

☐ Procedure No.: PS/00423/2019

## -RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on October 17, 2019 filed

claim before the Spanish Data Protection Agency.

The claim is directed against MYMOVILES EUROPA 2000, S.L. with NIF B87403887 (in

later, the claimed one).

The reasons on which the claim is based are that the person responsible for the website \*\*\*WEB.1

It lacks a privacy policy and when trying to find out the property data of the

page, the claimant verifies that the company is not identified in the notice

legal.

For this reason, it considers that the website, although it has a data collection form (of

registration, contact, subscription to newsletter) does not provide any of the

information provided for in article 13 of the RGPD.

Along with your written claim, provide the following documentation:

☐ Screenshot of the website's legal notice.

☐ Screenshot of the Terms and Conditions of the website.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant of which this Agency has become aware, the

Subdirectorate General for Data Inspection proceeded to carry out actions

prior investigation to clarify the facts in question, by virtue of the

investigative powers granted to the control authorities in article 57.1 of the

Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter

RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

In addition, the following extremes are noted:

On March 14, 2019, the claim was transferred to the claimed entity, in the actions with reference E/02867/2019.

The notification is made by postal mail and is delivered by the Post Office on March 21, 2019. No reply received.

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On June 5, 2019, these proceedings begin.

On October 29, 2019, TESYS INTERNET S.L.U. sends to this Agency the

Next information:

1. The client who contracted the domain mymomoviles.com and the service of associated hosting is the company whose name and CIF are included in the section of Investigated Entities. It also provides other information:

Name: B.B.B.

Surname: B.B.B.

Address: \*\*\*ADDRESS.1

Contact email: \*\*\*EMAIL.1

Contact phone: \*\*\*PHONE.1

Provides invoice dated August 12, 2019 and invoice dated October 11, 2019.

On October 10, 2019, it is verified that on the website \*\*\*WEB.1:

1. There is no evidence of the existence of a privacy policy.
2. There is no identification of the person in charge.
3. The creation of user accounts is allowed where, among others, the data of name, surname, email address and password as well as the option to mark "Receive offers from our partners" and "Subscribe to our newsletter".
4. There is a contact form where the email data is entered email and message.
5. There is contact information, this being exclusively a postal address, a contact phone number and email address.

On November 8, 2019, it is verified that the registered office of the company

The owner of the website is the one included in the Investigated Entities section.

THIRD: On December 3, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,  
WHO

This resolution is issued taking into account the following:

## FACTS

FIRST: the person in charge of the website \*\*\*WEB.1 lacks a privacy policy and try to find out the ownership data of the page, the claimant verifies that the company is not identified in the legal notice.

For this reason, it considers that the website, although it has a data collection form (of registration, contact, subscription to newsletter) does not provide any of the information provided for in article 13 of the RGPD.

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SECOND: The AEPD has notified the respondent of the agreement to initiate this sanctioning procedure, but it has not presented allegations or evidence that contradict the alleged facts.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to the provisions of articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate 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 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 RGPD), 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 means of a 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 authorization of access, collation or interconnection, limitation, suppression or destruction;"

Therefore, in accordance with those definitions, the collection of data from

personal character 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 RGD, a precept that has moved from

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on May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, of

Personal data protection.

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 the duty of report

(<https://www.aepd.es/media/guias/guia-Modelo-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, provides 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 you with all the information listed 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 basis

legal 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 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 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 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

information, the following information necessary to guarantee fair data processing

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 related 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, 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 the

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personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 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 about that other purpose and any additional relevant information pursuant to 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 which refers to the following section and indicating an electronic address or other means 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 concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly in a similar way, when this right concurs in accordance with the provided for in 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 powers corrective measures in the event of a violation of the provisions of the RGPD.

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;”

(...)

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“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 accordance with a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of 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 section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, choosing the highest 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 minor 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 sections 4 and 5 of article 83 of the Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of information transparency or the right data subject of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679.”

In this case, it is taken into account that the respondent collects personal data from the users who fill in the form included in the website \*\*\*WEB.1 without provide them, prior to their collection, with all the information regarding data protection provided for in article 13 of the aforementioned RGPD.

According to the evidence currently available

agreement to initiate the sanctioning procedure, and without prejudice to what results from the investigation, the exposed facts could constitute, on the part of the claimed, a infringement of the provisions of article 13 of the RGPD.

Likewise, if the existence of an infraction is confirmed, in accordance with the provisions in the aforementioned article 58.2.d) of the RGPD, in the resolution the claimed party may be ordered, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from them to the requirements contemplated in the article 13 of the RGPD, as well as the provision of supporting evidence of the compliance with what is required.

v

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article

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58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied in under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy to the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, in what measure;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in related to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76, "Sanctions and corrective measures", provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also may be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing personal.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have led to the commission of the infringement.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection delegate.

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- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party."

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in this case on the entity claimed as responsible for an infraction typified in article 83.5.b) of the RGPD, in an initial assessment, the following mitigating factors:

-

The claimed one does not have previous infringements (83.2 e) RGPD).

- It has not obtained direct benefits (83.2 k) RGPD and 76.2.c) LOPDGDD).

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The claimed entity is not considered a large company.

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of €1,500 for the infringement of article 58.2 of the RGPD.

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 MYMOVILES EUROPA 2000, S.L., with NIF B87403887, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine of 1,500 euros (one thousand five hundred euros),

SECOND: NOTIFY this resolution to MYMOVILES EUROPA 2000, S.L.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 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 December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

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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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

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