

□ Procedure No.: PS/00357/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

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

The claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are non-compliance with the regulations of  
data protection on the website \*\*\*URL.1.

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/06538/2020, transfer of  
said claim to the claimed, on August 14, 2020, to proceed to  
its analysis and inform this Agency within a month of the actions carried out  
carried out to adapt to the requirements set forth in the regulations for the protection of  
data, with no response to date.

THIRD: On November 26, 2020, the Director of the Spanish Agency  
of Data Protection agreed to initiate a sanctioning procedure against the claimed, 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 submitted a written  
allegations on December 14, 2020 in which, in summary, it stated that in the  
document "Legal Notice" contains extensively what is established in the regulations of  
Data Protection.

Likewise, in relation to the contact form, in which data is collected personal, it is indicated that «the link "Privacy Policy" really directs the document "Legal Notice" that due to its content, as already mentioned, responds more broadly to the requirements of the data protection regulations than the document "Privacy Policy"».

In short, the information provided to users, both in the general content of the web page as well as in the contact form itself, comply adequately with all the requirements established by law, without non-compliance observed in none of the points regulated in article 13 of the RGPD.

FIFTH: On December 12, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the [www.aepd.es](http://www.aepd.es)

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2/7

previous investigative actions, E/06790/2020, as well as the documents provided by the claimant.

SIXTH: On January 19, 2021, a resolution proposal was formulated, proposing that A.A.A. with NIF \*\*\*NIF.1 in accordance with provided for in article 58.2.b) of the RGPD, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The breach of the data protection regulations in the

website \*\*\*URL.1; specifically because the information provided to customers on the processing of personal data does not meet the requirements established in the GDPR.

SECOND: The respondent states that the information provided to the users of the website that is the subject of this claim meets all the requirements established in article 13 of the RGD.

THIRD: It is verified that the information included in the website \*\*\*URL.1 complies all the requirements demanded in article 13 RGD in response to the requirement of this Agency.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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 in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGD), under the rubric "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 an 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;

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3/7

2) “processing”: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling 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, a precept that has moved since May 25

of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection

of Personal Data.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty

to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying 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 responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- 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 delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the 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 the categories of recipients of the personal data, in their case;
- f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for 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 it is not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data relating 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 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 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 supervisory authority;

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

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions 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 on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that 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 referred to in the following section and indicating an electronic address or other medium 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 the preparation of profiles, the basic information will also include this circumstance. In this In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

IV

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5/7

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 corrective powers in the event of an infraction of the precepts of the GDPR.

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 operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;”

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

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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 paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a)

Failure to comply with the principle of transparency of information or the right

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679.”

v

In this case, it is taken into account that the person claimed collected the personal data

of 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.

Specifically, the content of points 2 to 7 of the Legal Notice had to be updated.

in accordance with the new personal data protection regulations

modifying the reference to Organic Law 15/1999 by Organic Law 3/2018, of

Protection of Personal Data and guarantee of digital rights.

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6/7

It has been verified that the information contained in the Privacy Policy document

privacy has been modified adapting to the data protection regulations

valid.

SAW

Thus, in accordance with the available evidence, the facts

exposed, specifically, that since the month of May 2018 the information provided to users and customers about the processing of their data, constitute, on the part of the defendant, an infringement of the provisions of article 13 of the GDPR.

This infraction will be sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of personal data, since there is no record of the commission of any previous infraction in matter of data protection.

Likewise, since the adaptation of the information offered to the users whose personal data is collected from them to the requirements contemplated in article 13 of the RGPD, it is not necessary to make a request some.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A. with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to A.A.A. with NIF \*\*\*NIF.1.

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 month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, 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 a period of two months from the day following the notification of this act, as provided in 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, may provisionally suspend the firm resolution in administrative proceedings if the

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7/7

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 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.

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