

□ Procedure No.: PS/00409/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00409/2019, instructed by the Spanish Agency for

Data Protection, to the entity GARANTIZA AUTOMOCIÓN, S.L. with CIF:

B87149001, owner of the websites www.garantiza.net and www.garantizaautomocion.com,

(hereinafter, "the entity claimed"), for alleged violation of Regulation (EU)

2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection

tion of Natural Persons with regard to the Processing of Personal Data and

to the Free Circulation of these Data (RGPD), and based on the following,

BACKGROUND

FIRST: dated 09/19/18, Ms. A.A.A. (hereinafter, "the claimant"), presented

written before the Spanish Agency for Data Protection, in which, among others, denounced

ciaba:

"In the website of the respondent, a breach of the duty to inform is observed.

information in the treatment, contact details of the Data Protection Delegate

legal basis or legitimacy for the treatment, term or the criteria of con-

preservation of information existence of automated or elaborated decisions

profiling, provision of transfers to Third Countries, right to pre-

file a claim with the Control and Privacy Policy Authorities

in a foreign language, among others".

Attached to the claim screenshot of the Privacy Policy of the website,

www.garantiza.net, where you can see that the information provided in the

It is not written in Spanish language:

Privacy Policy: "Suspendisse commodo tempor sagittis! In fair it is, solici-

tudin eu scelerisque pretium, placerat eget elit. Praesent faucibus rutrum hate
at rhoncus. Pellentesque vitae tortor id neque fermentum pretium. maecenas ac
lacus ut neque rhoncus laoreet sed id tellus. Donec just tellus, tincidunt vitae
pellentesque nec. pharetra to orci Praesent nunc nunc. egestas eget elemen-
you thirsty; rutrum eget metus! Vestibulum congue congue dut ut porta... Aenean
laoreet viverra turpis, a commodo purus eleifend a. Nam lacus dui; egestas ut
aliquam nec, eleifend sit amet est. Nam just elit, dictum id tempus a, uitrícies
tempus lacus. Nunc purus nibh; eleifend eget facilisis ac, sagittis non tortor. Saw-
vamus eu enim a orci accumsan tincidunt ut ut elit”.

SECOND: In view of the facts set forth in the claim and the documents
provided by the claimant, the General Subdirectorate for Data Inspection proceeded
to carry out actions for its clarification, under the investigative powers
tion granted to the control authorities in article 57.1 of the Regulation (EU)
2016/679 (GDPR). Thus, with dates 10/16/18, and 10/31/18, an information request is directed
tive to the claimed entity.

THIRD: According to a certificate from the Electronic Notifications Service and Address
Electronic Enabled, the request sent to the claimed entity, dated
10/16/18, through the Notific@ service, was rejected, dated 10/27/18.

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According to a certificate from the State Post Office, the notification sent to the company
claim, dated 10/31/18, through the SICER service, to the address: ***DI-
RECCION.1, was delivered on 11/06/18, the recipient being Ms. B.B.B..

***NIF.1.

FOURTH: On 10/31/18 the website www.garantizaautomocion.com forcing the browser to download the latest version of the page hosted on the

remote server, by pressing the key combination Control + F5, con-

Trying that in the "contact", only the email address and the postal address of

the company, not producing personal data processing.

On 10/31/19, a printout of the pages corresponding to "Notice

Legal", "Privacy Policy", "Cookies Policy" and "Contact" of the claim website.

mado <http://www.garantiza.net>, it is verified that in the link to the Privacy Policy

You will find, among others, the following information:

"Guarantiza Automoción, S.L, informs you about its Privacy Policy regarding

of the treatment and protection of the personal data of the users and

customers that may be collected by browsing or contracting services

services through the website <https://www.garantiza.net>. In this sense, Guarantee

za Automotive, S.L. guarantees compliance with current regulations in ma-

matter of protection of personal data, reflected LOPD and RGPD. The use of si-

tio Web implies acceptance of this Privacy Policy.

Identity of the person in charge (...) and Principles applied in data processing (...)

Obtaining personal data:

"To browse <https://www.garantiza.net> you do not need to provide any

some personal data. The cases in which you do provide your data are the following:

following:"

Rights:

"Request access to stored data. Request a rectification or

cancellation. Request the limitation of your treatment. Oppose the treatment.

The exercise of these rights. To exercise your access rights, rectify-

tion, cancellation and opposition you have to send an email to info@garantiza.net

along with valid proof of law such as a photocopy of the D.N.I. or equivalent

lens.

You cannot exercise the right to data portability”

You have the right to effective judicial protection and to file a claim before

the control authority, in this case, the Spanish Agency for the Protection of

Data,

Purpose of personal data processing:

“When you connect to the website to send an email to the Owner, subscribe or

make a contract, you are providing personal information of

which the person in charge is Guarantee Automoción, S.L. This information can

include personal data such as your IP address, name and

last name, physical address, email address, telephone number,

and other information. By providing this information, you consent to

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your information is collected, used, managed and stored by 1&1 IO-

US <https://www.ionos.es/terms-gtc/terms-privacy/>”,

The personal data and the purpose of the treatment by the Owner is different according to

According to the information capture system:

There are other purposes for which the Owner treats your personal data:

“To guarantee compliance with the conditions set forth in the applicable law,

ble. This may include the development of tools and algorithms that help

this website to guarantee the confidentiality of the personal data that take. To support and improve the services offered by this website. for management social networks. Guarantee Automotive, S.L. has a presence in networks social. If you become a follower on the Holder's social networks, the treatment of personal data will be governed by this section, as well as by those conditions of use, privacy policies and access regulations that belong to the social network that is appropriate in each case and that you have previously accepted.

You can consult the privacy policies of the main social networks on these links: Facebook; Twitter; LinkedIn; Youtube; Instagram”.

The Holder will treat your personal data with the purpose “to correctly manage their presence on the social network, inform you of their activities, products or services, as well as for any other purpose that the regulations of social networks allow. In no case does the Holder use

You will use the profiles of followers on social networks to send advertising.

Security of personal data.

The website is hosted by 1&1 IONOS <https://www.ionos.es/terms-gtc/terms-privacy/>. You can check their privacy policy.

Personal data will not be transferred to third organizations.

“with the exception that said transfer of data is covered by an obligation legal obligation or when the provision of a service implies the need for a contractual relationship with a treatment manager. In the latter case, only the transfer of data to the third party will be carried out when Guarantee Automotive,

SL has the express consent of the User. However, in some

In some cases, collaborations can be carried out with other professionals, in those cases, consent will be required from the User informing about the identity of the collaborator and the purpose of the collaboration”.

Content from other websites.

The pages of this website may include embedded content (for example, eg, videos, images,). Embedded content from other websites behaves

exactly the same way as if you had visited the other website. These

Websites may collect data about you, use cookies, embed code additional third-party tracking, and monitor your interaction.

Cookies policy

For this website to work properly, it needs to use cookies, which

It is information that is stored in your web browser.

Legitimation for data processing.

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The legal basis for the treatment of your data is: consent. For with-

contact the Owner, subscribe to a newsletter or make comments on this site

Web you have to accept this Privacy Policy.

Categories of personal data.

The categories of personal data processed by the Holder are: Identification data you.

Conservation of personal data.

The personal data that you provide to the Owner will be kept until they are request its deletion.

Recipients of personal data. Google Analytics

Web navegation.

When browsing <https://www.garantiza.net> non-identifying data can be collected.

assets, which may include IP address, geolocation, a record of how the services and sites are used, browsing habits and other data that is not They can be used to identify you.

The website uses the following third party analytics services:

Google Analytics. The Holder uses the information obtained to obtain data statistics, analyze trends, manage the site, study birth patterns, vegetation and to gather demographic information.

Acceptance and consent.

As a user of the website, you declare that you have been informed of the conditions on the protection of personal data, you accept and consent to the treatment ment of the same by Guarantee Automoción S.L. in the form and for the purposes indicated in this Privacy Policy.

Revocability.

To exercise your rights of access, rectification, cancellation and opposition you have to send an email to info@garantiza.net together with the proof ba valid in law as a photocopy of the D.N.I. or the equivalent. The exercise of your rights does not include any data that Guarantee Automoción, S.L. East obliged to keep for administrative, legal or security purposes.

FIFTH: On 12/04/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of of the powers established in art. 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), for alleged infringement of article 13 of the RGPD and considered very serious in 72.1.h) of the LOPDGDD for the purposes of prescription, setting an initial sanction of "Warning", without prejudice to what is

will result in the course of the instruction of the procedure, and requiring the entity that: "Take the necessary measures contemplated in article 13 of the RGPD, for which that you must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment".

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SIXTH: On 12/15/19, the initiation of the file was notified to the claimant entity.

demanded, who has not filed before this Agency, any brief or allegation, within the the period granted for this purpose.

PROVEN FACTS

1.- Consulting the website www.garantiza.net, dated 10/31/19, it is observed that it contains Legal Notice where it is indicated that "You cannot exercise the right to data portability. Nor does it indicate the existence or not of a Protection Delegate. Data Transfer (DPD) or whether or not you carry out international data transfers.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of Organic Law 3/2018, of December 5, bre, Protection of Personal Data and guarantee of digital rights (in the successive LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the

treatment of alleged infringements of these Regulations” and in 2.i), that of:

“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 case.”.

In the present case, it has been found that, on the website www.garantiza.net,

It is indicated that "You cannot exercise the right to data portability". Either indicates the existence or not of a Data Protection Delegate (DPD) or whether or not he performs international data transfers.

All of the above could suppose an infraction for violation of art 13) RGPD, considered in art 72.1.h), LOPDGDD as "very serious" for prescription purposes.

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III

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the greater amount, in accordance with article 83.5.a) of the RGPD.

The sanction to be imposed must be graded according to the criteria established article 83.2 of the RGPD, and with recital 148 of the RGPD itself, which provides for the possibility of punishing with a warning in certain circumstances.

In view of the aforementioned precepts and others of general application, the Director of the Agency Spanish Data Protection.

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RESOLVE

NOTICE: to the entity GARANTIZA AUTOMOCIÓN, S.L. with CIF: B87149001, title
lar of the websites www.garantiza.net and www.garantizaautomocion.com, for infraction of the
article 13 of the RGPD, typified in Article 83.5 of the RGPD.

REQUEST: to the entity GARANTIZA AUTOMOCIÓN, so that, within a period of
month from this act of notification, proceed to take the appropriate measures to
adapt its privacy policy to current regulations, (requirements contemplated in
article 13 of the RGPD), for which you must take into account the provisions of article
6 of the RGPD in relation to the legality of the treatment.

NOTIFY: this resolution to the entity GARANTIZA AUTOMOCIÓN,

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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
LOPDPGDD, 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 the date of

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 section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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