

□ Procedure No.: PS/00414/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

MUNICIPAL INSTITUTE OF CONSUMPTION OF *** PROVINCE.1 (in

FIRST:

hereinafter, the claimant) on June 26, 2020 filed a claim with the

Spanish Data Protection Agency.

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

The reasons on which the claim is based are the non-compliance of the website ***URL.1 to
lack of Privacy Policy.

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/06539/2020, transfer of

said claim to the claimed, on August 14, 2020, to proceed to

its analysis and inform this Agency within a month of the actions carried out

carried out to adapt to the requirements set forth in the regulations for the protection of
data, with no response to date.

THIRD: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirector General for Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

Said investigative actions have revealed that there is no link to the Privacy Policy or equivalent document.

The only contact information that appears on the website is the telephone number for contract the different services.

Required from TELEFONICA DE ESPAÑA, S.L.U. ownership of said number telephone, dated November 6, 2020, this Agency receives a response to the requirement indicating that the owner of the line is A.A.A. with NIF ***NIF.1.

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FOURTH: On August 26, 2020, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the claimant.

FIFTH: The agreement to initiate this sanctioning procedure was notified to the claimed on February 19, 2021, but he has not issued any allegation in the deadline given for it.

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

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: The web page object of this claim collects personal data of the people who fill out the contact form, and despite this said web page lacks of privacy policy.

SECOND: On August 14, 2020, this Agency requires the claimed person to within a month, carry out the necessary actions to adapt to the requirements set forth in the data protection regulations, without receiving a response to the aforementioned requirement.

THIRD: On February 19, 2021, 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), by not carrying out the claimed allegations within the indicated period.

FOURTH: The privacy policy of the website ***URL.1 indicates the following:

“In ELECTRICISTAS XXXXX, sensitized with the needs of users of Internet and aware of the importance of the rigorous privacy of information entrusted to us, we include this privacy statement in order to that you are aware of the policy in the treatment of personal data that you get from your visitors and users.

As a user, you accept these conditions by the mere fact of reading, viewing or browse the site. If you do not accept them, you must leave the site, without making any use of it and its content, and without accessing the linked pages.

RESPONSIBLE FOR DATA PROCESSING

The owner of the site and responsible for data processing is A.A.A., with DNI ***NIF.1, to contact you can use the email address ***EMAIL.1, the

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phone ***TELEPHONE.1 or mail to C/ ***ADDRESS.1 of ***LOCALITY.1,

*** PROVINCE.1.

PURPOSE OF DATA PROCESSING

On our websites, there are specific sections where you can write down your data to receive information about updates to our website and some of the programs that are distributed. We assure you that the information you give us facilitates will be managed in a totally confidential manner.

The data will be stored as long as there is a forecast of its use for the purpose for which were collected.

No automated decision-making is carried out with your data.

The website may use cookies, see our cookie policy.

LEGITIMATION OF DATA PROCESSING

The use of your data is done because you give us your consent to use what we you provide in the forms for a specific use that is indicated in each of they. Your data is only necessary for the specific uses for which you are request, if you do not provide them to us, these services are not possible.

TRANSFERS AND ASSIGNMENTS OF DATA

There is a firm commitment on our part that the data you provide to

ELECTRICISTAS XXXXX, will not be sold or transferred to third parties without the prior consent of the interested party under any concept or circumstance, except express consent or legal obligation.

The data included in the comment form will be processed by Automattic

Inc., domiciled in the USA in order to filter spam in the comments.

You can consult the privacy policy of Automattic Inc..

Our website contains links to third party websites. ELECTRICIANS

XXXXX is not responsible for the privacy policies and practices of these other places.

RIGHTS OF INTERESTED PARTIES

You have the right to access the information that is stored about you

in our databases, rectify it if there is any error, delete it, limit it,

oppose their treatment and withdraw your consent if that is your wish. For it

you just have to write an e-mail to the e-mail address ***EMAIL.1

where we will gladly assist you with any query, comment or clarification

required in this regard.

For more information on related topics, the Web reference site

Spanish is the Data Protection Agency, where you have the right to claim.”

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FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and

in the art. 47 and 48.1 of LOPDGDD.

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.

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:

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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 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 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 extent that the interested party already has the information.

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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;”

(...)

“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

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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 has been found that the website ***URL.1 did not have a Privacy Policy.

Privacy but it has been verified that it has recently been updated.

Despite this, it should be noted that the sanction of warning for the

personal data that was collected without adequately informing customers, which

which is constitutive of an infringement of article 13 of the RGPD. However, it will be a

sanction of warning without the need to adopt measures by the defendant,

because it has already been proceeded by this to the generation of a privacy policy

adequate.

SAW

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.

In view of the foregoing, the following is issued

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A. with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to A.A.A. with NIF ***NIF.1 From

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

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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