

□ Procedure No.: PS/00302/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 01/20/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter, the claimant),
through which he makes a claim against the entity GESTIONES AUTO LOW
COST S. L with NIF B90350901 (hereinafter, the claimed one), owner of the website
<https://gestoautolowcost.business.site/>, because it lacks the corresponding policy
Of privacy.

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

“I want you to erase my personal data that you have in your possession (Name,
telephone number, ID photo) and when searching on their website I have been able to verify that neither
They do not even have the mandatory information on privacy policy and protection of
data. It is then impossible for me to address the data controller
data since I don't even know who he is, apart from the fact that they have stopped answering my messages
and calls”.

SECOND: Prior to admitting this claim for processing, the
Agency gave transfer of it to the claimed on 02/15/2021, in accordance with the
provided in article 65.4 of Organic Law 3/2018, of December 5, of
Protection of Personal Data and guarantee of digital rights (hereinafter,
LOPDGDD).

Initially, the request for information on the facts revealed

manifest could not be served to the claimed after two attempts. First of them took place through the Electronic Notifications Service, being rejected on 02/26/2021 once the established ten-day period has elapsed; and the second sent through the Postal Service, being "Returned to origin by unknown" on 03/10/2021. Subsequently, the Subdirector General for Inspection of Data requested from the State Tax Administration Agency information on the fiscal domicile of the claimed party, reiterating by postal mail to the new address the 04/06/2021 and being received on 04/15/2021, as stated in the Receipt Notice issued by the Post Office, without any reply having been received.

THIRD: On 07/09/2021, 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.

FOURTH: 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 C/ Jorge Juan, 6

28001 – Madrid

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2/10

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 07/12/2021 and that on 07/23/2022 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".

FIFTH: 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 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.

SIXTH: The agreement to initiate the procedure agreed in the third point of the part dispositive "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 of 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: The website <https://www.gestautolowcost.business.site/> lacks a

Privacy Policy appropriate to data protection regulations. under the rubric

"Contact", the website only provides users with three mobile phone numbers, the

opening hours and address of the entity.

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3/10

SECOND: 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 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

circulation of these data (hereinafter RGPD) recognizes each control authority,

and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

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 the GDPR, 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;”

In accordance with the above definitions, the collection of personal data with reason for the formalization of a contract for the provision of services included in a web page constitutes data processing, for which the controller of the treatment must comply 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 RGPD, 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 any;

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, ble, 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 any time, without affecting the legality of the treatment based on consent.

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5/10

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 applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the data controller plans the further processing of 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 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 must 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 least:

- 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 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

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6/10

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;

(...)

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 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

“They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.”

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In this case, the respondent has not presented arguments or evidence that contradicts the facts denounced within the term for it.

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7/10

This Agency has verified that the conduct of the respondent is not in accordance with the data protection regulations,

since your website

<https://www.gestoautolowcost.negocie.site/> does not have a Privacy Policy,

as required in article 13 of the RGPD, indicated in the legal basis

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 order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines

under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are in each individual case effective,

proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question as well

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

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8/10

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of

personal information.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the precepts indicated, in order to set the amount of the penalty to impose in the present case, it is appropriate to grade it according to the following criteria aggravating factors established in article 83.2 of the RGPD:

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The nature, seriousness and duration of the infraction. The claim continues without incorporate the corresponding Privacy Policy into its website.

The intentionality or negligence in the infringement. In the present case not we can affirm that the defendant has acted maliciously, although her conduct reveals a serious lack of diligence.

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The way in which the supervisory authority became aware of the infringement. The

The way in which the AEPD has been informed has been through the interposition of the complaint by the claimant.

- The degree of cooperation with the AEPD in order to remedy the infringement. After notification of the claim and the agreement to start the present sanctioning procedure to the claimed one for purposes of being able answer, the AEPD has not received any response.

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 13, it allows set a penalty of 1,000 euros, (one thousand euros).

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution requires the claimed party, as data controller, to

add to the website <https://gestoautolowcost.business.site/> a Privacy Policy

Privacy adjusted to the provisions of article 13 of the RGPD, as well as the contribution of means of evidence accrediting compliance with the requirements

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 GESTIONES AUTO LOW COST S.L., with NIF B90350901, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine of 1,000 euros (one thousand euros).

SECOND: REQUEST GESTIONES AUTO LOW COST S.L., with NIF B90350901, under the provisions of article 58.2 d) of the RGPD, so that within a period of month from this act of notification proves before this body the adoption of measures to provide information to the people whose personal data you collect,

in accordance with the provisions of article 13 of the RGPD.

THIRD: NOTIFY this resolution to GESTIONES AUTO LOW COST

S.L.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 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, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

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

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10/10

voluntary 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 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.

Sea Spain Marti

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