

Procedure No.: PS/00100/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00100/2019, instructed by the Spanish Agency for

Data Protection to D.A.A.A. (hereinafter the defendant), given the claim of D.

BBB (hereinafter the claimant), and based on the following

### BACKGROUND

FIRST: On 09/19/2018, the claimant filed a claim with the Agency

Spanish Data Protection. The claim is directed against the defendant. The

reasons on which the claim is based are: The claimant subscribed to a page

web, portaenrere.cat and they send you an email to let you know that you have subscribed

correctly but there is no information about the privacy policy or the

How your data will be treated.

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 10/16/2018, the claim submitted was transferred to the defendant for analysis

and communication to the complainant of the decision adopted in this regard. Likewise, it

required him to send to the determined Agency within a period of one month

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.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

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

THIRD: On 04/15/2019, 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 and, in accordance with the provisions of article 58.2 of the same norm consider that the sanction that could correspond would be WARNING.

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FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not submitted a brief of arguments.

Of the actions carried out in this proceeding, there have been accredited the following:

#### PROVEN FACTS

FIRST: On 09/19/2018 the claimant submitted a written claim to the AEPD.

The claim was directed against the claimant and the reason for it: that subscribed to a web page called [portaenrere.cat](http://portaenrere.cat) by sending you an email to tell you that your subscription had been made correctly without in the same contain any information on privacy policy, legal notice, or the way in which

your data would be processed.

SECOND: The claimant provides a copy of his DNI.

THIRD: In the form on the website to become a subscriber, provided by the claimant, there is no reference to the information that has to be provided to the interested parties in accordance with the provisions of the RGPD.

FOURTH: A copy of the welcome email dated 09/07/2018 sent to claimant from subscribers@portaenrere.cat, indicating:

Congratulations BBB! You have created a new compte correctly!

## 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.

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II

The defendant in this proceeding is charged with the violation of article 13 of the GDPR. This article determines the information that must be provided to the interested at the time of collecting your data, establishing the following:

"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 applicable;
- c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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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.

In accordance with the facts proven in this proceeding, the claimed has violated article 13 of the RGPD, materialized in the mail sent to the claimant and in which no reference is made to the fulfillment of what is indicated in the same and in which he should have mentioned, among others, the identity of the responsible, the purposes for which the data will be used, the rights that the interested party can exercise before the person in charge, etc., from which it is inferred that the

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claimed has not adapted the information offered on its website to what is established

in the GDPR.

### III

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the section 5 of the aforementioned article 83 of the aforementioned Regulation, "with fines 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 regulation of infractions in the LOPDGDD is more precise in terms of the situations giving rise to an infringement and their consideration, so that it is much easier to know the limitation period of that infraction (that is, if it is considered mild, serious or very serious) and in view of the administrative sanction to be imposed for its non-compliance.

The LOPDGDD, for prescription purposes, typifies in its article 72:

“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.

(...)”

However, article 58.2 of the REPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its

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Recital 148 of Regulation 2016/679, which establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that the respondent did not respond to the requirements of information formulated by the Inspection Service.

IV

At the same time, notification of the start agreement and after the term granted

to formulate allegations, I do not present any writing.

At this point, it is necessary to point out that if you do not correct and adapt the information offered on its website to the provisions of the RGPD or reiterate the conduct revealed in the claim and that is the cause of this procedure, as well as not immediately informing this AEPD of the measures adopted could proceed to the exercise of possible actions before the person in charge of the treatment in order to apply effectively the appropriate measures to guarantee and not compromise the confidentiality of personal data and the right to personal privacy.

Considering the aforementioned precepts and others of general application,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. A.A.A. with NIF nº \*\*\*NIF.1, for an infraction of the article 13 of the RGPD, sanctioned in accordance with the provisions of article 83.5.b) of the cited RGPD and, qualified as very serious in article 72.1. h) from the LOPDGDD to the effects of its prescription, a sanction of WARNING in accordance with the provided for in article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to the D.A.A.A. with NIF nº

\*\*\*NIF.1 and, in accordance with art. 77.2 of the RGPD, INFORM the claimant D. B.B.B. on the result of the claim.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 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 period of

month from the day following the notification of this resolution or directly



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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 appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of  
through the

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Director of the Spanish Data Protection Agency