

□ Procedure No.: PS/00398/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 22, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against SOLUCIONES Y SERVICIOS ANDUNAS, S.L. with
NIF B72316102 (hereinafter, the claimed).

The grounds on which the claim is based are that, when making a call
interested in the status of an order, the data controller has
proceeded to record said call without previously informing of said circumstance.

The recording is provided in which they are informed that they are recording the call, without making any
type of allusion to the regulations on data protection.

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/04049/2020, transfer of
said claim to the claimed party, on June 18, 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.

THIRD: On February 9, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written
pleadings in which, in summary, it stated the following:

“No legal precept of the RGPD has been infringed, not even article 13 that

This Agency states that the claimed infringes.

The claimed entity is a company dedicated to the online sale of material

therefore, the contracting and processing of data, as well as the

information to the client regarding the processing of personal data is made at the time

to formalize the purchase, in writing and online.

Proof of the moment in which the company obtained from the interested party the

personal data related to this, as well as, at the same time in which it is

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provided all the information required by the aforementioned article 13 of the RGPD. Moment

which in any case was prior to the telephone call, therefore, and by virtue of the

section 4 of article 13 of the RGPD “The provisions of sections 1, 2 and 3 do not

will be applicable when and to the extent that the interested party already has the

information.”, the company has not violated the data protection regulations, the

data were collected at a time prior to the call made, same

moment in which the legal information is provided to the interested party, which is why the

The interested party already had the mandatory information since the contracting of his order

required by said regulations.”

The entity claimed states that "the same complainant recognizes these extremes

when he expressly states that "he made a call to inquire about the

status of your order” since the customer gets in touch to inquire about a

request, solely and exclusively, not proceeding to carry out data processing

any in said conversation.”

It is also alleged by the respondent that "she does not make recordings because there is no reason one for which the company needs to record calls telephone calls with their clients, because the terms of the contract and the sale are formalized online, and in the same way personal data is collected and informed the contracting client of all the mandatory information.

However, in the hypothetical case that the telephone conversation had not adequately provided the interested party with the information required by the regulations legal, the provisions of article 13 of the RGD will not be applicable, since, the The call was after the moment in which the data was actually collected. information and current legal information on data protection was provided to the interested party."

FIFTH: On March 16, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/04049/2020, as well as the documents provided by the claimant.

SIXTH: On March 22, 2021, a resolution proposal was formulated, proposing that it be imposed on SOLUCIONES Y SERVICIOS ANDUNAS, S.L., with NIF B72316102, for an infringement of article 13 of the RGD, typified in article 83.5 of the RGD, a sanction of warning.

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

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PROVEN FACTS

FIRST: A recording is made in which they are informed that the call is being recorded, without make any allusion to the regulations on data protection.

SECOND: The claimed entity denies the realization of the recording of the call, despite the fact that in the recording provided by the claimant, the operator affirms that it is being recorded.

The respondent company alleges that even if it had recorded the call, it was not they took personal data, but listening to the recording provided reveals that the name and surnames of the claimant were provided, and the email was verified claimant's email.

THIRD: The entity complained against has demonstrated that it provides the information of the article 13 of the RGPD to your customers on your website when they make a purchase, which It is the moment in which they obtain the data of their clients.

In addition, it is verified that in the telephone communications the entity claimed did not obtains new personal data from its customers, so as already informed of data processing at the time of purchase do not have to re-report it.

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

The defendant was charged with the commission of an infraction for violation of article 13 of the RGPD, because the claimant when making a call inquiring about the situation

of an order, the data controller has proceeded to record said call without report this circumstance in advance, which entailed a violation of article 83.5 b) of the GDPR.

III

It has been verified that the facts denounced do not imply a violation of article 13 of the RGPD because the claimed entity provides the information required in the mentioned article to your customers, when they make a purchase through your page Web.

Therefore, it is stated that in the telephone communications the claimed entity does not obtains new personal data from its customers, so as already

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informed of the treatment of the data obtained at the time of purchase was not requires them to report again.

Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to the claimant and claimed.

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reconsideration before the Director of the Agency Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and paragraph 5 of the provision additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction Contentious-Administrative, within two months from the day after to the notification of this act, as provided in article 46.1 of the aforementioned Law.

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Director of the Spanish Data Protection Agency

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