

□ Procedure No.: PS/00542/2021

## RESOLUTION OF THE PUNISHMENT PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before  
D.A.A.A. with NIF.: \*\*\*NIF.1, owner of the web pages: \*\*\*URL.1; \*\*\*URL.2 and  
\*\*\*URL.3, (hereinafter, "the claimed party"), by virtue of the claim presented  
by GIROPES, S.L., (hereinafter, "the claimant party"), for the alleged violation  
of data protection regulations: Regulation (EU) 2016/679, of Parliament  
European and Council, of 04/27/16, regarding the Protection of Natural Persons  
regarding the Processing of Personal Data and the Free Circulation of  
these Data (GDPR); Organic Law 3/2018, of December 5, on the Protection of  
Personal Data and Guarantee of Digital Rights (LOPDGDD), and in accordance with  
the following:

### BACKGROUND:

FIRST: On 11/10/20, you had entry into this Agency, written claim,  
presented by GIROPES, S.L. (hereinafter, "the claimant party"), in which, between  
others indicated:

"We want to report the three websites added for non-compliance with the LGPD / LOPD.  
Every time we have tried to contact by form we do not see anywhere the  
property of the websites."

SECOND: On 01/22/21, by the Director of the Spanish Agency for  
Data Protection agreement is issued for the admission of processing of the claim  
presented, in accordance with article 65 of the LPDGDD, when assessing possible  
reasonable indications of a violation of the rules in the field of competences  
of the Spanish Agency for Data Protection.

THIRD: On 09/22/21, the General Subdirectorate for Data Inspection

addressed an informative request to the claimed party, under the powers of

investigation granted to the control authorities in article 57.1 of the RGPD.

According to a certificate from the State Post and Telegraph Society, the request sent

to the claimed party, on 09/22/21 through the SICER service, it was returned to

destination with the message "absent" and "not withdrawn from the List service", the day

10/13/21.

FOURTH: On 11/10/21, the following characteristics are verified, regarding

the "Privacy Policy" and regarding the "Cookies Policy", on the web pages:

\*\*\*URL.1

1.- Website:

1.a).- Regarding the processing of personal data:

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Through the link exists at the top and bottom of the page, <<contact>>, the

web redirects the user to a new page, \*\*\*URL.4, where they can enter

personal data such as name or email.

It is verified that, once the personal data has been entered in the form,

there is a privacy policy acceptance box, being able to send the personal data

directly by clicking on <<send>>. Nor does it exist, on this page of the

form no link that can redirect the user to the "Privacy Policy".

1.b).- About the Privacy Policy:

There is a link, at the bottom of the main page, <<Privacy Policy>>

which redirects to a new page, \*\*\*URL.5 where information about

the principles applicable to the processing of personal data; data categories that are treated; the legal basis for the processing of personal data; the ends of treatment to which the personal data is intended; the retention periods of the personal information; the recipients of the personal data or about the rights derived from data processing.

However, it is noted that no information is provided on the identification of the person responsible for the processing of personal data in the privacy policy or anywhere else on the web.

#### 1.c).- About the Cookies Policy:

When entering the web for the first time, without accepting cookies or performing any action on the page, it has been verified that cookies that are not technical or necessary. Third-party cookies are not used either.

There is a banner about cookies on the main page of the website, with the following message:

"This website uses cookies. If you continue browsing we understand that you agree agreement and accept its use, more information about the <<cookies policy>>  
<<Accept>>

If you choose to accept cookies, using the <<accept>> option you check that cookies that are not technical or necessary are not used.

If you choose to access the "Cookies Policy", the web redirects to a new page

\*\*\*URL.6, where information is provided on what cookies are, what types of cookies exist, as well as the management of cookies through browsers installed in terminal equipment.

\*\*\*URL.2

#### 2.- Website:

2.a).- Regarding the processing of personal data:

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Through the link exists at the top and bottom of the page, <<contact>>, the web redirects the user to a new page, \*\*\*URL.7, where they can enter personal data such as name or email.

It is verified that, once the personal data has been entered in the form, there is a privacy policy acceptance box, being able to send the personal data directly by clicking on <<send>>. Nor does it exist, on this page of the form no link that can redirect the user to the "Privacy Policy".

#### 2.b).- About the Privacy Policy:

There is a link, at the bottom of the main page, <<Privacy Policy>> which redirects to a new page, \*\*\*URL.8 where information about the principles applicable to the processing of personal data; data categories that are treated; the legal basis for the processing of personal data; the ends of treatment to which the personal data is intended; the retention periods of the personal information; the recipients of the personal data or about the rights derived from the processing of personal data.

However, it has been observed that no information is provided on the identification of the person responsible for the processing of personal data in the policy privacy policy or anywhere else on the web.

#### 2.c).- About the Cookies Policy:

When entering the web for the first time, without accepting cookies or performing any action on the page, it has been verified that cookies that are not technical or

necessary.

There is a banner about cookies on the main page of the website, with the following message:

"This website uses cookies. If you continue browsing we understand that you agree agreement and accept its use, more information about the <<cookies policy>>  
<<Accept>>

If you choose to accept cookies, using the <<accept>> option you check that cookies that are not technical or necessary are not used.

If you choose to access the "Cookies Policy", the web redirects to a new page

\*\*\*URL.9 where information is provided on what cookies are, what types of cookies exist, as well as the management of cookies through browsers installed in terminal equipment.

\*\*\*URL.3

3.- Website:

3.a).- Regarding the processing of personal data:

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Through the link exists at the top and bottom of the page, <<contact>>, the web redirects the user to a new page, \*\*\*URL.10 , where they can enter personal data such as name or email.

It is verified that, once the personal data has been entered in the form, there is a privacy policy acceptance box, being able to send the personal data directly by clicking on <<send>>. Nor does it exist, on this page of the

form no link that can redirect the user to the "Privacy Policy".

## 2.b).- About the Privacy Policy:

There is no link on the web that redirects to the "Privacy Policy" or "notice legal".

## 3.c).- About the Cookies Policy:

When entering the web for the first time, without accepting cookies or performing any action on the page, it has been verified that cookies that are not technical or necessary.

There is a banner about cookies on the main page of the website, with the following message:

"This website uses cookies. If you continue browsing we understand that you agree agreement and accept its use, more information about the <<cookies policy>>

<<Accept>>

If you choose to accept cookies, using the <<accept>> option you check that cookies that are not technical or necessary are not used.

If you choose to access the "Cookies Policy", the web redirects to a new page

\*\*\*URL.11 where information is provided on what cookies are, what types of cookies exist, as well as the management of cookies through browsers installed.

FIFTH: On 11/15/21, in view of the facts exposed, the Director of the Spanish Agency for Data Protection, agreed to initiate a sanctioning procedure against the party claimed for the infringement of article 6.1 of the RGPD, when collecting data of the users of the web pages of its ownership without having obtained prior free and informed consent, with an initial penalty of 1,000 euros and for the infringement of article 13 of the RGPD, when verifying that they were collected personal data of the users of the web pages without providing the information

necessary on the subsequent processing of your data, with a penalty of 1,000 euros.

In addition to the initial sanctions and in accordance with article 58.2 of the RGPD, indicated that the corrective measures that could be imposed on the entity would consist of ordering him to take the necessary measures on the web pages of its ownership to adapt it to current regulations with the inclusion of a mechanism that would enable the users of the same to provide their consent to the processing of your personal data freely and voluntarily and

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complete the "Privacy Policy" of its web pages with the inclusion of the required information as established in article 13 of the RGPD.

With regard to the "Cookies Policy" of the web pages, in accordance with the evidence available at that time, it was considered that it did not contradict with the provisions of article 22.2 of the LSSI.

SIXTH: Notified to the respondent party, the initiation of the file on 12/13/21, to today's date, there is no record that the respondent has made any kind of allegations to the agreement to initiate this sanctioning procedure.

In this sense, article 64.2.f) of the LPACAP -provision reported by the claimed in the agreement to open the procedure- establishes that, "if no they make allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the responsibility imputed, may be considered a resolution proposal."

In the present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the current regulations attributed to the defendant and the sanction that could be imposed. Therefore, taking into consideration that the respondent has not made allegations to the agreement to start the file and in accordance with the provisions of article 64.2.f) LPACAP, the aforementioned Initiation agreement is considered in this case resolution proposal.

## PROVEN FACTS

It has been verified as in the three websites claimed (\*\*URL.1; \*\*URL.2 and \*\*URL.3 the following characteristics exist in regards to its "Privacy Policy" vacidad" and its "Cookies Policy":

a).- On the non-existence of an acceptance box, which generates a record of consent in the forms of the websites.

Once the personal data has been entered in the "contact" form, there is no chair of acceptance of the privacy policy, being able to send personal data directly by clicking on <<send>>, therefore, there is no possibility of realizing consent through a clear affirmative act or the possibility of carrying out a specific consent for each treatment purpose.

b).- About the "Privacy Policy" of the websites:

In the three claimed web pages, personal data can be obtained from the users through the "contact" tab, such as name and email, but there is no acceptance box for the privacy policy in any of the three consulted pages, being able to send personal data directly by clicking in <<send>>. Nor is there, on this page of the form, any link that can redirect the user to the "Privacy Policy".

About the "privacy policies", on the pages: \*\*URL.1 and \*\*URL.2 there is a link, at the bottom of the main page that redirects the user to the "Privacy Policy".



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Privacy” that contain: the purpose of the treatment; access rights, limitation, portability, opposition, rectification and cancellation and the right to present a claim before the Spanish Data Protection Agency; conservation and the legitimacy but the identity of the person in charge or the right to revoke the consent.

On the other hand, on the \*\*\*URL.3 website there is no mention of the “Privacy Policy”. Privacy”, nor any link that may redirect to it.

c).- About the "Cookies Policy" of the website (About the use of cookies technical or necessary):

when entering the main page and without performing any action on it and without accept cookies, only technical or necessary cookies were used. Also it was found that by continuing to browse the pages or by accepting the policy of cookies, the claimed websites still did not use cookies that were not technical or necessary.

## FOUNDATIONS OF LAW

I.- Competition:

- About the "Privacy Policy":

It is competent to initiate and resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that art 58.2 of the RGPD and arts. 47, 64.2 and 68.1 of the LOPDGDD Law.

- About the Cookies Policy:

It is competent to initiate and resolve this Sanctioning Procedure, the Director of

the Spanish Agency for Data Protection, in accordance with the provisions of the art. 43.1, second paragraph, of Law 34/2002, of July 11, on Services of the Information Society and Electronic Commerce (LSSI).

II.- On the non-existence of an acceptance box, which generates a record of the con-  
feeling in the web forms.

Article 6.1.a) of the RGPD, establishes, on the legality of data processing personal, that the treatment of these will only be lawful if at least one of the the conditions indicated in point 1, among which are: a) the interested party gave your consent to the processing of your personal data for one or more specific purposes (...)".

Consent must be given through an affirmative, informed and free act The silence absence, pre-ticked boxes, or inaction are not considered "having given a consent." implicit sentiment", for the treatment of personal data. Therefore, it is from mandatory compliance that to obtain the consent of the users they are provided with have a blank box or similar mechanism where you can give the consent of an affirmative, informed and free way.

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Before providing personal data and giving consent to their processing,

It would be desirable that the interested party be recommended to read and understand the privacy policy.

emptiness Also, it would be considered good practice to remind the user of their choice

of permissions and request a confirmation of your consent, in the same way that

many times a second confirmation is requested when the user unsubscribes from

an online service or advertising communications.

Thus, article 72.1.b) of the LOPDGDD considers it very serious, for the purposes of prescription, "The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation".

This infraction may be sanctioned according to the provisions of article 83.5.b) of the RGPD, where it is established that: "Infringements of the following provisions are shall be sanctioned, in accordance with section 2, with administrative fines of 20,000,000 EUR maximum or, in the case of a company, an amount equivalent to 4% as a maximum of the overall annual total turnover of the financial year above, opting for the highest amount: a) the rights of the interested parties to tenor of articles 12 to 22".

The balance of the circumstances contemplated, with respect to the infraction committed, by violating the provisions of its article 6.1 of the RGPD, it allows to set a sanction of 1,000 euros, (one thousand euros).

III.- About the "Privacy Policy" of the websites:

Article 13 of the RGPD establishes the information that must be provided to the interested in the moment of obtaining your personal data:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide: a) the identity and contact details of the person in charge and, where appropriate, of their representative; b) the contact details of the data protection officer, in his case; c) the purposes of the treatment to which the personal data is destined and the basis legal treatment; d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of personal data, if any; 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 an adequacy decision of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or the fact that have lent.

2. In addition to the information mentioned in section 1, the person in charge of the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair 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 period; b) the existence of the right to request access to data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its

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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 the Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal; d) the right to file a claim with a control authority; e) if the communication of personal data is a requirement legal or contractual, or a necessary requirement to enter into a contract, and if the The interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of decisions

you automate, including profiling, referred to in article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party”.

In the present case, it is verified that in the “Privacy Policy”, of the web pages

\*\*\*URL.1 and \*\*\*URL.2, the data controller is not identified

personal information obtained, and on the \*\*\*URL.3 website there is no such thing as “Privacy Policy”.

Privacy” therefore, in accordance with the evidence obtained, the facts

exposed suppose the violation of article 13 of the RGPD.

Regarding this, article 72.1.h) of the LOPDGDD, considers it very serious, for

of prescription, “the omission of the duty to inform the affected party about the treatment

of your personal data in accordance with the provisions of articles 13 and 14 of the RGPD”.

This infraction may be sanctioned according to the provisions of article 83.5.b) of the

RGPD, where it is established that: “Infringements of the following provisions are

shall be sanctioned, in accordance with section 2, with administrative fines of 20,000,000

EUR maximum or, in the case of a company, an amount equivalent to 4%

as a maximum of the overall annual total turnover of the financial year

above, opting for the highest amount: a) the rights of the interested parties to

tenor of articles 12 to 22”.

The balance of the circumstances contemplated, with respect to the infraction committed

by violating the provisions of article 13, allows a fine of 1,000 euros to be set,

(a thousand euros).

IV-Total sanction:

Therefore, in accordance with the criteria set out in the previous points, the sanction

total to be imposed is 2,000 euros (two thousand euros), for infractions of the articles,

6.1 of the RGPD (1,000 euros); and article 13 of the RGPD (1,000 euros).

In accordance with the foregoing, by the Director of the Spanish Agency for

Data Protection,

RESOLVES:

FIRST:

web:\*\*\*URL.1; \*\*\*URL.2 and \*\*\*URL.3, the following sanctions:

IMPOSE A.A.A.

with NIF.: \*\*\*NIF.1

, headline pages

a).- Penalty of 1,000 euros (one thousand euros) for the infringement of article 6.1 of the RGPD,

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b).- Penalty of 1,000 euros (one thousand euros) for the infringement of article 13 of the RGPD,

SECOND: That in accordance with article 58.2 of the RGPD, the corrective measure to

to impose consists in ORDERING him that, within a period of one month, counting from the

notification of this resolution, take the necessary measures to adapt the policy

of privacy to what is stipulated in the current regulations, that is, to the RGPD and to the

LOPDGDD and the inclusion of a mechanism that enables users of the same

provide your consent to the processing of your personal data freely and

informed.

THIRD: NOTIFY this resolution to A.A.A.

FOURTH: WARN the sanctioned party that the sanction imposed must make it effective

Once this resolution is executed, in accordance with the provisions of the

Article 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, within the voluntary payment period indicated in the Article 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17 December, by depositing it in the restricted account N° ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency for Data Protection in the Bank CAIXABANK, S.A. or otherwise, it will be collected in executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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 (article 48.6 of the LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, the interested parties may optionally file

appeal for reconsideration before the Director of the Spanish Data Protection Agency

within one month from the day following the notification of this

resolution or directly contentious-administrative appeal before the Chamber of the

Contentious-administrative of the National Court, in accordance with the provisions of the

Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulatory of the Contentious-administrative Jurisdiction, in the term of

two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

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writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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