

□ Procedure No.: PS/00418/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: MUNICIPAL CONSUMER INSTITUTE OF THE CITY COUNCIL OF

*** LOCATION.1 (hereinafter, the claimant) on July 8, 2020 filed

claim before the Spanish Data Protection Agency.

The claim is directed against MAHICO SOLUCIONES, S.L. with CIF B98159940 (in
later, the claimed one).

The reasons on which the claim is based are that the website ***URL.1 would not be
providing the user with clear and complete information about the treatment of their
personal information.

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/07912/2020, transfer of
said claim to the claimed party, on October 6, 2020, so that he could proceed with his
analysis and report to this Agency within a month, of the actions carried out
carried out to adapt to the requirements set forth in the data protection regulations,
with no reply to date.

THIRD: On January 26, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, with
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of article 13 of the RGPD, typified in article

83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on February 17, 2021, in which, in summary, it stated that were immersed in an audit process of their web page, but that they have corrected by indicating in its new privacy policy the following:

“The owner of the Website ***URL.1 is MAHICO SOLUCIONES, S.L., as well as the responsible for the processing of personal data provided by its users.

The treatment of personal data that is carried out through this Website observes the provisions of Regulation (EU) 2016/679, General Protection of Data, in Organic Law 3/2018, of December 5, on Data Protection Personal and with the appropriate technical and organizational security measures to guarantee a level of security appropriate to the risk of the treatment.

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1. Information on data protection

If the user decides to request information on our website, the data will be requested strictly necessary for the achievement of the purpose for which our website, which is the information and promotion of our services, all of them available on our website. In no case will they be used for purposes other than of those for which they have been voluntarily entered on the web.

The personal data that the user provides us will be treated, having been informed of the purposes of the treatment and other information.

Those who voluntarily provide their data to the owner of the Web by any of the

means established for this purpose at all times, have had at their disposal in a transparent and clear, having clicked on the corresponding box, the following aspects:

1.1 The RESPONSIBLE for the treatment is MAHICO SOLUCIONES, S.L., domiciled at ***ADDRESS.1, ***TOWN.2 (***PROVINCE.1) and CIF: B98159940.

1.2 The PURPOSES of the treatment are the following:

The management of the petition, request or query, and the maintenance of relationships between the Web and its users.

Unequivocal authorization that the data provided can be used to send you, by any means of communication, including electronic ones, commercial communications, with information of interest, and communications reminder, provided that you have checked the corresponding box or have manifested, by any means, in an unequivocal way its authorization.

information for the use of cookies for specific and specific purposes informed at all times in the cookie policy.

1.3 The LEGAL BASIS for the treatment is based on the established relationship, on the compliance with legal obligations and with your unequivocal consent, in case of have borrowed We inform you that you can revoke your consent at any moment, through an easy and simple means. In the case of people of contact of a legal person, the legal basis of the treatment is the interest of this entity in the maintenance of relations with said person legal.

1.4 We inform you that the CONSERVATION PERIOD of your data will be that of the validity of the contract and after its termination, in the event that it is determined by the Law, while the conservation obligation lasts and, where appropriate, during the period of prescription of the corresponding actions. WE WILL KEEP your data in the

case in which the legal basis is consent as long as you do not revoke your authorization, and once revoked, it will be set according to the criterion of exhausting the terms of action prescription.

1.5 RECIPIENTS: no recipients of your data are foreseen, except legal obligation.

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1.6 We guarantee your RIGHTS to access, rectify or delete your data, as well as your right of limitation or portability, depending on the remaining information that is offers in this Privacy Policy.

2. Information about users

We do register your IP (Internet Protocol) data assigned to the subscriber who owns the telephone line at the time of connection to this website, for the purpose of security and collaboration with Justice. The data will be kept by the service provider the time set by current legislation.

Rights of Access, Rectification, Opposition, Deletion, Limitation, not to be subject of automated decisions and Portability

At any time, the user has the right to access their information, to rectify it if your data is erroneous, to oppose any type of treatment associated to the maintenance of the contractual relationship or the legitimate interest of the person responsible for the treatment, where appropriate, to revoke the consent granted, to request the limitation or suppression of its treatment, not to be subjected to automated decisions, and to unsubscribe from the services of MAHICO SOLUCIONES, S.L.

These rights can be made effective after accreditation of the personality in

forms and within the terms established in the General Regulations for the Protection of Data, by writing to the postal address that appears in the Legal Notice of the Web.

The processing of personal data and the sending of communications by means electronic, where appropriate, are adjusted to the regulations established in the Regulation General Data Protection, Organic Law 3/2018, of December 5, of Protection of Personal Data and in Law 34/2002, of July 11, on Services of the Information Society and Electronic Commerce.”

FIFTH: On February 23, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/08091/2020, as well as the documents provided by the claimant.

SIXTH: On March 1, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose MAHICO SOLUCIONES, S.L., with CIF B98159940, for an infringement of the article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

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FIRST: A claim is filed for the alleged breach of the regulations

of data protection on the website ***URL.1 considering that it would not be providing the user with clear and complete information about the treatment of their personal information.

SECOND: Arguments are filed by the respondent on February 17, 2021, stating that the indicated deficiencies are being corrected.

On March 1, 2021, its privacy policy is accessed and it is verified that it is in accordance with current data protection regulations.

FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and in the art. 47 and 48.1 of LOPDGDD.

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, a precept that has moved since May 25 of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection of Personal Data.

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>).

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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:

“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

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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 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 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;"

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"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:

"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 website <https://instaladordegas.club/> does not had a Privacy Policy but it has been verified that it has proceeded recently to its update.

Despite this, it should be noted that the sanction of warning for the personal data that was collected without adequately informing customers, which which is constitutive of an infringement of article 13 of the RGPD. However, it will be a sanction of warning without the need to adopt measures by the defendant, because it has already been proceeded by this to the generation of a privacy policy adequate.

SAW

This infraction is sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of personal data, since there is no record of the commission of any previous infraction in matter of data protection.

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In view of the foregoing, the following is issued

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MAHICO SOLUCIONES, S.L. with CIF B98159940, for a infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to MAHICO SOLUCIONES, 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

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.

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