owner and person in charge is

BEST HOME 2000 S.L.

Users are also informed that their data will be treated with the measures of

adequate security in accordance with the provisions of article 9 of the Organic Law

15/1999, of December 13, Protection of Personal Data and Title VIII

of Royal Decree 1720/2007, of December 21, which approves the Regulation of

development of Organic Law 15/1999, of December 13, on Data Protection of

Personal character.

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Likewise, BEST HOME 2000 S.L will guarantee the confidentiality of the data, which will not

will be communicated to third parties outside the cases necessary to manage the services

provided through this website as well as those provided for in the regulations

valid.

Users may exercise their rights of access, rectification, cancellation and

Opposition to your data by contacting, in the legally established manner, at: CALLE

***ADDRESS.1 - ***MUNICIPALITY.1 - ***TOWN.1.”

FOURTH: On April 26, 2021, the privacy policy of the respondent is the

Next:

"PRIVACY POLICY

Who is responsible for processing your data?

Company: BEST HOME 2000, S.L

Address: C/ ***ADDRESS.1, MUNICIPALITY.1, ***LOCATION.1

Email: ***EMAIL.1

Phone: ***PHONE.1

For what purpose do we process your personal data?

We process the personal data you provide us with for the following purposes:

a) The sending of commercial communications of our products or services, unless you express your will against it by any means.

Authorization to process your data for this purpose is voluntary and refusal would only as a consequence the fact that you would not receive commercial offers from our products or services.

b) The resolution of queries or the preparation of budgets that you may request from us. through the forms. We reserve the right to respond to inquiries or requests of unpaid budgets.

How long will we process your data? Data for sending commercial communications of our products or services will be kept indefinitely, until, where appropriate, you express your wish to delete them.

The data provided for the exclusive purposes of resolving queries or preparation of budgets, in case you do not want to receive commercial communications, They will be kept for 2 years.

What is the legitimacy for the treatment of your data?

The legitimacy to treat your data for the resolution of queries, preparation of budgets and carry out commercial actions is based on the consent given request, and you can revoke it at any time.

The withdrawal of said consent will not affect in any case the execution of the contract, but data processing for this purpose carried out beforehand will not lose its legality due to the fact that the consent has been revoked.

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To which recipients will your data be communicated?

The data will not be communicated to third parties.

What are your rights when you provide us with your data?

Anyone has the right to obtain confirmation as to whether we are processing data

personal that concern you, or not.

Interested persons have the right to:

1. What rights do you have in relation to the processing of your data?

- Right to request access to your personal data.
- Right to request its rectification or deletion.
- Right to request the limitation of your treatment.
- Right to oppose the treatment.
- Right to data portability.
- Right to withdraw the consent given.

Access/rectification and deletion: interested persons have the right to access their

personal data, as well as to request the rectification of inaccurate data or, where appropriate,

request its deletion when, among other reasons, the data is no longer necessary for the

execution of the contract.

Limitation: in certain circumstances, the interested parties may request the limitation

of the processing of your data, in which case we will only keep them for the

exercise or defense of claims.

Opposition: interested parties may oppose the processing of their data. BEST HOME

2000, S.L will stop processing the data, except for legitimate, compelling reasons, or the exercise or defense of possible claims, and we will keep them duly blocked during the corresponding period while the legal obligations persist. Equally, the interested party has the right to oppose the adoption of individual decisions automated that could produce legal effects or significantly affect you.

Portability: interested persons can request and receive the data that concerns them and that you have provided us or request that we send them to another data controller of your choice, in a structured format of common use and mechanical reading.

2. When will we respond to your request?

We will respond to your requests as soon as possible and, in any case, within the one month from receipt of your request. This period may be extended for another two months if necessary, taking into account the complexity and number of requests. The responsible will inform the interested party of the extension within the first month from the request.

3. Do you have the right to withdraw your consent?

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The interested party has the right to withdraw the consent given at any time, without that this affects the legality of the treatment based on the consent given in the time of your subscriptions or data contribution.

4. Where should you go to exercise your rights?

For the exercise of their rights, the interested party may send a letter with all their data, including photocopy of DNI or passport and indication of the right that is exercised

by contacting BEST HOME 2000, S.L Address C/ ***ADDRESS.1,***MUNICIPALITY.1,
***LOCALIDAD1, or by sending an email to ***EMAIL.1.

5. Do you have the right to claim?

When you have not obtained satisfaction in the exercise of your rights, you have the right to
file a claim with the National Control Authority, for these purposes you must contact
before the Spanish Agency for Data Protection. www.aepd.es

Data of minors

If the user is a minor, it is required that they have the prior consent of
their parents or guardians before proceeding with the inclusion of their personal data in the
web forms. BEST HOME 2000, S.L disclaims any liability for
non-compliance with this requirement. Security. BEST HOME 2000, S.L adopts and updates
its organizational and technical security measures so that the treatment of
personal data that it makes is in accordance with the requirements of the current legislation in
national and European data protection.

Electronic communications.

In compliance with Law 34/2002, of July 11, on Services of the Society of the
Information and Electronic Commerce, we inform you that the email addresses
email may be used to send information about our organization.

If you do not wish to receive information or want to revoke the consent granted for the
treatment of your data, please do so in the manner indicated above or by contacting the
following email address besthome***LOCALIDAD.1@gmail.com

Modifications to this data protection information. BEST HOME 2000, S.L
reserves the right to modify its Data Protection Policy in accordance with the
applicable law at all times. Any modification of said Policy will be
posted on the website.”

FIFTH: This Agency has verified that the respondent has proceeded to correct the

errors indicated on its website.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency for

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD and in the

art. 47 and 48.1 of LOPDGDD.

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II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of

April 27, 2016, regarding the protection of natural persons with regard to the

processing of personal data and the free circulation of these data (Regulation

General Data Protection, hereinafter RGPD), under the heading "Definitions",

provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by means of a

identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations performed on data

personal information or sets of personal data, whether by automated procedures or

no, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with these definitions, the collection of personal data personal through forms included in a web page constitutes a treatment of data, with respect to which the data controller must comply with the provided for in article 13 of the RGD.

In relation to this matter, it is noted that the Spanish Data Protection Agency has at the disposal of citizens, the Guide for the fulfillment of the duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carry out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

“1. When personal data relating to him is obtained from an interested party, the person in charge of the treatment, at the moment in which these are obtained, will provide you with all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of his representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment. treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
- e) the recipients or categories of recipients of the personal data, if applicable;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision on the adequacy of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or the article 49, paragraph 1, second paragraph, reference to adequate guarantees or

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appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to ensure fair data processing and transparent:

a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;

b) the existence of the right to request access to the data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any moment, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to which refers to article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent in which the interested party already has the information”.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to which refers to the following section and indicating an electronic address or other means that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for profiling, the

basic information will also include this circumstance. In this case, the affected must be informed of their right to oppose the adoption of individual decisions

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automated that produce legal effects on him or significantly affect him in any way similarly, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of powers corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period;

“i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case

particular;"

Article 83.5.b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered mild has:

"They are considered minor and the remaining infractions of a legal nature will prescribe after a year. merely formal of the articles mentioned in sections 4 and 5 of article 83 of the Regulation (EU) 2016/679 and, in particular, the following:

a)

Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

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In this case, it is taken into account that the respondent collects personal data from the users who fill in the form included in the website ***URL.1 without provide them, prior to their collection, with all the information regarding data protection provided for in article 13 of the aforementioned RGPD.

This Agency has verified that the person claimed has recently proceeded to his update.

Despite this, it should be noted that the sanction of a warning for the data data that were collected without properly informing clients, which is

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constituting an infringement of article 13 of the RGD. However, it will be a penalty of warning without the need to adopt measures on the part of the defendant, since it has already been proceeded by this to the generation of an adequate privacy policy.

SAW

This infraction is sanctioned with a warning, in accordance with article 58.2.b) of the RGD, considering that the administrative fine that could be levied in accordance with the provided in article 83.5.b) of the RGD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to data processing personal, since there is no record of the commission of any previous infraction in terms of Data Protection.

In view of the foregoing, the Director of the Spanish Agency for Data Protection

RESOLVES:

FIRST: IMPOSE BEST HOME 2000, S.L., with CIF B88312194, for an infraction of article 13 of the RGD, typified in article 83.5 of the RGD, a sanction of warning.

SECOND: NOTIFY this resolution to BEST HOME 2000, S.L.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the

day following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National High Court, with
in accordance with the provisions of article 25 and section 5 of the fourth additional provision
of Law 29/1998, of July 13, regulating the Contentious-administrative Jurisdiction,
within two months from the day following the notification of this act,
according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be
provisionally suspend the firm resolution in administrative proceedings if the interested party
states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to
the Spanish Agency for Data Protection, presenting it through the Registry
Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through
any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1
october. You must also transfer to the Agency the documentation that accredits the
effective filing of the contentious-administrative appeal. If the Agency did not have
knowledge of the filing of the contentious-administrative appeal within two
months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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