

□ Procedure No.: PS/00170/2021

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00170/2020, instructed by the Spanish Agency for Data Protection to the entity, MAX2PROTECT, S.L. with CIF: B88606355, holder of the website: <https://www.amonmed.es/> and email: testcovid@amonmed.es, (hereinafter, "the party claimed"), by virtue of a complaint filed by A.A.A. , (hereinafter, "the claimant party"), and based on the following:

BACKGROUND

FIRST: On 12/23/20, this Agency entered the letter of claim, which indicated, among others, the following: "I receive spam from testcovid@amonmed.es several times a day (commercial communications received are attached) dated 12/21/20)".

SECOND: On 02/16/21, this Agency sent a request information to the claimed party, in accordance with the provisions of article 65.4 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights, ("LOPDGDD").

THIRD: On 04/14/21, this Agency received a written response to the request made, indicating therein, among others, that: "databases, from which the advertising campaigns are carried out by email, are purchased from a central communication provider and are also obtained from access pages public on the internet.

FOURTH: On 04/19/21, by the Director of the Spanish Agency for Data Protection, an agreement is issued for the admission of the complaint filed. given by the claimant, in accordance with article 65 of the LPDGDD, when considering that the response given by the respondent to this Agency in relation to the facts

claimed does not prove its legitimacy for the treatment of the data and the sending of commercial ammunition.

FIFTH: On 05/08/21, this Agency has been able to verify that, in the "Policy of Privacy" of the web, <https://www.amonmed.es/politica-de-privacidad> exists, among other, the following information:

"(...) The person responsible for processing the information on this website is:

MAX2PROTECT, S.L.; Technical Avenue, 43-Loc. 18-22. 28522 RIVAS VACIAMA-DRID MADRID; Telephone: +672 675 477 E-mail: info@amonmed.es"

It has also been possible to verify that, on the contact page of the website, <https://www.amonmed.es/contacto/> there is the following information: "(...) Our co-Emails are: testcovid@amonmed.es; citas@amonmed.es".

SIXTH: On 05/11/21, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed entity, by virtue of the powers established by:

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Violation of article 6.1 of the RGPD, regarding the illicit treatment carried out of the personal data obtained from public access pages on the internet, with an initial fine of 2,000 euros (two thousand euros).

Violation of article 21.1 of the LSSI, regarding the sending of communications without the express consent of the interested party, with an initial fine

of 2,000 euros (two thousand euros).

FIFTH: The initiation of the file was notified on 05/28/21, as of today, there is no that any response has been given to the initiation of the file, within the period granted for it.

Of the actions carried out in this procedure, of the information and do- documentation presented by the parties, the following have been accredited:

PROVEN FACTS

1.- As indicated in the claim brief, the claimant received emails not of the claimed entity without its consent.

2.- At the request of this Agency, the entity claimed states that “the bases of data, from which the advertising campaigns are carried out by email, they buy from a central communication provider and are also obtained from websites of public access on the internet.

FOUNDATIONS OF LAW

- Regarding the processing of personal data:

I- Competition.

Is competent to resolve this Sanctioning Procedure, the Director of the Agency Spanish Data Protection Agency, by virtue of the powers that article 58.2 of the Re- Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding to the Protection of Natural Persons with regard to Data Processing Personal and the Free Circulation of these Data (RGPD) recognizes each Authority of Control and, as established in arts. 47, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD).

- Regarding the sending of advertising emails without the consent

Of the interested:

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

Data Protection, in accordance with the provisions of art. 43.1, paragraph second, of Law 34/2002, of July 11, on Services of the Society of the Information and Electronic Commerce (LSSI), is competent to initiate and resolve this Sanctioning Procedure, the Director of the Spanish Agency for the Protection of Data.

About the origin and processing of personal data of the claimant

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The RGPD deals, in its article 5, with the principles that must govern the treatment of personal data and mentions among them that of legality, loyalty and transparency, pointed out, in the first section, that:

- 1.- Personal data will be processed lawfully, loyally and transparently in relation to the interested party ("lawfulness, loyalty and transparency");
- 2.- The data controller will be responsible for compliance with the provisions in paragraph 1 and able to demonstrate it ("proactive responsibility").

In turn, article 6.1 of the RGPD, on the legality of the processing of personal data, establishes that the processing of personal data will only be lawful if it complies with the least one of the following conditions:

- a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

- b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;
- d) the treatment is necessary to protect the vital interests of the interested party or another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that said interests interests do not prevail or the fundamental rights and freedoms of the interest cases that require the protection of personal data, in particular when the interested sado be a child. The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions”.

In the present case, the entity alleges that it uses the personal data obtained from the purchase from communication providers and those obtained from those published on pages public access on the internet.

Regarding the allegations made by the entity, it should be noted that, although the personal data is published on the internet voluntarily, this does not allow its indiscriminate treatment by third parties as they do not have the legitimacy necessary for this, in accordance with the provisions of the RGPD, so these facts suppose the violation of article 6.1 of the RGPD, where the legality of the treatment of personal data, indicated above.

Article 72.1.b) of the LOPDGDD, considers very serious, for prescription purposes,

“The processing of personal data without the concurrence of any of the conditions of the license tude of the treatment established in article 6 of the Regulation”.

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This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated and according to the result of the investigation, purposes of setting the amount of the sanction to be imposed in this case, it is considered that it is appropriate to grade it according to the following aggravating criteria that establishes article 83.2 of the RGPD:

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The duration of the infraction, (paragraph a) taking into account that the first mail received by the claimant of this type of communication is dated on 12/21/20.

The balance of the circumstances contemplated above, with respect to the infraction committed by the entity, by violating the provisions of article 6.1 of the RGPD, allows you to set a penalty of 2,000 euros, (two thousand euros).

III-About the sending of commercial communications through emails

Sending commercial emails without the express consent of the recipient, constitute an infraction attributable to the claimed entity, to the provided in article 21 of the LSSI, which provides that:

"1. The sending of advertising or promotional communications by co-electronic mail or other equivalent means of electronic communication that previously

have not been requested or expressly authorized by the recipients.

2. The provisions of the preceding section shall not apply when there is a relationship prior contractual agreement, provided that the provider had legally obtained the contact details of the recipient and will use them to send communications such as commercials referring to products or services of your own company that are similar those who were initially contracted with the client.

In any case, the provider must offer the recipient the possibility of opposing the processing of your data for promotional purposes through a simple procedure and free, both at the time of data collection and in each of the co-commercial communications directed to you.

When the communications have been sent by email, said means

This must necessarily consist of the inclusion of an email address

unique or other valid electronic address where this right can be exercised, remain-

Sending communications that do not include said address is prohibited.”

The aforementioned infraction is typified as minor in art. 38.4.d) of said regulation

ma, which qualifies as such, "The sending of commercial communications by electronic mail

single or other equivalent means of electronic communication when in said shipments

the requirements established in article 21 are not met and it does not constitute an infringement serious".

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Pursuant to the provisions of article 39.1.c) of the LSSI, minor infractions may

sanctioned with a fine of up to €30,000, establishing the criteria for its

graduation in article 40 of the same norm.

After the evidence obtained, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria, established in the aforementioned art. 40 from the LSSI:

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The existence of intent in sending commercial communications, in this case, since 12/21/20, an expression to be interpreted as equivalent to a degree of guilt according to the Judgment of the National High Court of 11/12/07 relapse in Appeal no. 351/2006, corresponding to the denounced entity the determination of a system of Obtaining informed consent that is in accordance with the mandate of the LSSI.

According to this criterion and according to the result of the investigation, it is considered appropriate when imposing a penalty of 2,000 euros (two thousand euros) on the party claimed, for the infringement of article 21 of the LSSI.

IV- Sanction.

The balance of the circumstances contemplated in the present case, with respect to the infractions committed by the claimed entity allows a total sanction of 4,000 euros, (four thousand euros): 2,000 euros for violation of article 6.1 of the RGPD and 2,000 euros for violation of article 21 of the LSSI.

In accordance with the foregoing, by the Director of the Spanish Agency for Pro-data protection,

RESOLVE

FIRST: IMPOSE the entity, MAX2PROTECT, S.L. with CIF: B88606355, holder from the website <https://www.amonmed.es/> and email: testcovid@amonmed.es, for the infringement of article 6.1 of the RGPD, a penalty of 2,000 euros (two thousand euros), for the illicit treatment of the claimant's personal data and for the infringement

tion of article 21 of the LSSI, a penalty of 2,000 euros (two thousand euros), regarding of sending commercial communications without the express consent of the recipient.
river.

SECOND: NOTIFY this resolution to the entity, MAX2PROTECT, S.L.

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

Once this resolution is executed, in accordance with the provisions of art.

Article 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations, 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 December 17,

bre, through its deposit in the restricted account N° ES00 0000 0000 0000 0000 0000,

opened in the name of the Spanish Data Protection Agency at Banco CAIXA-

BANK, S.A. or otherwise, it will be collected in the executive period.

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

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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 (article 48.6 of the LO-

PDGDD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public tions, the interested parties may optionally file an appeal for repossession. petition before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and in the section do 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 fervent legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations public authorities, the firm resolution may be provisionally suspended 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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