

□ Procedure No.: PS/00260/2020

## 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 February 27, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against APARTAMENTOS ANTARES, S.L. with NIF B70564331

(hereinafter, the claimed).

The reasons on which the claim is based are that the person responsible for the website

\*\*\*URL.1 lacks an adequate privacy policy adapted to the RGD, despite

that collects personal data through the reservation form, where it is required

name, phone and email.

SECOND: The present claim was transferred to the respondent on June 3, 2020,

requiring him to send to this Agency, within a period of one month, information

about the response given to the claimant for the facts denounced, as well as the

causes that have motivated the incidence and the measures adopted.

In response to the aforementioned request, the respondent states that they are very

aware of compliance with data protection regulations and the

application of the technical and organizational measures necessary for said

compliance, and that is why they are constantly reviewing and updating

the data processing procedures including the website and cookies, and

continue to comply with data protection regulations and avoid claims.

For this reason, they consider that these measures applied with the updating of the web are

enough to guarantee the good use of the data and to have the free consent

and unequivocal of the users at all times.

THIRD: On October 5, 2020, 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:

“On the website <https://apartamentosantares.com> it is CORRECTLY indicated, in the lower part of said website, that there is a LEGAL NOTICE and a POLICY OF PRIVACY.

THE LEGAL NOTICE correctly complies with what is specified in the LSSI-CE and the PRIVACY POLICY complies with the requirements of the L.O. 3/2018 from

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/9

Data Protection and Guarantees of Digital Rights and Regulation (EU)

2016/679 of Data Protection.

You may use side tabs to make reading easier, and do more

understandable the contents of the legal notice and the privacy policy, carry,

Contrary to what was intended, to a possible confusion at the time of analyzing the PRIVACY POLICY.

Both the LEGAL NOTICE and the PRIVACY POLICY, upon opening them, in their left column, appear, in different tabs, all the requirements that demand the

IT. 3/2018 on Data Protection and Guarantees of Digital Rights and the

Regulation (EU) 2016/679 on Data Protection.

On the other hand, the Agency points out that: "Notwithstanding, of the actions of investigation carried out, it is verified that the form to be completed in the decision data of the clients of the claimed, does not allow the claimant to choose between giving his consent or not for the processing of your personal data, when these are to be used for advertising purposes.

We state that we do not send advertising and that any possible reference to promotional activities refers to the sending of the information requested by the same interested or related to the contracted service (apartment reservation).

Both aspects considered correct in the LSSICE and exempt from the need for consent according to section 2 of article 21 of said law.

Serve as proof that, in the content of the privacy policy, in the tab "communications", the following information can be read: The RESPONSIBLE does not carries out SPAM practices, therefore, in accordance with the LSSICE, it does not send emails commercials by e-mail that have not been previously requested or authorized by the User.

In addition, the letter of the Agency continues, that "On the other hand it is manifested in the present claim that the web page of the claimed person lacks a policy of adequate privacy adapted to the RGPD, in accordance with what is indicated in the legal basis III, which would entail a violation of article 13 of the RGPD".

In this case WE OPPOSE since the website has a PRIVACY POLICY that conforms to what is required by the L.O. 3/2018 of Data Protection and Guarantees of Digital Rights and the RGPD."

FIFTH: On November 6, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/03321/2020, as well as the documents provided by the claimant.

SIXTH: On November 11, 2020, a resolution proposal was formulated, proposing that it be imposed on APARTAMENTOS ANTARES, S.L., with NIF B70564331, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/9

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: Through the investigative actions carried out by the Agency

Spanish Data Protection has found that the claimed has the following

privacy policy on the website \*\*\*URL.1:

“The purpose of this Website is to inform all Users of the

information and the sale of its products and/or services offered by EL

RESPONSIBLE, through a showcase displayed in the content of its pages.

For the purposes of the provisions of the Law, the CONTROLLER informs you that the data

information that you could voluntarily provide us through telephone calls

or while browsing our Website (at the time of registration or when

submit a form or make your query, comment or request or by sending us a

email), will become part of the information system of the

RESPONSIBLE. with the purpose of:

Manage your request and make reservations and send the confirmation of the

reservation made.

Also for carrying out commercial, administrative, promotional and/or advertising, and respond to your requests for information, or to any services provided or sponsored by the RESPONSIBLE, or simply send you information that we consider of interest to you.

In this sense, the user CONSENT that the personal data provided through of this website, or any other of the RESPONSIBLE, are incorporated into their files and for sending commercial information via internet, SMS, fax or any other medium.

Not providing the requested personal data or not accepting this privacy policy data protection implies the impossibility of subscribing, registering or receiving information about the products and services of the CONTROLLER.”

SECOND: It is therefore found that in the tab called "purpose of the data collection", where what is transcribed in the first fact is indicated, it is indicated that the The use of the data provided will be to provide the service and inform and send them advertising.

However, in said tab the user is not given the option to oppose the use of their data, nor is the possibility of filing a claim with the AEPD.

THIRD: The respondent states that it is possible that the use of side tabs on the website give rise to confusion at the time of analyzing the POLICY OF PRIVACY, but that both the LEGAL NOTICE and the PRIVACY POLICY, when

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

open them, in its left column, all the requirements appear, in different tabs

that require the L.O. 3/2018 on Data Protection and Rights Guarantees

Data and Regulation (EU) 2016/679 on Data Protection.

## FOUNDATIONS OF LAW

Yo

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>).

III

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/9

Article 5.1.e) of the RGD establishes that personal data will be:

“e) kept in a way that allows the identification of the interested parties during longer than necessary for the purposes of the processing of personal data; the Personal data may be kept for longer periods provided that it is processed exclusively for archival purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures that This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");"

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, 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 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 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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/9

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

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/9

significantly affect in a similar way, when this right concurs in accordance  
with the provisions of article 22 of Regulation (EU) 2016/679."

In the present case, it is stated that the website <https://apartamentosantares.com/> lacks an adequate privacy policy, to which the defendant alleges in response to the request made by this Agency that have proceeded to the update of the web to guarantee the good use of the data and to have the free and unequivocal consent of users at all times.

The respondent states that the use of the personal data object of this case It is based on legitimate interest.

In this sense, the defendant will have acted in accordance with the law as long as complies with the provisions of article 21.2 of the current Law 34/2002, of July 11, of Services of the Information Society and Electronic Commerce (hereinafter LSSI), "in any case, the provider must offer the recipient the possibility of Oppose the processing of your data for promotional purposes by means of a simple and free procedure, both at the time of data collection and in each of the commercial communications that you direct.

When the communications have been sent by email, said means must necessarily consist of the inclusion of an email address electronic or other valid electronic address where this right can be exercised, sending communications that do not include said address is prohibited."

On the other hand, in this claim, it is stated that the website of the claimed lacks an adequate privacy policy adapted to the RGPD, of in accordance with what is indicated in the basis of law III, which supposes a infringement of article 13 of the RGPD.

v

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;”

(...)

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/9

“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;”

“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 74.a) of the LOPDGDD, under the heading "Infringements considered minor

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.”

In this case, it is taken into account that the respondent collects personal data from the users without providing them, prior to its collection, all the information in matter of data protection provided for in article 13 of the aforementioned RGPD.

The exposed facts constitute, on the part of the defendant, an infraction to the provided in article 13 of the RGPD.

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.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, orders the claimed party, as data controller, the adequacy of the information offered to users whose personal data is collected from them to the requirements contemplated in 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 APARTAMENTOS ANTARES, S.L., with NIF B70564331, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a

warning sanction.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

9/9

SECOND: TO REQUIRE the claimed party so that within one month they certify

before this body the fulfillment of:

☐ the adoption of the necessary measures to update its "Privacy Policy".

Privacy" to current regulations on data protection

-Regulation (EU) 2016/679 (RGPD)-, adapting the information

offered to the requirements contemplated in article 13 of the RGPD, and must

provide users, prior to the collection of data

of the same, all the information required in the aforementioned precept,

for which said company must take into account the provisions of article

21.2 of the LSSI regarding the requirement to establish a procedure

simple and free to oppose the processing of data from the moment

in which they are taken, as well as what is indicated in article 5 of the RGPD in what

regarding the purpose of the treatment and term of conservation of the data.

THIRD: NOTIFY this resolution to APARTAMENTOS ANTARES, 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/](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

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](https://sedeagpd.gob.es)