

□ Procedure No.: PS/00366/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated May 26, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The claimant states that the respondent advertises and sells his services

home renovations and repairs through the websites: - www.lardeco.com -

www.manitasacasa.com.

It adds that within the "Legal notice" section of both websites, it does not state

neither the company name, nor the tax identification number, nor the tax domicile, not

identifies the person responsible for said website or services offered through these

websites.

The claimant states that the claimant is in breach of the RGPD, as it is

of some websites that collect personal data, through which you can

contract services, not specifying: where the existence of the file is located,

who is responsible for data processing, and does not request consent

explicit user during the data collection process.

And, on the other hand, it indicates that it is not clear who to address by limiting the

rights of access, limitation and cancellation, thus infringing, flagrantly,

the rules.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the claims made before the Spanish Agency for Data Protection, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes provided in article 37 of the aforementioned norm, or to these when they had not been designated, the transfer of the claim submitted by the respondent to proceed with its analysis and give response to this Agency within a month.

On June 19, 2020, the claim filed was transferred to the defendant for analysis and decision adopted in this regard.

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

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On June 19, 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.

THIRD: On November 24, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 b) of the GDPR.

Said agreement was notified by post on February 15, 2021 and through the BOE edictal board on March 29, 2021.

FOURTH: Formal notification of the initiation agreement, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period 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.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: It is stated that the defendant advertises and sells his services of reforms and home repairs through the websites: - www.illardeco.com – and www.manitasacasa.com.

SECOND: The absence of the adaptation of the privacy policy of the web pages - www.illardeco.com – and www.manitasacasa.com, specifically not contains any information in the sense indicated in article 13 of the RGD, within of the "Legal Notice" section of both websites, does not state the company name, neither the tax identification number, nor the tax domicile, does not identify the person in charge of said website or services offered through these websites.

THIRD: It is verified that as they are websites that collect data personal, through which services can be contracted, does not specify where the entity is located, who is responsible for data processing, and does not request the explicit consent of the user during the process of capturing data.

FOURTH: On November 24, 2020, this sanctioning procedure was initiated by the alleged infringement of article 13 of the RGD, being notified on February 15 and 29

March 2021. Not having made allegations, the respondent, to the settlement agreement beginning.

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FOUNDATIONS OF LAW

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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.

II

The facts denounced specify the absence of adaptation of the policy of privacy of the web pages - www.illardeco.com – and www.manitasacasa.com. to regulations in force regarding the protection of personal data, specifically does not contain any information in the sense indicated in article 13 of the RGPD and, by not have it with adequate Privacy Policies where it is provided to the user clear and complete information on the processing of their personal data according to the provisions of said article.

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:

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 any;

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

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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.

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 “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 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

The LOPDGDD in its article 72 indicates for prescription purposes: "Infringements considered very serious:

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"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 RGPD 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.

In the case at hand, the respondent has not adapted the information

offered on both web pages as established in the RGPD, collecting data

of the users who fill in through contact forms and

They do not have a privacy policy.

In accordance with the evidence available to said conduct

constitutes on the part of the claimed the infringement of the provisions of article 13 of the

GDPR.

This infraction is sanctioned with a warning. According to the article

58.2.b) of the RGPD, when collecting basic data from the interested parties through the

contact forms and consider that the administrative fine that could fall

in accordance with the provisions of article 83.5.b) of the RGPD would constitute a burden

disproportionate to the claimant.

Likewise, for the purposes provided in article 58.2 of the RGPD, the measure

corrective measure imposed on the defendant consists of ordering the adequacy of the information offered to users to the requirements contemplated in article 13 of the RGPD, as well as the provision of means of evidence accrediting compliance with what is required.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. B.B.B., with NIF ***NIF.1, for a violation of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning and require him to proceed within a month, to adopt the necessary measures to that adapts the information offered to users to the requirements contemplated in the article 13 of the RGPD, and inform the AEPD within the aforementioned period of the measures adopted

SECOND: NOTIFY this resolution to D.B.B.B..

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by 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

938-131120

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