

□ Procedure No.: PS/00437/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 07/13/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against STOCKHUNTERS, S.L. with CIF B88606611 (hereinafter, the claimed).

The reasons on which the claim is based are, in short, that the respondent does not attend  
to any of their claims, not knowing what is the use that is given to their  
data because the privacy policy of the entity's website does not comply with what  
established in the GDPR.

SECOND: In view of the facts denounced and the documents provided by  
the claimant of which this Agency has become aware, the Subdirectorate  
General Data Inspection proceeded to carry out actions for the  
clarification of the facts in question.

On 08/10/2020, reiterated on 09/01/2020, the claim was transferred to the defendant  
submitted for analysis and decision adopted in this regard. Likewise, it  
required so that within a month it would send to the Agency determined  
information:

- Copy of the communications, of the adopted decision that has been sent to the  
claimant regarding the transfer of this claim, and proof that  
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the  
claim.

- Report on the measures adopted to prevent the occurrence of similar incidents.

- Any other that you consider relevant.

The respondent has not responded to any of the requirements made by the Spanish Data Protection Agency.

THIRD: On 11/25/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 01/27/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the aforementioned RGPD.

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2/8

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

## PROVEN FACTS

FIRST: The claimant, on 07/13/2020, filed a claim with the Agency

Spanish Data Protection Agency, stating that the respondent has not complied with

none of his writings, not knowing what is the use and treatment that he gives to his

personal data because the privacy policy of its website is not

conforms to the provisions of the RGPD.

SECOND: The privacy policy of the entity's website does not comply with what

established in the RGPD, in accordance with the provisions of article 13 of the citation

Regulation.

## FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with

transfer of how many actions exist in this regard, and the interested parties will be notified,

understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms

of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.

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3/8

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

Article 58 of the RGPD, Powers, states in its point 2 that:

III

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in

Instead of the measures mentioned in this section, according to the circumstances of each particular case;

(...)"

The facts denounced that give rise to this procedure are

materialize in that the privacy policy and legal notice of the website of the claimed party do not complies with the provisions of the RGPD, specifically article 13 of the RGPD.

This article determines the information that must be provided to the interested party at the time of collecting your data, establishing the following:

"Article 13. Information that must be provided when personal data is obtain from the interested party.

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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28001 – Madrid

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 basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

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 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 related 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 data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw the

consent at any time, without affecting the legality of the

treatment based on 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 providing such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

personal data for a purpose other than that for which it was collected,

will provide the interested party, prior to said further treatment, information

for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information.

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The website: <https://stockhunters.es/privacy-policy/>, ownership of the claimed does not make any reference to compliance with the provisions of article 13 of the RGD previously mentioned, in the sense of determining the identity of the person in charge, the purposes for which the data will be used and the rights that the interested party may exercise before the person in charge, etc.

The respondent has not provided supporting documentation that proves the correct compliance with the provisions of the RGD, including the information to which it reference article 13.

#### IV

Article 83.5 b) of the RGD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 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 treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.

(...)"



In order to establish the administrative fine to be imposed,  
observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which  
point out:

v

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. 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 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

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6/8

as well as the number of stakeholders affected and the level of damage and

damages they 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 have

applied under articles 25 and 32;

e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case, what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered 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 certificates 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 realized or losses avoided, direct or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the 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 treatments of personal data.

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 after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

data.

In accordance with the precepts transcribed, in order to set the amount of the

sanction to be imposed in the present case for the infraction typified in article 83.5.b)

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7/8

of the RGPD for which the claimed party is responsible, the

following factors:

The merely local scope of the treatment carried out by the entity

claimed.

Only one person has been affected by the offending conduct or at least

there is only evidence that there was only one claimant.

The damage caused to the claimant having to go to this instance

claiming the aforementioned facts, in view of the fact that the defendant did not attend to his

claims.

The respondent entity does not record that it has adopted measures to prevent the produce similar incidents; has not responded to the request information of the Agency which affects the lack of cooperation with the control authority in order to remedy the infringement and mitigate the possible side effects of it.

There is no evidence that the entity had acted maliciously, although the performance reveals a serious lack of diligence.

The link of the offender with the performance of data processing of personal character.

The claimed entity is a small business.

Therefore, in accordance with the established graduation criteria, both adverse and favorable, a penalty of 4,000 euros is imposed for violation of the article 13 of the RGPD, of which the claimed party must respond.

In accordance with the applicable legislation and assessed the graduation criteria of the sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE STOCKHUNTERS, S.L., with CIF B88606611, for a infringement of article 13 of the RGPD, typified in article 83.5.b) of the aforementioned RGPD, a fine of €4,000 (four thousand euros).

SECOND: NOTIFY this resolution to STOCKHUNTERS, S.L., with CIF B88606611.

THIRD: 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,

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8/8

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 is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings if 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.

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