

□ Procedure No.: PS/00351/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

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

filed a claim with the Spanish Data Protection Agency. The

claim is directed against PUIGMARKET, S.L. with NIF B40580631 (hereinafter, the
reclaimed).

The reasons on which the claim is based are that the person responsible for the website

***URL.1 lacks a privacy policy when collecting data through a

form hosted on the home page.

On that same home web page, at the foot of the page, there are two links, to the privacy policy
privacy and legal notice, but they are not really operational, since they do not lead to
neither document.

In any case, the privacy policy document, which can be accessed

through ***URL.1 does not comply with the provisions of art. 13 GDPR.

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

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), with reference number E/04021/2020, transfer of

said claim to the claimed party, on June 30, 2020, so that he could proceed with his

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations,

with no reply to date.

THIRD: On November 26, 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 of the RGPD.

FOURTH: On December 8, 2020, the agreement to start this procedure, becoming the same in resolution proposal in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure Common Administrative of Public Administrations (LPACAP), as no claims within the specified period.

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

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2/6

FACTS

FIRST: The person in charge of the website ***URL.1 lacks a privacy policy when you collect data through a form hosted on the home page, because that the links available at the bottom of the page on privacy policy and legal notice, they are not operational.

SECOND: The agreement to initiate this procedure becomes a proposal for resolution in accordance with articles 64.2.f) and 85 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP), as allegations were not made within the indicated period.

FOUNDATIONS OF LAW

Yo

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

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016, regarding the protection of natural persons in what

regarding the processing of personal data and the free circulation of these data

(General Data Protection Regulation, hereinafter RGPD), under the rubric

“Definitions”, provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

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;”

Therefore, in accordance with these definitions, the collection of personal data

personal through forms included in a web page constitutes a treatment

of data, with respect to which the data controller must comply with the

provided for in article 13 of the RGPD, a precept that has moved since May 25

of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection

of Personal Data.

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3/6

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty

to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying out low-risk data processing, the free tool

Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGPD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, it has:

“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 legal basis

of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party 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 it is 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 relating 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 portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or 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

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4/6

personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which 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 controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

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

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the

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.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

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

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5/6

(...)

“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 under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each

particular case;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the

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:

a) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered

mild has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a)

Failure to comply with the principle of transparency of information or the right

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679.”

v

In this case, it is taken into account that the respondent collects personal data from the

users who complete the

website

<https://solmarket.es/politica-de-privacidad/> without providing them, prior to their

collection, all information on data protection provided for in article

13 of the aforementioned RGPD.

included in the

form

SAW

Thus, in accordance with the evidence available to the facts

exposed constitute, on the part of the claimed, an infraction of the provisions of the

article 13 of the RGPD.

This infraction is sanctioned with a warning, in accordance with article 58.2.b)

of the RGPD, when collecting through said form basic data of the users and

consider that the administrative fine that could be levied in accordance with the provisions of

Article 83.5.b) of the RGPD would constitute a disproportionate burden for the

claimed, whose main activity is not directly linked to the treatment of

personal data, since there is no record of the commission of any previous infraction in

matter of data protection.

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6/6

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 PUIGMARKET, SL, with NIF B40580631, for an infraction

of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of

warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from them to the requirements contemplated in article 13 of the RGPD, as well as the contribution of means of evidence accrediting compliance with the requirements.

THIRD: NOTIFY this resolution to PUIGMARKET, SL.

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

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