

□ File No.: PS/00345/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 03/03/2021, 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 B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed party), for not complying with the Privacy Policy of the page  
web <https://www.jobitur.com> with the provisions of Regulation (EU) 2016/679, of the  
European Parliament and of the Council, April 27, 2016, regarding the protection of  
natural persons with regard to data protection treatment and the free  
circulation of these data (hereinafter, RGPD).

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

"The aforementioned website, [www.jobitur.com](http://www.jobitur.com), does not comply with what is established under the Law  
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of  
digital rights, which they have openly breached by not reporting that the  
data obtained go to generate a database in your possession, at the time of  
record, in which nothing is indicated (attached photo) nor does it mention the objective of the  
itself, nor of course do they mention how to exercise the fundamental rights of  
deletion, rectification and cancellation of the data, as there is no address or  
physical or electronic to go to for it. In repeated communications to the only  
contact email that appears on the web about it, they never answer.

In its "privacy policy" section of the web, an identification does not appear

of the company, which violates compliance with the law, neither CIF, nor personality of the same, nor address, nor mention of the rights of cancellation, deletion and rectification of the data obtained when no site to go to appears.

Attach the following documentation:

- A copy of the email sent by the claimant to the email listed on the website [www.jobitur.com](http://www.jobitur.com), exercising the right to cancel your data personal. It indicates the following:

"I hereby request that you cancel each and every one of my data that you hold in their proxy in an electronic file of their database and refrain from share my data with third parties of any kind, and on the other hand, cancel my account on its website, in compliance with Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of the rights digital, which they have openly breached by not reporting that the data obtained go on to generate a database in their possession, not to mention the

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objective of the same, nor of course mention how to exercise the rights fundamentals of deletion, rectification and cancellation of data".

- A copy of sections 1, 2 and 5 of the Privacy Policy that appears in the mentioned website. They indicate the following:

"1. Ownership. JOBITUR.COM is the entity that owns the website and the file to which Your Personal Data is incorporated, as well as the person responsible for the treatment of them.

## 2. Collection and treatment.

### 2.1. Personal Data JOBITUR.COM will collect the Data of

Personal Character of the Users, through online forms, via

Internet. The Personal Data collected, depending on each case

They will be, among others, name and surnames, address, telephone number, email

email, shipping address. The Users expressly and unequivocally

give their consent for the Personal Data to be

incorporated into the Personal Data file with the number 206075028,

registered with the data protection agency.

### 2.2. Purpose. The purpose of the collection and automated treatment of the

Personal Data will be

2.2.1. Facilitate management and communication with our customers.

2.2.2. Make proposals to new contacts.

2.2.3. Sending communications and advertising related to services and products

from JOBTUR.COM.

## 5. Rights of access, rectification, cancellation and opposition. Those

individuals who have provided their data to JOBITUR.COM, may

address it, as responsible for the Personal Data File,

in order to be able to exercise their rights of access, cancellation, rectification

and opposition regarding the data included in the Data File of

Personal character.

Given the very personal nature of these rights, it will be necessary for the

affected prove their identity to JOBITUR.COM. JOBITUR.COM is

reserves the right to adopt the measures that are pertinent with the object

to verify your identity.

The rights of access, rectification, cancellation and opposition may

be exercised in accordance with the provisions of current legislation. The user must send a communication in writing, addressed to the Department of JOBITUR.COM Customer Service.

Once the request is received, JOBITUR.COM will proceed to notify you of your decision within the terms established in the applicable legislation in each moment.

- A copy of the registration form on the website [www.jobitur.com](http://www.jobitur.com) that includes as personal data the name and surnames, the telephone and the address of email. In addition, it has two boxes, "Employer" and "Candidate", that the user must mark according to his profile.

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SECOND: In view of the reported facts, on 04/12/2021 the Subdirectorate General of Data Inspection accessed the DomainBigData registry in which indicates that the claimed party appears as the registrant of the domain [jobitur.com](http://jobitur.com) in the registry of Whois. In this sense, it is verified that the claimed party also has registered its name is the domain [magazineoftravel.es](http://magazineoftravel.es), as stated in the Whois registry of Red.es.

Likewise, on 04/13/2021, by the General Subdirectorate for Data Inspection access to the information available on the claimed in "Axesor". on said website

There is evidence of the participation of the respondent in three companies in which she has the 100% participation and, consequently, other information about them.

Lastly, on 04/20/2021 this Subdirectorate accesses the website

<https://www.jobitur.com>. Regarding the collection of personal data, check that, apart from having the registration form mentioned in the section on "Facts", first point, also has a contact form. In this are collected as mandatory data the name and email, being conditioned its sending to the acceptance of the Privacy Policy. Also, it allows users to send their curriculum, having to fill in another form that collects as the name, email, telephone, province, professional title and location are mandatory; but not the data regarding salary, photo, skills, URL, education and experience.

Regarding the Privacy Policy of the jobitur.com website, it is verified that continues to be the same one that appears in one of the documents provided by the claimant and indicated in the "Facts" section, first point, of this agreement. However, it should be noted that the sections not mentioned in the documentation attached to the claim are "Use of Cookies and remarketing", "Links" and "Change of Regulations".

Prior to admitting the claim for processing, this Agency gave transfer to the one claimed on 04/21/2021, in accordance with article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD). For purposes of power practice the notification, information was requested from the Tax Agency on the tax domicile of the claimed party, resulting in "Returned to origin due to surplus (not picked up at the office), as stated in the Post Office notice of 05/12/2021.

THIRD: On 06/29/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 10/08/2021, the Director of the Spanish Protection Agency

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

FIFTH: An attempt was made to notify the opening agreement of this sanctioning procedure by postal mail, which resulted in "Returned to origin by Unknown", according to the notice issued by the Post Office. In this way, the notification occurred through an announcement published in the Official State Gazette on the day 05/11/2021 and a hearing period of TEN WORKING DAYS is granted so that formulate allegations and present the evidence it deems appropriate, in accordance with

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with the provisions of articles 73 and 76 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

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 party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to open the procedure agreed in the fourth 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 protection of personal data on the website <https://www.jobitur.com>. The agency Spanish Data Protection has verified that its Privacy Policy is not conforms to the provisions of article 13 of the RGPD. Well, it does not cover all issues listed in the aforementioned precept.

SECOND: The Spanish Data Protection Agency has notified the respondent the agreement to open this sanctioning procedure, but 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 [www.aepd.es](http://www.aepd.es)

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The Spanish Agency for Data Protection is competent to resolve this process.

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": all 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 performed on data personal information 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, with respect to 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:

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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 applicable;

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 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.

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3. When the data controller plans further data processing

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 significantly affect in a similar way, when this right concurs in accordance with the provisions of 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:

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) (...)

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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 under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case".

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:

"Based on the provisions of article 83.5 of regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, 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."

v

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced in 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 [www.jobitur.com](http://www.jobitur.com) does not contain all the information required in article 13 of the RGPD, indicated in the foundation of

right III.

Thus, the exposed facts constitute, on the part of the claimed, a  
infringement of the provisions of article 13 of the RGPD.

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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.

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 B.B.B., with NIF \*\*\*NIF.1, for an infraction of article 13 of the  
RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE B.B.B., with NIF \*\*\*NIF.1, under the provisions of the

article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the GDPR article 13

THIRD: NOTIFY this resolution to B.B.B..

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

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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

Director of the Spanish Data Protection Agency

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