

□ Procedure No.: PS/00453/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: MADRID MUNICIPAL CONSUMER INSTITUTE (hereinafter, the
claimant) dated June 26, 2020 filed a claim with the Agency
Spanish Data Protection.

The claim is directed against JOMAGAR PRODELEC S.L. with NIF B88097480 (in
later, the claimed one).

The reasons on which the claim is based are the breach of the web
<http://www.jomagar-prodelec.com> as it lacks a Privacy Policy.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), with reference number E/06552/2020, transfer of
said claim to the claimed, on August 13, 2020, to proceed to
its analysis and inform this Agency within a month of the actions carried out
carried out to adapt to the requirements set forth in the regulations for the protection of
data, with no response to date.

THIRD: On December 2, 2020, the Director of the Spanish Agency for
Data Protection agreed to admit for processing the claim presented by the
claimant.

FOURTH: On February 4, 2021, an initiation agreement is issued by the Director
of the Spanish Agency for Data Protection in accordance with the provisions of the
article 58.2.b) of the RGPD, for the alleged infringement of article 13 of the RGPD,

typified in article 83.5.b) of the RGPD

WHO

TO: 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.

SIXTH: Not having made allegations or presented evidence within the given period,
by the claimed party, in accordance with articles 64.2.f) and 85 of the Law
39/2015, this resolution is issued taking into account the following:

FACTS

FIRST: It is denounced that the website <http://www.jomagar-prodelec.com> lacks
Privacy Policy appropriate to current data protection regulations.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

SECOND: On February 19, 2021, the claimant is notified of the settlement agreement
beginning of this procedure, becoming the same in resolution proposal of
in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the
Common Administrative Procedure of Public Administrations (LPACAP), to the
not make the claimed allegations within the indicated period.

THIRD: It has been found that the web page that works on the web page
<http://www.jomagar-prodelec.com> is the following:

1. Privacy Policy

Jomagar Prodelec, s.l. informs users of the website about its policy regarding the treatment and protection of the personal data of the users and customers that may be collected by browsing or contracting services to through your website.

In this sense, Jomagar Prodelec, s.l. guarantees compliance with regulations in force regarding the protection of personal data, reflected in the Organic Law 15/1999 of December 13, on the Protection of Personal Data and in the Royal Decree 1720/2007, of December 21, which approves the Regulation of Development of the LOPD.

The use of this website implies acceptance of this privacy policy.

2. Collection, purpose and data processing

Jomagar Prodelec, s.l. has a duty to inform users of its website about the collection of personal data that can be carried out, either by sending an email or by filling in the forms included in the website.

In this sense, Jomagar Prodelec, s.l. will be held responsible for the data collected through the means described above.

In turn, Jomagar Prodelec, s.l. informs users that the purpose of the treatment of the collected data contemplates:

The attention of requests made by users, the inclusion in the agenda of contacts, provision of services and management of the business relationship.

The operations, procedures and technical procedures that are carried out in a automated or non-automated and that enable the collection, storage, modification, transfer and other actions on personal data,

They are considered to be the processing of personal data.

All personal data collected through the jomagar-website

prodelec.com, and therefore has the consideration of treatment of character data personnel, will be included in the files declared before the Spanish Agency for Data Protection by Jomagar-Prodelec, s.l.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

3. Communication of information to third parties

Jomagar-Prodelec, s.l. informs users that their personal data will not be transferred to third organizations, with the exception that said transfer of data is covered by a legal obligation or when the provision of a service implies the need for a contractual relationship with a data processor.

In the latter case, the transfer of data to the third party will only be carried out when Jomagar Prodelec s.l. have the express consent of the user.

4. Rights of users

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

Personal grants interested parties the possibility of exercising a series of rights related to the processing of your personal data.

Insofar as the user's data is processed by

Jomagar-Prodelec, s.l.

Users may exercise their rights of access, rectification, cancellation and opposition in accordance with the provisions of current legal regulations on personal data protection.

To make use of the exercise of these rights, the user must go through written communication, providing documentation proving your identity (DNI or

passport), to the following address:

Jomagar Prodelec, s.l., Calle Samuel Baltés, 15, 28590 Villarejo de Salvanes Madrid or

the address that is replaced in the General Registry of Data Protection.

Said communication must reflect the following information:

Name and surname of the user, the application request, address and data accreditations.

The exercise of rights must be carried out by the user himself.

However, they may be executed by a person authorized as a representative legal of the authorized

In this case, the documentation that accredits this representation of the interested."

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 individuals with regard to the processing of personal data and the free www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

4/9

circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to what is established in the 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 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 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 these definitions, the collection of personal data

personal through forms included in a web page constitutes a treatment of data, with respect to which the data controller must comply with the provided for in article 13 of the RGD.

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 RGD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

“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;
- 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.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

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:

“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;”

(...)

“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 a specified manner 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:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 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:

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 mild 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 paragraphs 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 of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679."

v

In this case, it has been found that the privacy policy of the website <http://www.jomagar-prodelec.com> is not updated because instead of apply the RGPD 2016/679 and the Organic Law 3/2018, of December 5, on Protection

of Personal Data and guarantee of digital rights that are the current regulations

Regarding data protection, mention is made of Organic Law 15/1999, of

Protection of Personal Data, currently repealed.

Thus, it is considered that the exposed facts constitute, on the part of the

claimed, a violation of the provisions of article 13 of the RGPD.

SAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/9

This infraction will be sanctioned with a warning, in accordance with article 58.2.b)

of the RGPD, when collecting personal data from users and considering that the fine

administrative that could fall in accordance with the provisions of article 83.5.b) of the

RGPD would constitute a disproportionate burden for the claimed party, whose activity

principal is not directly linked to the processing of personal data, since it does not

There is evidence of the commission of no previous infringement in terms of data protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the

resolution may order the claimed, as responsible for the treatment, that the

personal data that is collected is in accordance with the data protection regulations in

general and to the requirements contemplated in articles 5, 6, 12, 13 and 14 of the RGPD in

particular, as well as the provision of supporting evidence of compliance

of what is required.

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 JOMAGAR PRODELEC S.L., with NIF B88097480, for a infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: REQUEST JOMAGAR PRODELEC S.L., with NIF B88097480, to protection of the provisions of article 58.2 d) of the RGPD, which adopts the measures necessary to update your "Privacy Policy" to current regulations on personal data protection, -Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, must provide users, prior to the collection of data of the same, all the information required in the aforementioned precept, for which that said company must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment, as well as what is indicated in article 5 of the RGPD in relation to the purpose of the treatment and term of conservation of the data. Said measures must be adopted within a period of one month computed from the date in which this sanctioning resolution is notified, and the means must be provided proof of compliance.

THIRD: NOTIFY this resolution to JOMAGAR PRODELEC S.L.

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

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

9/9

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es