

938-0419

Procedure No.: PS/00377/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On June 18, 2018, you have an entry in this Agency claim
formulated by Don A.A.A. (hereinafter the claimant), stating that
the website ***URL.1 does not identify the owner of the company and that on the page of
contact of the aforementioned website does not request the approval of the user to the policy of
privacy of it.

SECOND: In view of the facts set forth in the claim and the information
and documentation obtained as a result of the actions carried out, has been
had knowledge of the following facts:

2.1 Dated July 27, 2018, it is verified through the website

***URL.2 that Ms. B.B.B. (hereinafter, the claimed or IVT) appears as the owner of the
reviewed domain.

2.2 On November 20, 2018, the written entry of the
claimed in which, in response to the request for information that was made
by this Agency dated August 17, 2018, reports the following points:

- Affirms that the owner of the page was identified by his NIF, although

Your name and surnames have also been included.

- Regarding the contact page, it states that "it is only a

"contact" that voluntarily establishes who requests it. It is the interested party

voluntarily provide your data. In addition, these data are not stored or

subjected to any treatment. In fact, once the answer to the user's request, they are destroyed. For this reason, he interpreted that it was not necessary to approval of the user, since it is he who by decision and own will facilitates his data," adding that it has "built-in approval."

2.3 Dated November 26 and 27, 2018, when accessing the site

web ***URL.1 it is verified that:

2.3.1. – Regarding the collection and processing of personal data, the

Next information:

2.3.1.1 In the contact form included in the page of the reviewed website

***URL.1 the name, e-mail and telephone number of the users who complete it are collected. To the

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At the bottom of the aforementioned form there is an unfilled box together with the text: "I have

I have read and accept the privacy policies.", under which the "Send" button appears.

The underlined text above is a link that redirects to page ***URL.1 of the

reviewed site, although under the title "Privacy Policies" it does not offer information

any in this regard, limited to including the following contact information:

info@***URL.1, ***URL.1 and ***PHONE.1.

On the same page of the contact form the following appears

information:

1. Responsible for the data: IVT

two.

3. Data storage: Database hosted on the web ***URL.1 IVT

Purpose of the data: Sending budgets

4. Rights: At any time you can limit, recover and delete your information. (The underlined text is a link that does not lead to any other information or document)

(EU)

2.3.1.2. In the "Legal Notice" of the studied website, it is identified as the owner of the same to the claimed, whose name, surnames and NIF are provided.

In the "Protection of Personal Data" section of the aforementioned "Legal Notice" it is reports:

"The provider is deeply committed to compliance of the Spanish regulations on the protection of personal data, and guarantees the full compliance with the obligations set forth, as well as the implementation of the security measures provided in art. 9 of Law 15/1999, on the Protection of Personal Data (LOPD) and in the Development Regulation of the LOPD.

The provider makes available to users the Privacy Policy of the entity informing users regarding the following aspects:

Data of the person in charge of the treatment.

Processed data.

File in which they are stored.

Purpose of the treatment.

Mandatory or not to facilitate, as well as the consequences in case of not

On the rights that assist all users and the procedure for facilitate them.

exercise them."

As indicated in section 2.3.1.1, the page https://***URL.1 does not does not offer any information regarding the data that must be provided to the interested party at the time of collecting your personal data. Furthermore, it has been verified

that said document is only accessible from the link contained in the text of acceptance of the privacy policies that appears below the form of website contact.

In the section called "Consent Forms" of the aforementioned "Notice

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Legal" it is reported that:

"What does it consist of?

It is a box that we must leave unchecked by default and that must be included at the end of any online form with the text "I accept the Policy of Privacy", and linking to that privacy policy text.

What is it for?

This box serves to demonstrate that the user who provides us with their data personal expressly consents to the treatment of the pampering.

What forms should it be included in?

It will be included in all the forms that appear on the website, both contact as subscription.

What happens to registrations obtained before this new regulation?

Forms of implied or default consent are not supported, as they are based in inaction and therefore, if you have obtained consents under those conditions, you already would not be legitimate and you could not continue to use those records unless the adapt to the new regulations.

THIRD: On November 26, 2018, the application of the AEPD that manages the consultation of precedent sanctions and warnings in matter of data protection, it is verified that the claimed party does not have records previous.

FOURTH: On January 11, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure of Warning to the claimed (Mrs. IVT), in accordance with the provisions of article 58.2.b) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data (General Regulation of Data Protection, hereinafter RGPD), for the alleged violation of article 13 of the RGPD, typified in article 83.5.b) thereof.

Likewise, in accordance with the provisions of article 58.2.d) of the RGPD, the Director of the Spanish Agency for Data Protection agreed to require the claimed the adequacy of the privacy policy of the website ***URL.1 of its ownership to the requirements contemplated in article 13 of the RGPD, and must facilitate to the users of the portal, at the moment in which it collects the personal data of the themselves through the forms on their website, the information required in the aforementioned precept, for which you must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment.

FIFTH: The mentioned initiation agreement was notified to the respondent on January 22 of 2019, as stated in the delivery certificate issued by the State Company Post and Telegraph, S.A. operating in the procedure, not stating that the claimed has exercised his right to make allegations and propose evidence deemed appropriate within the period granted for such purposes.

SIXTH: On July 11, 2019, the Diligence procedure for Capture printout of the "Contact Form", the "Privacy Policy" and "Notice Legal" obtained as a result of the accesses made, dated July 10 and 11, 2019, to the website ***URL.1.

In these accesses it is observed that at the bottom of the form there is a box without

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complete along with the text:

"I expressly consent to the processing of my personal data, according to which is expressed in IVT Privacy Policies (Publi-Net Communication). The personal data provided through this form will be sent by e-mail and will be registered in an IVT file (Publi-Net Communication), in order to answer queries and obtain statistical data from the same. At any time, you can exercise your access rights, rectification, cancellation, opposition and forgetting, writing to our email or postal mail." Below this text is the "Submit" button. (The underlined text is a link that when clicked leads to the "Privacy Policy" of the website, such as also occurs when clicking on the link with the text "you can limit, recover and delete your information").

Likewise, it is verified that the document "Privacy Policy to which they direct

The links outlined in the previous fact informs about the following aspects:

- Identification of the entity responsible for the processing of personal data, facilitating: trade name "Publi-Net communication", registered office, telephone, e-mail and web in question, as well as a DNI/CIF number that, according to checked coincides with the DNI provided by Ms. IVT when answering the request of information that was made in the transfer of the claim.
- Applicable regulations: Refers to the RGPD and the Spanish regulations applicable in matter of data protection. In this field it is reported that: "By providing your data, You declare to have read and know this Privacy Policy, giving your unequivocal and express consent to the processing of your personal data

according to the purposes and terms expressed herein.(...)”

- Data Protection Delegate: There is no designated DPD.

- Purpose of the processing of Personal Data. It is reported that: “The treatment that we carry out of your personal data responds to the following purposes:

1.- Correctly manage the commercial relationship that unites us with customers, guaranteeing correct administrative, commercial, logistics and customer service management. client, reserving the right to carry out quality surveys that we estimate in the name of offering quality products and services.

2.- Inform about new products, services, promotions and invitations to events that may be of interest to you using any of the physical and currently existing electronics and those that may arise in the future.

3.- Carrying out contests or raffles for promotions or campaigns specials.”

- Term of conservation of your data. They will be kept for the duration of the relationship commercial to carry out the administrative, commercial, logistics management, customer service and quality control. Once this is finished, they indicate the different terms depending on the applicable commercial or tax legislation. They point out that: “In Regarding the purpose of informing about new products, services, promotions and invitations that may be of interest to you, the data will be kept as long as you do not exercise your right of deletion. And in the case of data collected for contests or raffles, and to dispose of them in the event of possible claims or challenges, your personal data will be kept for up to 1 year after

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held the contest or raffle.”

- Automated decisions and profiling. no decisions

automated including profiling.

- Legitimation and Data collected. On this matter they report the following:

“The legal basis to inform you about products, services, promotions and invitations, as well as for sweepstakes and contests, is your consent granted by expressing free and specific will.

The contracting of the client of any product or service offered by the responsible, either via web page, physical document or telephone; the granting of consent to receive information about new products, services, promotions, invitations to participate in events or sweepstakes and contests; wave sending emails to those responsible, through the accounts enabled for this purpose, imply that the user declares having read and accepted expressly this privacy policy, and grant your consent unequivocal and express treatment of your personal data in accordance with the stated purposes.”

-Data categories. They are treated: Personal identification data, data of personal characteristics and economic data. IP address and access time data collection web form.

- Security measures. They report on the adoption of measures to which refers to article 32 of the RGPD.

- Transfer of Data. They refer to assignments established by legal norm; a banks for banking management derived from the sale of products and/or services; I don't know provide for international data transfers.

- User Rights. They cite the rights of access, rectification, deletion, limitation of the treatment, opposition to the treatment, portability of the data and revocation of consent granted.

- How to exercise my rights? They point out that “To exercise their rights

must go to the person in charge, requesting the corresponding form for the exercise of the chosen right. Optionally, you can go to the Control Authority authority to obtain additional information about your rights.” remember also that the contact details for the exercise of rights are those that appear in the header.

- Consent to send electronic communications. To this

In this regard, they report that according to the LSSI, when completing the collection form of data and checking the corresponding box "I accept the sending of communications electronic", Uno, is granting express consent to be sent to your email address, telephone, fax or other electronic information about our company.”

SEVENTH: In view of everything that has been done, by the Spanish Agency for Data Protection in this procedure are considered proven facts the following,

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FACTS

First: On June 18, 2018, it is registered at the AEPD

claim in which, in summary, the claimant states that the information offered on the contact page of the ***URL.1 website does not comply with the requirements contained in the new European data protection regulations.

Second: Ms. IVT is responsible for the website https://***URL.1 and the treatment of the personal data collected through the contact form included in said web page, as stated in the information of the Legal notice of the website.

Third: In all the accesses made, it is verified that the website ***URL.1

had a contact form through which the data controller

collects, along with the subject and message of the contact, the name, e-mail and telephone (data personal) of the users who completed said form.

The contact page that includes the form contains the following information: 1.

Responsible for the data: IVT; 2. Purpose of the data: Sending budgets; 3.

Data storage: Database hosted on the web ***URL.1 IVT (EU); Four.

Rights: At any time you can limit, retrieve and delete your information. (The underlined text is a link); the contact details: info@***URL.1, ***URL.1 and the phone ***PHONE.1.

Fourth: In the accesses made on November 26 and 27, 2018,

notes that at the bottom of the form there is an unfilled box together with the text:

"I have read and accept the privacy policies.", under which the button appears "Send".

The underlined text is a link that, when clicked, goes to the page ***URL.1

of the reviewed site, although the only information offered under the title "Privacy Policies

Privacy" was limited to the following contact details of the person in charge:

info@***URL.1, ***URL.1 and ***PHONE.1.

The link with the text "you can limit, recover and delete your information" that contained in point 4 of Rights did not lead to any information or document when pressed.

Fifth: In the accesses made on July 10 and 11, 2019, the following is observed:

5.1 That at the bottom of the form there is an unfilled box together with the

text: "I expressly consent to the processing of my personal data, according to the

which is expressed in the Privacy policies of IVT (Publi-Net Communication). The data

of a personal nature that are provided through this form will be sent by mail

electronically and will be registered in a file of IVT (Publi-Net Communication), with

the purpose of answering queries and obtaining statistical data from them. In

At any time, you can exercise your rights of access, rectification,

cancellation, opposition and forgetting, writing to our email or mail

postcard.”, under which is the “Send” button (The underlined text is a link that, when

pressed leads to the "Privacy Policy" of the website, which also occurs when

click on the link with the text “you can limit, recover and delete your information

”). I know

maintains the information referred to in the second paragraph of the above Proven Fact

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Third.

5.2 That the information provided in the "Privacy Policy" document,

which is accessed through the link "privacy policies" indicated in the fact

5.1 above, and the extract of which appears in the Precedent of Fact Six, is not suitable for

the provisions of letters a) and c) of section 1 of article 13 of the RGPD nor, either,

to the provisions of letters d) and e) of section 2 of the same precept.

Sixth: The website ***URL.1 does not offer portal users a link

permanently to the "Privacy Policy" that is easily visible to them in

depending on your location.

FOUNDATIONS OF LAW

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By virtue of the powers that articles 55.1, 56.2 and sections b) and d) of the

Article 58.2 of the RGPD recognize each control authority, and as established

in articles 47 and 48.1 of Organic Law 3/2018, of December 5, on Protection

of Personal Data and guarantee of digital rights, (hereinafter, LOPDGDD), the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

Article 63.2 of the LOPDGDD indicates: "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 64.2.f) of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, of October 2, 2015, in hereinafter LPACAP, provides that:

"The initiation agreement must contain at least: (...)

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 the event of not making allegations within the stipulated period on the content of the resolution of initiation, it may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility." (the underlined corresponds to the AEPD).

In the present case, such prescriptions have been observed, since in the initial agreement warned of the provisions of article 64.2.f) of the LPACAP, it was specified the alleged infraction committed together with its corresponding typification, the sanction of warning to be imposed, if applicable, was determined in accordance with the criteria taken into account based on the evidence obtained on that date and indicated certain measures in accordance with the provisions of article 58.2.d) of the GDPR.

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In consideration of the foregoing and in accordance with the provisions of the Article 64.2.f) of the LPACAP, the agreement to initiate this proceeding sanctioning is considered a Resolution Proposal, since it contained a precise statement about the imputed responsibility, and, after notification in the manner described in the fifth factual record, the claimant has not made allegations to the same within the period granted for such purposes.

III

Article 4 of the RGPD, under the heading "Definitions", provides the following:

“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”.

“11) «consent of the interested party»: any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern”.

Therefore, in accordance with those definitions, the collection of data from personal character through forms enabled for this purpose constitutes a data processing, for which the data controller, in this case the claimed, is obliged to comply with the provisions of articles 12.1 and 13 of the RGPD.

Article 12 of the RGPD, referring to the “Transparency of information, communication and modalities of exercising the rights of the interested party”, in its

section 1 establishes the following:

"1. The person responsible for the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means."

In the present case, the defendant is charged with responsibility for the obligation to make available to interested parties at the time in which requests the data through the contact form, and prior to its collection, the violation of the provisions of article 13 of the RGPD, a precept that in terms of the Information that must be provided when personal data is obtained from the interested.", determines 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 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 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 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 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

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 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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In turn, both precepts are related to the provisions of the

Recitals 60 and 61 of the aforementioned RGPD, which establish:

“(60) The principles of fair and transparent treatment require that the

interested party of the existence of the treatment operation and its purposes. The responsible

of the treatment must provide the interested party with as much complementary information as is

necessary to ensure fair and transparent treatment, taking into account the

specific circumstances and context in which the personal data is processed. I know

must also inform the interested party of the existence of profiling and

the consequences of such elaboration. If personal data is obtained from

interested parties, they must also be informed of whether they are obliged to provide them and of the

consequences if they don't. This information may be transmitted in

combination with standardized icons that offer, in an easily visible way, intelligible and clearly legible, an adequate overview of the treatment provided. Icons presented in electronic format must be legible mechanically.

(61) Data subjects should be provided with information on the processing of your personal data at the time it is obtained from them or, if obtained from another source, within a reasonable time, depending on the circumstances of the case. If the personal data can be legitimately communicated to another recipient, it must be inform the interested party at the time they are communicated to the recipient for the first time time. The data controller who plans to process the data for a purpose that is not is the one for which they were collected must provide the interested party, before said further processing, information about that other purpose and other necessary information. When the origin of the personal data cannot be provided to the interested party by multiple sources have been used, general information should be provided.”

For its part, regarding the rights of “Transparency and information to the affected”, article 11 of the LOPDGDD establishes that:

"1. When the personal data is obtained from the affected party, the person in charge of the treatment may comply with the duty of information established in the Article 13 of Regulation (EU) 2016/679 providing the affected party with basic information 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 be contain at least:

a) The identity of the data controller and his representative, in his case.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22

of 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.

3. When the personal data had not been obtained from the affected party, the

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responsible may comply with the duty of information established in article

14 of Regulation (EU) 2016/679, providing the aforementioned basic information

in the previous section, indicating an electronic address or other means that allows

easy and immediate access to the rest of the information.

In these cases, the basic information will also include:

a) The categories of data subject to treatment.

b) The sources from which the data came.”

IV

In this case, based on the information provided by the

claimant in June 2018 and the result of the accesses made in November

of 2018 to the website ***URL.1, it was found that through the contact form

operating on said web page, personal data of the users who

completed without being informed at the time of collection by the

claimed, responsible and owner of the aforementioned web page, of the aspects contained

in article 13 of the RGPD, except for the identity and contact details of the

claimed included in the contact page of the form, as reflected in the

Proven Fact Third of this resolution.

Notwithstanding that the behavior described above supports the existence of responsibility of the claimed in the commission of the imputed infraction, with dates July 10 and 11, 2019, the aforementioned website is accessed for the purpose of be able to determine, in accordance with the provisions of article 58.2.d) of the RGPD, the processing operations to order the claimed party so that the information offered complies with the provisions of the aforementioned article 13 of said Regulation.

As a result of said accesses, it is verified that the defendant had modified the content of the text that appeared next to the unfilled box below the form, having also provided content to the "Privacy Policy" of the site Web. In these accesses it is also verified that part of the information offered violates the requirements set out in article 13 of the RGPD as it is incomplete or incorrect, as can be deduced from the irregularities described in Fact

Tried Fifth of this resolution.

Regarding the basic information currently offered on the page that displays the contact data collection form (Proven Fact 5.1)

note the following:

1)

The right of cancellation is erroneously mentioned in the text that appears next to the unfilled box. It does not refer to the rights established in articles 15 to 22 that are not cited appear in the corresponding heading of the "Privacy Policy".

two)

It is not indicated that the remaining additional information is displayed on the "Data protection policy".

3)

The information offered in relation to the granting of the consent is considered incorrect due to the arguments expressed in the

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following Foundation of Law.

Regarding the information offered in the document "Privacy Policy"

the following is observed:

1)

Regarding the identity of the person responsible, an aspect included in the article 13.1.a) of the RGPD, in the field called "Identification of the entity responsible for the processing of personal data", the name and surnames are not provided of the person in charge of the treatment associated with the NIF of the natural person who provides, regardless of whether said identification appears on the information under the contact form.

The information contained in the "Applicable regulations" field regarding the provision of consent will also be analyzed in the following Foundation of Law.

two)

3)

Regarding the purposes of the treatment to which the data is destined data and the legal basis of the treatment, an aspect included in article 13.1.b) of the RGPD, it is observed:

- That in the field called "Purpose of Data Processing Personal", the mention to the reservation of the "right to carry out quality surveys

that are deemed appropriate in the name of offering quality products and services”

should be separated from the treatment associated with the management of the contractual relationship with customers as it is a treatment that responds to advertising purposes.

This field does not inform about the purpose linked to "answering the consultations and obtain statistical data from them" that is cited in the legend that appears next to the blank box below the data collection form for user contact.

- That in the field called "Legitimation and Data collected" there is no information on the legal basis that protects the treatment of the data collected through the contact form, in this case, the consent granted by the interested parties to “answer queries and obtain statistical data from them”. I do not know informs about the legitimacy with which it has to manage the commercial relationship, contractual or pre-contractual with customers or the legitimacy that, where appropriate, operates for compliance with the legal obligations referred to, for example, in the fields related to the period of conservation of the data or transfer of data.

The information offered regarding the provision of consent unequivocal and express treatment of personal data will also be analyzed in the following Foundation of Law.

4)

The right to file a claim with a supervisory authority, aspect contained in article 13.2.d) of the RGPD, should not be identified with "go to the competent Control Authority to obtain additional information about their rights", as indicated in the field called How to exercise my rights?.

The interested parties are not informed “if the communication of data is a legal or contractual requirement, or a necessary requirement to subscribe a contract, and if the interested party is obliged to provide the personal data and is

informed of the possible consequences of not providing such data;”, to which refers to article 13.2.e) of the RGPD.

5)

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6)

Regarding the field “Consent to send Communications

Electronic”, which are regulated by article 21 of Law 34/2002, of July 11, of

Services of the Information Society and Electronic Commerce, (hereinafter,

LSSI), the privacy policy does not offer a specific mechanism to consent to the

sending commercial communications by means of electronic communication that

require prior request or express authorization of the possible recipients,

except that there is a prior contractual relationship in the terms

collected in section 2 of the aforementioned article 21, a precept that, it is recalled, obliges the

service provider to offer to the recipients of such communications in the

At the time of collecting your data, the possibility of objecting to the processing of your data.

data for promotional purposes by electronic means.

v

In the information currently provided by the claimed party to the interested parties

whose personal data you request via web form (name, e-mail and telephone), the

responsible for the treatment links the obtaining of consent to the treatment of

the personal data provided by them upon reading and accepting the "Privacy Policy".

Privacy”, as can be deduced from the following contents, literal transcription

of the information outlined:

At the bottom of the contact form, next to the unfilled box appears

indicated: “I expressly consent to the processing of my personal data,

according to what is expressed in the Privacy policies of IVT (Publi-Net Communication).

(...)"

In the "Privacy Policy", in relation to the question raised appears:

-In the "Applicable regulations" field, it is reported that: "By providing your data, you declares to have read and know this Privacy Policy, giving its unequivocal and express consent to the processing of your personal data according to the purposes and terms expressed herein.(...)"

-In the field "Legitimation and Data collected" it is reported that: "The base legal to inform you about products, services, promotions and invitations, as well As for sweepstakes and contests, it is your consent granted through free and specific expression of will.

The contracting of the client of any product or service offered by the responsible, either via web page, physical document or telephone; the granting of consent to receive information about new products, services, promotions, invitations to participate in events or sweepstakes and contests; wave sending emails to those responsible, through the accounts enabled for this purpose, imply that the user declares having read and accepted expressly this privacy policy, and grant your consent unequivocal and express treatment of your personal data in accordance with the stated purposes."

Articles 6 and 7 of the RGPD refer, respectively, to the "Legality of the treatment" and the "Conditions for consent", establishing in this regard:

Article 6 of the RGPD.

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"1. The treatment will only be lawful if at least one of the following is met

conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more

in order to align the application of the rules of this Regulation with

regarding the treatment in compliance with section 1, letters c) and e), setting

more precisely specific treatment requirements and other measures that

guarantee lawful and equitable treatment, including other situations

specific treatment under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis

or, in relation to the treatment referred to in section 1, letter e), it will be necessary

for the fulfillment of a mission carried out in the public interest or in the exercise of

public powers conferred on the data controller. This legal basis may

contain specific provisions to adapt the application of rules of this

Regulation, among others: the general conditions that govern the legality of the treatment

by the controller; the types of data object of treatment; the interested

affected; the entities to which personal data can be communicated and the purposes

of such communication; purpose limitation; the retention periods of the

data, as well as the operations and procedures of the treatment, including the

measures to ensure lawful and fair treatment, such as those relating to other

specific treatment situations under chapter IX. Union Law

or of the Member States will fulfill a public interest objective and will be proportional

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to the legitimate end pursued.

4. When the treatment for another purpose other than that for which it is

collected the personal data is not based on the consent of the interested party or

in the law of the Union or of the Member States that constitutes a measure

necessary and proportional in a democratic society to safeguard the objectives

indicated in article 23, paragraph 1, the data controller, in order to

determine whether processing for another purpose is compatible with the purpose for which it was

initially collected the personal data, will take into account, among other things:

a) any relationship between the purposes for which the data was collected

data and the purposes of the intended further processing;

b) the context in which the personal data were collected, in particular by

regarding the relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when they are processed

special categories of personal data, in accordance with article 9, or data

related to convictions and criminal offenses, in accordance with article

10;

d) the possible consequences for the interested parties of the subsequent treatment

provided;

e) the existence of adequate safeguards, which may include encryption or

pseudonymization”.

Article 7 of the RGPD.

"1. When the treatment is based on the consent of the interested party, the

responsible must be able to demonstrate that he consented to the treatment of his

personal information.

2. If the data subject's consent is given in the context of a declaration

writing that also refers to other matters, the request for consent will be

presented in such a way as to be clearly distinguishable from other matters, in a manner

intelligible and easily accessible and using clear and simple language. It will not be binding

any part of the declaration that constitutes an infringement of these Regulations.

3. The interested party shall have the right to withdraw their consent at any

moment. The withdrawal of consent will not affect the legality of the treatment

based on consent prior to withdrawal. Before giving your consent, the

Interested party will be informed of this. It will be as easy to withdraw consent as it is to give it.

4. In assessing whether consent has been freely given, account will be taken to the greatest extent possible whether, among other things, the execution of a contract, including the provision of a service, is subject to the consent of the processing of personal data that is not necessary for the execution of said contract".

In turn, in relation to the legality of the treatment in recitals 32, 42, and 43 of the RGPD states:

“(32) Consent must be given by means of a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the will of the interested in accepting the treatment of personal data that concern... Therefore, silence, boxes already checked or inaction should not

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constitute consent. Consent must be given for all activities of treatment carried out with the same or the same purposes. When the treatment has various purposes, consent must be given for all of them (...)"

“(42) When the treatment is carried out with the consent of the data subject, the data controller must be able to demonstrate that the data controller has consented to the processing operation. In particular in the context of a written statement made on another matter, there must be guarantees that the interested party is aware of the fact that he gives his consent and the extent to which that makes. In accordance with Council Directive 93/13/CEE (LCEur 1993, 1071), a model declaration of consent drawn up must be provided

previously by the person in charge of the treatment with an intelligible formulation and of easy access that uses clear and simple language, and that does not contain clauses abusive In order for the consent to be informed, the interested party must know at least the identity of the person responsible for the treatment and the purposes of the treatment to which the personal data is intended. The consent must not be considered freely provided when the interested party does not enjoy true or free choice or may not withhold or withdraw consent without prejudice.”

“(43) (...) Consent is presumed not to have been freely given when does not allow separate authorization of the different data processing operations despite being appropriate in the specific case, or when the fulfillment of a contract, including the provision of a service, is dependent on the consent, even when it is not necessary for such compliance.”

It is also appropriate to take into account the provisions of article 6 of the LOPDGDD:

“Article 6. Treatment based on the consent of the affected party

1. In accordance with the provisions of article 4.11 of the Regulation (EU) 2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

2. When the data processing is intended to be based on consent of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship”.

In accordance with the above, data processing requires the existence of a legal basis that legitimizes it, such as the consent of the interested party validly.

In the present case, the defendant contemplates in its privacy policy the use of the personal data obtained from the interested parties for purposes other than the mere fulfillment of the contractual relationship or those derived from the compliance with the legal obligations applicable to the data controller.

These purposes contemplate answering the queries made via web form by the interested parties themselves, obtain statistical data on queries or their use for purposes

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advertising (referral of advertising by various means, conducting contests or raffles for promotions or special campaigns), their legality being conditioned to Obtaining the consent of the interested parties for the processing of their data for each of those specific purposes.

However, the respondent does not inform, nor does it offer mechanisms specific to collect, differentiated and through a clear affirmative action, the consent of the interested parties in order to the use of personal data for each of the aforementioned purposes, having estimated Ms.

IVT that the mere acceptance of the privacy policy by users through the Filling in the blank box at the bottom of the form entails the provision of those consents.

The claimed one limits the options of the interested parties to the marking of a box, pretending that through this mechanism the interested parties leave a record of your consent to the different types of data processing based on your purposes indicated in the privacy policy.

However, with this mechanism of acceptance of all treatments

detailed through a single action, which results from the acceptance of the policy of privacy, the consent given by the interested party would become invalid

Regarding the use of data for purposes other than the execution of the contract or pre-contractual relationship and the treatment for the fulfillment of the legal obligations applicable to the claimed or, what is the same, with respect to all those treatments that require obtaining a differentiated consent.

In accordance with the legal precepts and recitals set forth, no meets the requirement that “consent must be given by an act clear affirmative that reflects a manifestation of free will, specific, informed, and unequivocal of the interested party to accept the processing of personal data that concern him”. In addition, consent must be given for all activities of treatment carried out with the same or the same purposes, so when the treatment has several purposes that require obtaining consent, this must be provided for all of them.

In this case, it is estimated that the mechanism informed by the person responsible for the treatment prevents the interested parties from expressing a clear, free affirmative action, specific and unequivocal acceptance of each of the treatments with different purposes that are intended to be carried out with the information of a personnel requested (Considering 32), at the same time that it prevents the person in charge of the treatment demonstrate the existence of separate consent of the interested parties for each of these differentiated treatments (Recital 42).

Consequently, the defendant violates the right to information of the interested parties whose personal data is collected from them through the form of contact included in the website owned by Ms. IVT.

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

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“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;”

(...)

“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 in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

Article 83 of the RGPD, under the heading “General conditions for the

imposition of administrative fines”, in its sections 2 and 5.b) states that:

“two. 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). (...)

5. Violations of the following provisions will be sanctioned, in accordance

with paragraph 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 according to articles 12 to 22;”.

For its part, article 71 of the LOPDGDD establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the this organic law.”, establishing in article 74 of said Law that: “It is considered minor and will prescribe after a year the remaining infractions of a merely formal of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

1. Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by Articles 13 and 14 of Regulation (EU) 2016/679.”

From the reasoned, it is evident that the claimed does not facilitate the interested parties to those who request personal data, at the time of obtaining it, information about all the extremes outlined in article 13 of the RGPD, also being incorrect or partial information provided regarding some of them.

The facts described constitute a violation of the duty to inform collected in the aforementioned article 13 of the RGPD in its relationship with the provisions of the sections 1 and 2 of article 11 of the LOPDGDD, typified in article 83.5.b) of the RGPD and classified as minor for prescription purposes in article 74.a) of the LOPDGDD,

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attributable to the claimed party, which as the person responsible for said treatment must take the necessary measures to implement the appropriate mechanisms to facilitate interested parties who complete the outlined form, prior to the Obtaining the requested personal data, the information indicated in article 13 of the RGPD in accordance with the provisions of article 6 of the RGPD, in particular

Regarding the mechanisms implemented to obtain the consent of the affected for the processing of their personal data for one or more purposes specific.

Recital 148 of the RGPD states that: "In the event of a minor infringement, or if the fine that was likely to be imposed would constitute a disproportionate burden for a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

In view of which, in the present case, it is deemed appropriate to impose the penalty of warning provided for in article 58.2.b) of the RGPD, in view of the following circumstances: the data controller is a natural person whose main activity is not linked to the processing of personal data; the absence of intentionality in the offending conduct, as can be deduced from the reaction shown by the respondent by introducing, once received the agreement of beginning of the procedure, a series of changes to adapt the information offered in the privacy policy to the right of information of users whose data personal data were going to be collected from them, without prejudice to the fact that the corrections made were insufficient; in addition to the administrative fine that could fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a disproportionate burden for the respondent and that the latter does not

There is evidence of the commission of no previous infringement in terms of data protection.

Based on the foregoing, it is appropriate to apply the provisions of the aforementioned article 58.2.d) of the RGPD in order for the claimed party to carry out the actions (technical and organizational measures) necessary so that the information provided to users who fill in the contact form in the website of its ownership includes all the aspects set out in article 13 of the RGPD in its relationship with the provisions of sections 1 and 2 of article 11 of the LOPDGDD, for which you must take into account the provisions of article 6.1.a) of the RGPD in relation to the legality of the treatment.

It is noted that section 6 of article 83 of the RGPD, establishes that “6. The Failure to comply with the resolutions of the supervisory authority pursuant to article 58, paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.”

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Article 72.1.m) provides that: “1. According to what the article establishes 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of competent data protection in exercise of the powers conferred by article 58.2 of Regulation (EU) 2016/679.”

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 Ms.

a sanction of

WARNING for a violation of the provisions of article 13 of the RGPD in its

in relation to the provisions of sections 1 and 2 of article 11 of the LOPDGDD,

typified in article 83.5.b) of the RGPD, in accordance with the provisions of article

58.2.b) of the RGPD.

B.B.B., with NIF ***NIF.1,

SECOND: ORDER Ms. B.B.B., in accordance with the provisions of the

article 58.2.d) of the RGPD, the adoption and implementation of the necessary measures

so that the information offered on the website ***URL.1 of its ownership responds

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

provide portal users, at the time they collect personal data

of them through the contact form, all the information required in the

cited precept, for which you must take into account the provisions of article 6 of the

RGPD in relation to the legality of the treatment.

In any case, the claimed party must prove the mechanisms implemented

to facilitate the rest of the information that must be made available to those affected

as well as the correction of the aspects highlighted in this

resolution in compliance with the right to information regulated in the RGPD,

especially in relation to the information referred to the obtaining of

differentiated consents for the processing of personal data based on

of each of the specific purposes.

The respondent must prove to this Agency the performance of said

actions within a period of ONE MONTH, computed from the date on which the

this sanctioning resolution, through the provision of documentation or any other means of proof valid in law that allows verifying the adequacy of the information provided on the website to the right of transparency and information of the interested parties whose data is required via web form.

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

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

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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/>], 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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