

□ Procedure No.: PS/00338/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

FIRST: On 02/26/2021, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter the part  
claimant), through which he makes a claim against FLATS FRIENDS, S.L. with  
NIF B98892771 (hereinafter, the claimed party), owner of the website  
<https://flatsfriends.com>, due to the lack of an adequate Privacy Policy for  
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 treatment  
of personal data and the free circulation of these data (hereinafter, RGPD).

The claim indicates the following, in relation to the matter of protection of  
data:

“By entering the privacy policy <https://www.flatsfriends.com/politica-de-privacidad/>  
it is not adequate to legality because they do not put the identification of who is the  
responsible for the treatment of the data that is going to be sent to them when contacting or that  
company (or person) is the one who is going to treat my sent data (name, surnames,  
town, province, telephone, email, query)”.

Along with the claim, provide, among others, the following documents:

- A copy of the contact form that includes spaces for data  
identification of the person, collecting as mandatory data the name,  
surnames, telephone and email.
- A copy of the Privacy Policy of the website [www.flatsfriends.com](http://www.flatsfriends.com)

SECOND: In view of the facts denounced, the General Subdirectorate of

Data Inspection verified that the website <https://www.flatsfriends.com> to date

04/07/2021 continued without adapting its Privacy Policy to the provisions of the RGD.

Prior to admitting this claim for processing, the Agency gave

transfer of it to the claimed one on 04/21/2021, in accordance with article

65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD). The day

04/22/2021 the respondent received notification through the Notification Service

Electronics.

On 05/12/2021, the respondent submitted a brief of allegations in which it indicates:

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“We have contacted Avantio ([www.avantio.es](http://www.avantio.es)), which is the company in charge of

manage the company's website, to detect where there may be a failure in the

compliance with the Data Protection Law.

All fields that affect said law are inspected, as well as those related to the

customer data collection and processing. Avantio confirm that of the 4

affected fields collected on the extranet, in one of them, in the Regulation

General Data Protection (GPDR), the email address appeared

of Flats Friends so that any client could contact us, but more were missing

company details.

The following measures are adopted:

[...]”

THIRD: On 06/28/2021 the Director of the Spanish Agency for the Protection of

Data agrees to accept the claim for processing.

FOURTH: On 09/01/2021, the Director of the Spanish Protection Agency

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

FIFTH: In compliance with the provision of article 14.2 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP) the agreement to open the procedure was notified to the claimed electronically.

The certificate issued by the Electronic Notification Service Support service and Authorized Electronic address of the National Currency and Stamp Factory (in forward, FNMT), which is in the file, proves that the AEPD put the notification available to the recipient on 09/01//2021 and that on 09/12//2021 produced the automatic rejection of the notification.

Article 43.2, second paragraph, of the LPACAP establishes that "When the notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when ten days have elapsed natural since the notification is made available without accessing its contents".

In turn, article 41.5 of the LPACAP specifies that "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure".

SIXTH: The respondent did not make any objections to the agreement to initiate the procedure.

Article 64.2.f) of the LPACAP -provision of which the one claimed was reported in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it

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contains a precise statement about the imputed responsibility, it may be considered a motion for a resolution.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the respondent has not made allegations to the agreement to initiate the file and in attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

SEVENTH: The agreement to initiate the procedure agreed in the third point of the operative part “INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim”.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: A claim is filed for non-compliance with the regulations of data protection on the website <https://www.flatsfriends.com>.

SECOND: The respondent states that she has proceeded to correct the mentioned website, incorporating a Privacy Policy appropriate to the article 13 of the GDPR.

THIRD: Despite the allegations of the respondent in response to the transfer of the claim and request for information, it is verified that the Privacy Policy examined does not comply with the provisions of sections 13.1 c) and 13.2 letters a) and d). Specifically, it does not inform of the legal basis of the treatment, nor of the period during which will keep the personal data or, not being possible to set a deadline, on the criteria employees to determine it; or the right to file a claim with the controlling authority.

FOURTH: The Spanish Data Protection Agency has notified the respondent the agreement to initiate this sanctioning procedure, but this has not presented allegations or evidence that contradicts the facts denounced.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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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, under the heading "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 the above definitions, data collection 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.

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, indicates 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

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

tant;

b) the contact details of the data protection delegate, if applicable;

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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 legitimate interests

swindles 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 of adequacy

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

46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees

adequate or appropriate and the means to obtain a copy of them or the fact of

that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained,

them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- 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 consent.  
lien prior to 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 re-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 providing  
tar 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, significant information on the applied logic, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data personal data for a purpose other than that for which they were collected, will provide the received, 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 to the extent



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measure in which 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 data controller

ment 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 Re-regulation (EU) 2016/679.

If the data obtained from the affected person were to be processed for the elaboration of

them, 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.

similarly, when this right concurs in accordance with the pre-

seen 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 corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed below:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

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(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular".

Article 83.5 b) of the RGPD establishes that:

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

b) 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" provides:

"The remaining formal infractions are considered minor and will prescribe after a year.

of the articles mentioned in paragraphs 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 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, the respondent has not presented arguments or evidence that

contradicts the facts denounced within the term for it.

This Agency has verified that the conduct of the respondent is not in accordance with the

data protection regulations, since its website <https://www.flatsfriends.com>

does not contain all the information required in article 13 of the RGPD, indicated in the

foundation of law III.

Thus, the exposed facts constitute, on the part of the claimed, a

infringement of the provisions of article 13 of the RGPD.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate

address a warning when collecting personal data from users to

through forms and consider that the administrative fine that could fall with

in accordance with the provisions of article 83.5 b) of the RGPD would constitute a burden

disproportionate to the one claimed, since there is no record of the commission of any

previous breach of data protection.

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Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collect from them the requirements contemplated in article 13 of the RGPD, as well as such as the provision of means of proof accrediting compliance with the required.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS FLATS FRIENDS, S.L., with NIF B98892771, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUEST FLATS FRIENDS, S.L., with NIF B98892771, under the provisions of article 58.2 d) of the RGPD, so that within ten business days from this act of notification proves before this body the adoption of measures to provide information to the people whose personal data it collects, in accordance with the provided for in article 13 of the RGPD.

THIRD: NOTIFY this resolution to FLATS FRIENDS, 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.

Finally, it is pointed out 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 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 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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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