

□ Procedure No.: PS/00062/2021

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00062/2021, instructed by the Spanish Agency for Data Protection to D. A.A.A., with NIF.: ***NIF.1 (hereinafter, "the person claims-da"), owner of the website: ***URL.1, by virtue of the claim filed by alleged violation of data protection regulations, and taking into account the following following:

BACKGROUND

FIRST: On 03/01/20, this Agency received a letter sent by D.

B.B.B., (hereinafter, "the complainant"), in which it indicated: "On the web ***URL.1 does not appear the data of those responsible for data files, nor does it appear neither a privacy policy nor the legal notice contains the corresponding data".

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 06/08/20, an informative request is addressed to the person claimed.

According to a certificate from the State Post and Telegraph Society, the requirement sent to the claimed entity, on 06/08/20, through the SICER service, it was returned to origin with the message "absent" on 06/15/20.

THIRD: by this Agency, checks are made on the Policy of Privacy, Legal Notice of the reported website, ***URL.1, checking the following characteristics in this regard:

A).- Regarding the processing of personal data on the website:

On the home page, through the <<contact>> link, located at the bottom of the same, is redirected to a form, ***URL.2, where personal data is collected from users, such as name and email. Before the form can be submitted, the user You must accept the <<privacy policy>>”

B).- About the "Privacy Policy" of the website:

Through the link <<Privacy Policy>>, existing on the contact page indicated above, as well as at the bottom of the main page, the website redirects to a new page, ***URL.3, information is provided on the responsible and owner of the website (owner, CIF, address, activity, and email); about the security of personal data obtained from users; About the conditions of use of the website; informs about the process of deregistration in the subscription and about the rights of revocation; is informed of the third parties with whom shares personal data and where the website is hosted.

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However, on the legal basis to which the web is adjusted, it is indicated that: "the page is GDPR compliant; to Organic Law 15/1999, of December 13, on the Protection of Personal Data and Royal Decree 1720/2007, of December 21, on Development Regulation of the LOPD and the LSSI Law 34/2002, of July 11, of Services of the Information Society and Electronic Commerce”.

FOURTH: On 02/19/21, the Director of the Spanish Agency for the Protection of Data agreed to open a sanctioning procedure for non-compliance with the provisions of the

article 13 of the RGPD with a sanction of “warning”, regarding the policy of privacy on the website.

SIXTH: Once the initiation agreement has been notified, the claimed person has not received any written statement of allegations at the initiation of the file, in the period granted to the effect.

Of the actions carried out in this procedure, of the information and do- documentation presented by the parties, the following have been accredited:

PROVEN FACTS

1º.- As indicated in the claim, in the ***URL.1 the data of the responsible, neither does the privacy policy appear nor does the legal notice contain the data corresponding.

2º.- As this Agency has been able to verify, the website in question can collect personal data of users, such as name and email.

In your “Privacy Policy”, the information you provide is referred to the deletion gada Organic Law 15/1999, of December 13, Protection of Character Data Personal and Royal Decree 1720/2007, of December 21, the Development Regulation llo of the LOPD.

FOUNDATIONS OF LAW

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II

Is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data (RGPD) recognizes each Control Authority and, as established in arts. 47, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD).

Article 64.2.f) of Law 39/2015, of the Common Administrative Procedure of the Public Administrations, of October 2, 2015, (LPACAP), provides that: "f) Indication of the right to formulate allegations and to be heard in the procedure and the deadlines for its exercise, as well as an indication that, in case of not making allegations the contents of the initiation agreement, it may be considered motion for a resolution when it contains a precise pronouncement about the imputed responsibility.

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In the present case, such requirements have been observed, since in the agreement of At the beginning, it was warned of the provisions of article 64.2.f) of the LPACAP, it was specified the presumed infraction committed together with its corresponding typification, is determined The amount of the sanction was determined in accordance with the graduation criteria taken into account based on the evidence obtained to that date, also reporting on the planned reductions on the amount set by virtue of the provisions of article ass 85 of the LPACAP.

In consideration of the foregoing and in accordance with the provisions of article 64.2.f) of the LPACAP, the initiation agreement is considered a Resolution Proposal, since it contained a precise pronouncement about the imputed responsibility tada and, after its notification in the form described in the antecedent of the fourth fact, the claimed has not made allegations to the same within the period granted for such purposes.

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It is reported that "the website does not comply with current regulations regarding the Protection of Data in its Privacy Policy".

III

In this sense, article 13 of the RGPD establishes the information that must be provide the interested party at the time of collecting their personal data.

For its part, article 99 of the RGPD, the entry into force and application of the new RGPD was, "twenty days after its publication in the Official Journal of the European Union (05/25/16)" and would be applicable as of May 25, 2018". Therefore, from 05/25/18, the LO was repealed. 15/1999, (LOPD), applying compulsorily, from that date, the current GDPR and from 12/07/18 the new LOPDGDD.

The known facts constitute an infraction, attributable to the defendant, for violation of article 13 of the RGPD, which establishes the information that must be provide the interested party at the time of collecting their personal data.

For its part, article 72.1.h) of the LOPDGDD considers it very serious, for the purposes 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 can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

However, Article 58.2) of the RGPD provides that: "Each supervisory authority will have all the following corrective powers indicated below: b) sanction any person responsible or in charge of the treatment with a warning when treatment operations have violated the provisions of this Regulation; (...); i) impose an administrative fine pursuant to Article 83,

in addition to or instead of the measures mentioned in this section, depending on the circumstances of each particular case”, therefore, the sanction that must correspond it is warning.

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

RESOLVE

NOTICE: to D. A.A.A., with NIF.: ***NIF.1 (hereinafter, "the person claimed"), owner of the website: ***URL.1 for violation of article 13, of the RGPD, in what regards the "Privacy Policy" of its website.

WHAT: In accordance with article 58.2 of the RGPD, the corrective measure that must be prevail over D.A.A.A. 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 privacy policy as stipulated in current regulations, that is, the RGPD and the LOPDGDD.

NOTIFY: this resolution to D. A.A.A..

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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 LOPDPGDD, 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 the date of

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

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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