

□ Procedure No.: PS/00047/2022 (EXP202105309)

RESOLUTION SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before the entity ACKERMANN & SCHWARTZ ATTORNEYS AT LAW SLP., with CIF.: B88457775, owner of the website: www.madridlaw.es, by virtue of the claim presented by D. A.A.A., for the alleged violation of the protection regulations data: Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Physical Persons with regard to the Processing of Personal Data and the Free Movement of these Data (RGPD), and violation of Organic Law 3/2018, of December 5, on Data Protection Personal Rights and Guarantee of Digital Rights (LOPDGDD), and based on the following:

BACKGROUND

FIRST: Dated 10/22/21, you have entered this Agency, writing presented by the claimant, in which he indicated, among other things, the following:

“On 10/11/2021 I send through (...) my CV in response to an advertisement for a job and on 10/13/2021 I receive a call from a person who

He quotes me for an interview in Alcobendas. Neither in the ad nor during the call I was informed of the name of the company nor was I offered any information identifier.

On 10/15/2021 I had the interview in Alcobendas. Upon reaching the room interview, the interviewer came in with my printed CV. I was not warned any moment of the treatment that was going to be given to my personal data, nor I was informed what treatment I had already had. I was not offered any of information in compliance with the GDPR.

The only way to find out which company was the one that interviewed me was thanks to some stickers with the company logo that were inside the office and that ACKERMANN & SCHWARTZ said. The corporate website of this company (www.madridlaw.es) does not contain any information regarding the GDPR or the privacy policy. The owner company is not identified either. from the web”.

SECOND: On 12/22/21 and 01/26/22, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations, in accordance with the provisions of Article 65.4 of the LOPDGDD Law.

- According to the certificate of the Electronic Notifications and Address Service Electronic, the application document sent to the claimed party, the day 12/22/21, through the electronic notification service "NOTIFIC@", it was rejected at destination on 01/02/22.

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- According to the certificate of the State Postal and Telegraph Society, the letter of support legality sent to the claimed party, on 01/26/22 through the service of no-postal notifications from the Postal Service, was returned to origin, the day 02/04/22, with the message “unknown”.

THIRD: On 01/22/22, by the Director of the Spanish Agency for Protection of Data, an agreement is issued to admit the processing of the complaint

presented by the claimant, in accordance with article 65 of the LPDGDD Law, to the assess possible rational indications of a violation of the rules in the field of the powers of the Spanish Data Protection Agency.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of the GDPR and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

1º.- When accessing the web page www.madridlaw.es, it is verified that obtain personal data from users through the "Contact" tab, where the web redirects to a new page <https://www.madridlaw.es/contact/> , appearing a form where you can enter the name, email and subject.

To send the message, click on the <<send>> option.

2º.- If you access the "Privacy Policy" of the web, through the existing link at the bottom of the main page <Privacy Policy>, the web redirects to a new page, <https://www.madridlaw.es/privacy-policy/> where the following information, (translated from the language in which it appears in the Policy of Privacy, English):

"ACKERMANN & SCHWARTZ informs you that the personal data that you facilitate will be incorporated into a personal data file owned by of ACKERMANN & SCHWARTZ, with the following purposes:

Manage and process each of the requests made or the services requested by the USER Manage commercial communications and advertising, related to our services, as well as in relation to the organization of events, activities and marketing and dissemination actions.

The USER declares, under his responsibility, to have read this section in its entirety, which is said to be known and accepted, expressly and fully, from the time of sending the data. If the USER does not agree with the content of this section, must therefore refrain from sending it and, therefore, Therefore, we would appreciate it if you would read it again before sending any of the mentioned forms.

Likewise, the USER guarantees that the data provided is true, accurate, complete and up-to-date, being responsible for any damage or damage, direct or indirect, that could be caused as a result of the breach of such obligation.

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In the case of the provision of third-party data, you must have obtained their prior consent for that purpose.

In the event that the data provided belonged to a third party, the USER guarantees that it has informed said third party of the aspects contained in this Policy and that you have obtained your authorization to provide your data to ACKERMANN & SCHWARTZ for the indicated purposes.

When personal data is collected through the form, it will be

It is necessary for the USER to provide, at least, those marked with an asterisk, Otherwise, the request made cannot be met.

FIFTH: On 03/28/22, by the Director of the Spanish Agency for Data Protection, the initiation of the disciplinary procedure by the

alleged violation of article 6.1 GDPR and article 13 GDPR with an initial sanction

total of 10,000 euros (ten thousand euros): 5,000 euros for the violation of article 6.1

GDPR, and 5,000 euros for the violation of article 13 GDPR, respectively.

Attempts to notify the agreement to start the sanctioning file

got as a result:

- According to the certificate of the Electronic Notifications and Address Service

Electronic, the shipment made to the claimed entity, on 03/28/22, through

of the electronic notification service "NOTIFIC@", was rejected in

destination on 04/06/22.

Although the notification was validly made by electronic means, assuming that

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under

information, a copy was sent by postal mail, which was returned to its destination on the date

06/15/22, with the message "unknown" and dated 07/15/22, the

notification of the initiation agreement by means of an announcement on the sole Edictal Board of the

Official State Gazette, in accordance with article 44 of the LPACAP.

SIXTH: Notified the initiation of the file to the claimed entity, as of today,

there is no record in this Agency of the receipt of any type of written

allegations to the initiation of the file.

In this sense, article 64.2.f) of Law 39/2015, of October 1, of the

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disposition of which the claimed party was informed in the opening agreement of the

procedure, establishes that, if allegations are not made within the period provided for

the content of the initiation agreement, when it contains a pronouncement

accurate about the imputed responsibility, it may be considered a proposal for

resolution. In the present case, the agreement to initiate the sanctioning file

determined the facts in which the accusation was specified, the infringement of the

LSSI attributed to the defendant and the sanction that could be imposed. Therefore, taking into consideration that the claimed party has not made allegations to the settlement agreement start of the file and in accordance with the provisions of article 64.2.f) of the LPACAP,

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the aforementioned start-up agreement is considered in the present case as a proposal for resolution.

PROVEN FACTS.

Of the actions carried out in this procedure, it has been accredited the following characteristics regarding the website www.madridlaw.es:

First: As has been verified, personal data can be obtained from the users through the "Contact" tab, appearing a form where they can enter name, email and subject. To send the message you only have to click on the option <<send>>

If the "Privacy Policy" is accessed, information is provided in English about, regarding the processing of personal data that, the personal data that provided will be incorporated into a personal data file owned by ACKERMANN & SCHWARTZ, and that the purposes of data processing will be to manage and process the requests made or the services requested and manage commercial and advertising communications, related to services borrowed. However, it is verified that the information provided is completely insufficient, lacking, for example, the identity and contact details of the responsible; the contact details of the data protection officer, if applicable;

the recipients of personal data and information necessary to exercise

the rights that assist users, how and where to exercise them.

FUNDAMENTALS OF LAW

I - Competition.

It is competent to resolve this Disciplinary Procedure, the Director of the

Spanish Agency for Data Protection, by virtue of the powers that art 58.2 of the

GDPR recognizes the control authority, as well as what is established in arts. 47, 64.2

and 68.1 of the Law, LOPDGDD.

II.- Regarding the obtaining of personal data and the lack of consent of the user in

www.madridlaw.es

the website

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Article 6.1 of the GDPR establishes the legality of data processing

personal information obtained from users that their treatment will only be lawful if it is

meets at least one of the conditions indicated in its first section, among which

found, in its section a): "that the interested party has given his consent

for the processing of your personal data for one or more specific purposes (...)"

For its part, article 12.1 of the aforementioned GDPR establishes, on the requirements that must be

comply with the information that the data controller must make available to

the interested parties when requesting their consent, the following:

"1. The person in charge of the treatment will take the appropriate measures to facilitate the

interested all information indicated in articles 13 and 14, as well as any

communication pursuant to articles 15 to 22 and 34 relating to processing, in the form

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concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically to a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is proven by other means (...)."

Articles 13 and 14 of the GDPR detail the information that must be provided- the interested party when the data is collected directly from the interested party (art. 13), or through through other means, (art. 14). In any case, the obligation to inform people interested parties on the circumstances related to the processing of their data rests about the data controller: a) If the data is obtained directly from the inter- information must be made available to you at the time it is requested. contain the data, prior to the collection or registration and b) if they are not obtained from the concerned, they must be informed within a month from the date the personal data was obtained. personal, or before or in the first communication with the interested party, or before the data (if any) have been communicated to other recipients.

Regarding data processing based on the consent of the interested party, the Article 7 of the GDPR indicates that the data controller must be able to determine show that the interested party consented to the processing of their personal data. If he with- sentiment is given in the context of a written statement that also refers to other issues, it is required that the request for consent be clearly distinguished from other matters and is presented in an intelligible form, easily accessible and using a clear and simple language. It is also required to provide additional information information to the interested party, among others, what will be the categories of data to be processed, the purposes

for which consent is sought and the right to withdraw consent

whenever.

Regarding the way to obtain the consent of the interested party for the treatment in

question, recital 32 of the GDPR provides that this, "must be given through a

clear affirmative act that reflects a manifestation of free, specific,

informed and unequivocal of the interested party to accept the processing of personal data

that concern you" and that "silence, already checked boxes or inaction

they should not constitute consent." Likewise, it is required that the consent be

granted "for all processing activities carried out with the same or the

same purposes. When the treatment has several purposes, consent must be given

for all of them". Finally, it establishes that, "if the consent of the interested party has been

to give as a result of a request by electronic means, the request must be clear,

concise and not unnecessarily disrupt the use of the service for which it is provided.

In the case at hand, when the processing of personal data is carried out through

through a website, the "Privacy Policy" of the page is the document, to

through which the owner of the website must inform its customers and users about the

management that it will carry out of the personal data that will be collected when browsing the site.

Therefore, before the user provides their personal data and gives their consent

to the treatment of these, a simple and direct access to the "Policy of

Privacy" of the web.

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Regarding the way to obtain the consent of the interested party, the request must be

carried out through a clear and voluntary affirmative act, providing a box in target, or a similar mechanism, where the user must mark or click in an explicit acceptance of the "Privacy Policy", through formulas such as:

" _ I have read and accept the conditions of the privacy policy" or equivalent.

The fact that the person in charge of the website www.madridlaw.es can obtain personal data of users without having previously obtained their consent for the treatment of these, through a clear and voluntary affirmative act, it can be constituting a violation of article 6.1 of the aforementioned GDPR.

For its part, 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 can be sanctioned with a fine of a maximum of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the of greater amount, in accordance with article 83.5.b) of the GDPR.

The balance of the circumstances contemplated, with respect to the infractions committed, by violating the provisions of Article 6.1 of the GDPR, allows the imposition of a penalty of 5,000 euros (five thousand euros).

III.- About the "Privacy Policy" on the web

www.madridlaw.es

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Recital 61) of the GDPR establishes that: "Interested parties must be provided with the information about the processing of your personal data at the time it is obtained from them or, if obtained from another source, within a reasonable time, depending on the circumstances of the case. If personal data can be legitimately communicated to another recipient, the interested party must be informed in the

moment when they are communicated to the addressee for the first time. The person in charge of treatment that plans to process the data for a purpose other than that for which it is collected must provide the data subject, prior to such further processing, information about that other purpose and other necessary information. When the origin of the personal data cannot be provided to the interested party due to the use of various sources, general information should be provided.

In this sense, article 12.1 of the GDPR establishes, regarding the requirements that must be comply with the information that the data controller must make available to interested parties, the following:

"1. The person in charge of the treatment will take the appropriate measures to facilitate the interested all information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically to a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided

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verbally as long as the identity of the interested party is proven by other means (...)"

Article 13 of the GDPR details the information that must be provided to the interested when the data is collected directly from him, establishing what following:

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

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time the data is obtained personal data, 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 term; b) the existence of the right to request access to the data from the data controller personal information 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 the portability of the data; c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9(2)(a), the existence of the right to withdraw consent in at 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 sign a contract, and if the The interested party is obliged to provide the personal data and is informed of the possible consequences of not providing such data; f) the existence of decisions automated, 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”.

The fact that the person in charge of the web page provides, in the "Policy of Privacy", on the one hand, of information in a non-official language in Spain, and on the other, of insufficient information, lacking, for example, the identity and data contact person responsible; the contact details of the data protection officer data, if applicable; recipients of personal data and information necessary to exercise the rights that assist users, how and where exercising them, may constitute an infringement of article 13 of the GDPR.

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In this sense, 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 GDPR”

This infraction can be sanctioned with a fine of a maximum of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the

of greater amount, in accordance with article 83.5.b) of the GDPR.

The balance of the circumstances contemplated, with respect to the infraction committed, by violating the provisions of article 13 of the GDPR, it allows setting a penalty of 5,000 euros (five thousand euros).

Therefore, in accordance with the foregoing, By the Director of the Spanish Agency for Data Protection,

HE REMEMBERS

FIRST: IMPOSE the entity ACKERMANN & SCHWARTZ ATTORNEYS AT LAW SLP., with CIF.: B88457775, owner of the website: www.madridlaw.es, the following sanctions

- Sanction of 5,000 euros for the infringement of article 6.1 GDPR, to the power obtain personal data from users of the website without having obtained prior consent for the treatment of these.

- Sanction of 5,000 euros for violation of article 13 GDPR, by providing, in the "Privacy Policy" of the website, information in a language not official in Spain, in addition to providing insufficient information, lacking, for example,

the identity and contact details of the responsible; the contact details of the data protection officer, in his case; recipients of personal data and necessary information to exercise the rights that assist users, how and where exercise them.

SECOND: ORDER the entity ACKERMANN & SCHWARTZ ATTORNEYS AT LAW, that, within a month from the notification of this resolution,

Take the necessary measures to implement, on your website:

- A mechanism that allows it to be adapted to current regulations, with the inclusion

in it a warning message for you to read the "Policy of Privacy" prior to sending your personal data and a mechanism that enables users to provide consent for processing of your personal data, in an affirmative and voluntary manner, prior to sending of your personal data to the person in charge of the web.

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Take the necessary measures to adapt it to current regulations, with the drafting of the information that must be provided to the users of the web pages of its ownership in the Spanish language, in a concise manner, transparent, intelligible and easily accessible, with clear and simple language,

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In addition to completing the information provided in the "Privacy Policy" in accordance with the provisions of article 13 of the GDPR.

THIRD: NOTIFY this resolution to the entity ACKERMANN & SCHWARTZ ATTORNEYS AT LAW and inform the claimant of the result.

Warn the penalized party that the sanction imposed must make it effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPACAP), 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 No. ES00 0000 0000 0000

0000 0000, opened in the name of the Spanish Data Protection Agency in the Banco CAIXABANK, S.A. or otherwise, it will proceed to its collection in executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment term It will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 82 of Law 62/2003, of 30 December, of fiscal, administrative and social order measures, the present Resolution will be made public, once the interested parties have been notified. The publication will be made in accordance with the provisions of Instruction 1/2004, of 22 December, from the Spanish Agency for Data Protection on the publication of their Resolutions.

Against this resolution, which puts an end to the administrative process, and in accordance with the established in articles 112 and 123 of the LPACAP, interested parties may file, optionally, an appeal for reinstatement before the Director of the Agency Spanish Data Protection Agency within a period of one month from the day following the notification of this resolution, or, directly, a contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and paragraph 5 of the provision additional fourth of Law 29/1998, of 07/13, regulating the Jurisdiction Contentious-administrative, within a period of two months from the day following to the notification of this act, as provided in article 46.1 of the aforementioned text legal.

Finally, it is noted 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>],

or through any of the other records provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer the documentation to the Agency

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proving the effective filing of the contentious-administrative appeal. if the

Agency was not aware of the filing of the contentious appeal-

administration within a period of two months from the day following the notification of the

present resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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