

□ File No.: PS/00335/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 02/17/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed party), for lacking the website ***URL.1 of a Policy of
Privacy appropriate to Regulation (EU) 2016/679, of the European Parliament and of the
Council, of April 27, 2016, regarding the protection of natural persons in relation to
regarding the processing of personal data (hereinafter, RGPD).

The claim indicates the following, in relation to the matter of protection of
data:

“That in no section of the website, that is, neither in legal notice, nor in privacy nor
in conditions of purchase the owner of the same appears, neither the address, nor the CIF for what
that it is impossible for the consumer citizen to contact the seller
in case of discrepancy as is my case”.

Based on the foregoing, the Privacy Policy contained in the ***URL.1 website is not
conforms to the personal data protection regulations, since it does not
provides the user with clear and complete information about their treatment. Next to the
claim provides:

- Proof of payment for the purchase made through the website

***URL.1.

- A copy of the two emails you sent to the address ***EMAIL.1,

where you claim the order made through the aforementioned website.

SECOND: In view of the facts denounced, the General Subdirectorate of

Data Inspection verified that the website ***URL.1 as of 03/24/2021

continued without adapting its Privacy Policy to the provisions of the RGPD. In this

sense, under the heading "Privacy Policy" the following is indicated: "By virtue of the

provided in Law 15/1999, of December 13, on the Protection of Character Data

Personal, we inform you that by completing this form your

personal data will be incorporated and will be treated in the files owned by

XXXXXXX, in order to manage, administer and maintain the Services provided and/or

or contracted, as well as to keep you informed, including by electronic means,

on matters relating to the activity of the Company and its services.

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In an independent paragraph, it adds: "You can exercise, at any time, the

rights of access, rectification, cancellation and opposition of your character data

staff by email addressed to ***EMAIL.1, always accompanying

a photocopy of your D.N.I."

Likewise, the Whois registry was accessed in which it appears as the registrant of the

website domain ***URL.1, ACENS TECHNOLOGIES, S.L.U, but in the

section "Legal notice" of the aforementioned website is indicated as the owner "XXXXXXX, in

Forward The Seller".

Prior to admitting this claim for processing, the Agency gave

transfer of it to the claimed on 04/08/2021, in accordance with article 65.4

of Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter LOPDGDD). The notification was

delivered through postal mail on 04/15/2021, as stated in the Notice of

delivery issued by Correos, without any reply having been received.

THIRD: On 06/23/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 07/30/2021 the General Subdirectorate for Data Inspection agreed to the

web page ***URL.1, being verified, on the one hand, that the claimed, after

having modified it, acknowledges being the owner of the website by indicating in the section "Notice

legal" that "The texts, images, sounds, animations, software and the rest of

contents included in this website are the exclusive property of The Seller (B.B.B.

with DNI ***NIF.1) or its licensors". On the other hand, the Privacy Policy of the website

continues to be the same as indicated in the "Facts" section, second point,

of this agreement.

With regard to the collection of personal data, on the website there are two

forms, contact and registration. The first of them allows any user

of the web page make the queries it deems appropriate, having to complete

for this, the corresponding form that collects as mandatory the name and

email, but not phone number. On the other hand, the form

registration only collects the personal data of those who want to convert

in clients, being mandatory to include in the "Personal Information" section the

name, surnames and email; as well as, in the "Address of

Billing", the phone number, address, city, postal code, country,

province and the NIF/CIF/NIE. Also, if you buy a product, you will also

collect data of a banking nature when having to enter the data of the credit card

credit/debit card or bank account.

FIFTH: On 08/12/2021, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of the RGD, typified in article 83.5 of the RGD.

SIXTH: There were two notification attempts of the agreement to initiate this sanctioning procedure through postal mail on 09/13/2021 and 09/14/2021, but they were "Returned to origin due to surplus (not withdrawn in the office)", as recorded in the notice issued by the Post Office.

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Finally, the notification was made through an announcement published in the Bulletin Official of the State on 09/29/2021 and a hearing period of TEN DAYS is granted SKILLFUL to formulate the allegations and present the evidence that it considers convenient, in accordance with the provisions of articles 73 and 76 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

SEVENTH: The respondent did not make allegations to the agreement to start the process.

Article 64.2.f) of Law 39/2015 - provision of which the party was informed claimed in the agreement to open the procedure - establishes that if they make allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the responsibility charged, 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 RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

EIGHTH: The agreement to initiate the procedure agreed in the fourth point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the information phase prior to the agreement of admission to processing of the claim.

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: A claim is filed for non-compliance with the regulations of data protection on the website ***URL.1.

SECOND: The Spanish Data Protection Agency has notified the claimant of the agreement to initiate this sanctioning procedure, but this has not presented allegations or evidence that contradicts the reported facts.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

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The Spanish Agency for Data Protection is competent to resolve this process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

Article 4 of the GDPR, 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 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;
- 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 the above definitions, data collection through forms included in a web page constitutes a data processing, in respect of which the data controller must give

compliance with the provisions of article 13 of the RGPD.

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 RGPD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, indicates that:

"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;

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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;

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.

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3. when the data controller plans further data processing

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 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

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:

"two. Each supervisory authority will have all of the following corrective powers listed below:

a) (...)

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

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c) (...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way 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 section 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:

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

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

v

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced in the term for it.

This Agency has verified that the behavior of the respondent is not in accordance with the data protection regulations, because its website ***URL.1 does not contain all the information required in article 13 of the RGPD, indicated in the legal basis

III.

Thus, the exposed facts constitute, on the part of the defendant, a
infringement of the provisions of article 13 of the RGD.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate
address a warning when collecting personal data from users to

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through forms and consider that the administrative fine that could fall with
in accordance with the provisions of article 83.5 b) of the RGD would constitute a burden
disproportionate to the one claimed, since there is no record of the commission of any
previous breach of data protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGD, in the
resolution is required to the claimed, as responsible for the treatment, the adequacy
of the information offered to users whose personal data is collected from the
themselves to the requirements contemplated in article 13 of the RGD, as well as the
provision of supporting evidence of compliance with what is required

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1, for an infraction of article 13 of the
RGD, typified in article 83.5 of the RGD, a warning.

SECOND: REQUIRE B.B.B., with NIF ***NIF.1, under the provisions of the
article 58.2 d) of the RGD, so that within ten business days from this act

of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the article 13 of the RGPD.

THIRD: NOTIFY this resolution to B.B.B..

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

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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-

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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 Data Protection Agency

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