

□ File No.: EXP202201701

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On January 5, 2022 A.A.A. (hereinafter, the claimant)

filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed).

The reasons on which the claim is based are the following:

- 1) In 2019, you made a purchase on the ***URL.1 website, for which you registered,
providing all your data.
- 2) On January 5, 2022, he received an email from the manager in which he
announced that the website had been updated and migrated to the ***URL.2 domain, which
kept all the orders placed on the previous site, including their data
personal information, and that he was urged to activate his user account on the new site.
- 3) That when accessing the new site you verify that, indeed, your data appears there
associated with the order he made, but that "nowhere do I find if the company that
manages this website "****URL.1" is the same one that manages the site "****URL.2" and that
check that the site is operated on the Shopify platform, so
understands that their rights have been violated by ceding to third parties their
data.

It should be noted that in the privacy policy published at ***URL.1 (available even
in Google's cache, since that domain currently redirects automatically
to ***URL.2) no reference is made to the data retention period.

On the other hand, the privacy policy shown in ***URL.2 does not now conform to as provided for in art. 13 GDPR.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), on February 11, 2022, 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.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/11

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of availability, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP dated February 22, 2022, as stated in the certificate that is in the file.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was not collected by the person in charge; reiterating the transfer on February 22, 2022 by certified postal mail, was again returned from unknown address.

THIRD: On April 4, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

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 functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

Data inspection has collected the following information regarding ***URL.2:

CONTACT EMAIL ***EMAIL.1

EMAIL DATA PROTECTION ***EMAIL.2

MAILING ADDRESS ***ADDRESS.1

Information has been requested from the entity in order to report on the following aspects:

1.

1.

Company name and NIF of the entity responsible for the web ***URL.2

Relationship with the entity responsible for ***URL.1

Details of the transfer of data between the entities responsible for both

2.

websites indicating what information was provided to those affected by said assignment of data and if it appears in their files that the claimant consented to their data communicated from one entity to another.

3.

Description that the SHOPIFY service provides to your entity indicating what processing of personal data carried out. Copy of the assignment contracts data or processing on behalf of third parties subscribed with SHOPIFY.

4.

Copy of the information offered to users who provide their data

through ***URL.2 with compliance with the requirements indicated in the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/11

Article 13 of the General Data Protection Regulation, indicating the date on which

that said information has been made available to its users

On April 26, 2022, this request was sent by email

to the addresses ***EMAIL.1 and ***URL.2

On May 2, 2022, it has been picked up at the address (...).

On May 25, 2022, it has been collected again in (...).

To date, no response has been received to the three shipments of

request for information

From the Data Inspection, the purchase of a product in ***URL.2 has been simulated and

information has been collected from the checking account to which to make a transfer:

ING Direct ES00 0000 0000 0000 0000 0000

Information requested from ING Direct, indicate that the account number ES00 0000

0000 0000 0000 0000 is owned by (...) and domiciled at (...).

FIFTH: On December 13, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of article 13 of the GDPR, typified in article 83.5 of the

GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP) and after the period granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed in the agreement to open the procedure - establishes that if no arguments within the established term on the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement of beginning of the disciplinary file determined the facts in which the imputation, the infringement of the GDPR attributed to the defendant and the sanction that could impose. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/11

FIRST: The privacy policy of the web page ***URL.2 does not conform to what provided for in article 13 of the GDPR, lacking aspects such as identity and data of the responsible, the period during which they will keep the personal data, or the right to

file a claim with the control authority.”

FUNDAMENTALS 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 this data (General Data Protection Regulation, hereinafter GDPR) recognizes each control authority, and as established in 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 Data Protection Agency is competent to initiate this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character 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 movement of such data (General Data Protection Regulation, hereinafter GDPR), under the heading "Definitions" provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data" means any information about an identified natural person or identifiable (“the data subject”); An identifiable natural person shall be considered any person

whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, data of location, an online identifier or one or more elements of identity physical, physiological, genetic, mental, 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, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/11

access, collation or interconnection, limitation, deletion or destruction;"

II

Article 13 of the GDPR, precept that determines the information that must be provided to the interested party at the time of data collection, provides:

"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 you with all the information listed below:

- 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, if applicable;
- c) the purposes of the processing for which the personal data is intended 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 categories of recipients of 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 of

adequacy of the Commission, or, in the case of the transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second subparagraph, reference to the

adequate or appropriate guarantees and the means to obtain a copy of these or

to the fact that they have been 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 it is not

possible, the criteria used to determine this term;

b) the existence of the right to request the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/6

of their 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

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 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, paragraphs 1 and 4, and, at least in such cases, information

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the person responsible for the treatment plans the subsequent processing of data

personal information for a purpose other than that for which it was collected, will provide the

data subject, prior to said further processing, information about that other purpose

and any additional information relevant under section 2.

4. The provisions of sections 1, 2 and 3 will not be applicable 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 personal data is obtained from the data subject, 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 basic information to the

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 applicable.

b) The purpose of the treatment.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/11

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 him significantly affect in a similar way, when this right occurs according to with the provisions of article 22 of Regulation (EU) 2016/679.”

IV.

Pursuant to the provisions of article 58.2 of the GDPR, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infringement of the precepts of the GDPR.

Article 58.2 of the GDPR provides the following:

"2 Each control authority will have all the following corrective powers indicated below:

(...)

"d) order the person in charge or person 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 in accordance with article 83, in addition to or instead of the measures mentioned in this paragraph, according to the circumstances of each particular case;”

Article 83.5.b) of the GDPR establishes that:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 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 highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22;”

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/11

In turn, article 74.a) LOPDGDD under the heading "Infringements considered mild has:

"The remaining infractions of a legal nature are considered minor and will prescribe after a year.

merely formal of the articles mentioned in sections 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 to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679.”

V

In this case, a claim is filed against the privacy policy of the site

web ***URL.1 for not collecting the information required in article 13 of the

GDPR.

The web page that is the subject of the complaint indicates in the protection policy section

of data following the link ***LINK.1, the following:

"In the framework of compliance with the provisions of Regulation (EU) 2016/679, of

April 27, 2016, regarding the protection of natural persons with regard to

regarding the processing of personal data and the free circulation of these data and the

ePrivacy Directive 2002/58, XXXXXXXXXX informs the users of this website

through this document of the use and processing of personal data that you provide.

have or will facilitate your browsing and the data protection policy that

will be applied to said data.

It should be noted that this Privacy Policy may vary depending on the exi-

legislative or self-regulatory agencies, so users are advised to

visit her regularly. It will be applicable in case the users decide

fill in any form of any of your contact forms where you are re-

Personal data fits.

The treatment of the data that XXXXXXXXXX carries out is done on the legal basis.

ca of a legal activity of electronic commerce that legitimizes its treatment, that

consists of making it possible for users to access their orders, carry out the same

electronically, cancel or add orders, and perform those activities

des that are typical of the web and the commercial activity of the company. Besides,

All data collected will be treated in accordance with the principles stipulated in

the art. 5 of the RGDP, legality, loyalty and transparency, data minimization, li-

limitation of the conservation period, integrity and confidentiality."

Despite the correct indications made on the web page object of this

claim regarding privacy policy, the text of which appears in the file,

no allusion is made to some of the aspects indicated in article 13 of the GDPR,
indicated in the basis of law III, such as identity and data of the person in charge, the
period during which they will keep the personal data, or the right to present a
complaint to the control authority.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/11

This Agency has managed to identify the owner of said website by knowing who it is
the holder of the bank account in favor of which payments for purchases are made
of the products that appear on the web and information about it has been requested in
several times, by email (both to the address provided for
commercial, such as the address provided for the purpose of addressing the rights of
protection of data of its clients), as well as by postal mail, but it has not been
got an answer about it. In this regard, the defendant has collected a
of postal notifications addressed to the postal address of "XXXXXXXXXXXXX".

Therefore, when verifying that the privacy policy of the website ***URL.1 does not
collects all the information required in article 13 of the GDPR, and not having obtained
any response from the owner of said website that justifies such deficiency, this
Agency considers that the claimed party is in breach of the GDPR,
specifically, it would be infringing article 13 of the GDPR by not providing all the
information required as required by said precept indicated in the basis of
right III.

SAW

In accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, each authority

of control may:

“order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”.

The imposition of this measure is compatible with the sanction consisting of a fine administration, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

VII

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 13 of the

GDPR, typified in article 83.5 of the GDPR, a fine of 1,000 euros (THOUSAND euros).

SECOND: REQUIRE the claimed party so that within a period of one month they accredit

before this body the adoption of all necessary measures so that the entity

denounced adapts its privacy policy in accordance with article 13 of the GDPR.

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

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:

XXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A. 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 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

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

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registries provided for in art. 16.4 of the

www.aepd.es

C / Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

11/11

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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es