

□ Procedure No.: PS/00074/2021

## 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 THE CITY COUNCIL

#### FIRST:

\*\*\* LOCATION.1 (hereinafter, the claimant) on July 8, 2020 filed

claim before the Spanish Data Protection Agency. The claim is

directed against GASPROMIN INSTALACIONES S.L. with CIF B86749280 (hereinafter,  
the claimed).

The reasons on which the claim is based are that the web page of the claimed,

\*\*\*URL.1, does not comply with the provisions of the data protection regulations.

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/07884/2020, transfer of

said claim to the claimant on October 13, 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.

No response has been received to this request.

THIRD: On May 26, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: On June 10, 2021, allegations are filed by the respondent

stating that it has proceeded to correct the indicated deficiencies, sending the

following link \*\*\*URL.2 to prove the above:

## PRIVACY POLICY AND DATA PROTECTION

In compliance with Regulation (EU) 2016/679 (General Regulation for the Protection of data) and its development regulations, as well as Organic Law 3/2018, of 5

December, of Data Protection and guarantee of digital rights we offer you the

following information of your interest in relation to the processing of your personal data:

### A) RESPONSIBLE FOR THE TREATMENT:

Your data will be processed by: GASPROMIN INSTALACIONES S.L.

Phone: \*\*\*PHONE.1

Address: Gaspromin facilities. C/ \*\*\*ADDRESS.1

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/9

### B) PURPOSE OF TREATMENT AND LEGITIMATION:

GASPROMIN INSTALACIONES informs you that it will only use your data to legitimate purposes, such as:

Compliance with our contractual and/or commercial relationship: your data will be processed to be able to maintain and fulfill the obligations derived from our relationship contractual and/or commercial.

Compliance with legal obligations (Tax Agency, legal actions, etc.)

Sending informative communications about possible incidents or breaches of Informatic security.

For any other purpose that has been previously and expressly authorized by you like:

Sending commercial offers and promotions about our products and/or services.

For the transfer of your data to companies of the group of which we have previously informed.

Sending offers and promotions from other group companies that previously we have informed you

To participate in the personnel selection processes carried out by this entity if you have sent us your CV or have registered in the selection processes.

Prepare a business profile based on the information provided by you for the purpose of to show you or send you personalized advertising based on your consumption habits and/or preferences. This profile can be created through cookies or any other medium. In any case, no automated decisions will be made based on said information. profile that produce legal or significant effects for you.

#### C) TO WHOM WILL WE PROVIDE YOUR DATA?:

Your data may be transferred or communicated to those entities or administrations that is strictly necessary to be able to provide the contracted services or maintain the commercial relationship freely accepted, to those entities or administrations to which we have the obligation to do so in compliance with any Law, as well as those entities or administrations to which you has expressly authorized.

#### D) PERIOD OF CONSERVATION OF YOUR DATA:

Your data will be kept for the duration of our contractual relationship and/or commercial, the time necessary to comply with the corresponding obligations and the statute of limitations for the pertinent legal actions. In any case

We will proceed to delete your data when you request its deletion in the terms provided by law.

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/9

#### E) YOUR RIGHTS:

You may exercise any of the following rights by sending us a request by written together with a photocopy of your DNI/passport to the following address:

GASPROMIN INSTALLATIONS. C/ \*\*\*ADDRESS.1

Information: You can ask us to inform you if we process your personal data.

Access: You can ask us to inform you about what personal data we we have included in our files and the purposes for which they have been collected

Rectification: You can ask us to modify your personal data when they are inaccurate, as well as complete those that are incomplete.

Deletion: You can request the deletion of your personal data when, between other reasons, withdraw your consent and the data is no longer necessary for the purposes that were collected.

Opposition: You can request that your personal data not be processed.

– Right of Limitation: You can request the limitation of the processing of your data when any of the following conditions are met:

- a) the interested party challenges the accuracy of the personal data and while check their accuracy.
- b) the treatment is illegal and the interested party opposes the deletion of the data and request instead the limitation of their use;
- c) the person in charge no longer needs the personal data for the purposes of the treatment, but the interested party needs them for the formulation, exercise or defense of claims;

d) the interested party has opposed the treatment while it is verified if the reasons

legitimate rights of the person in charge prevail over those of the interested party.

– Right of Portability: You will have the right to receive the data that you have provided us in

a structured format, of common use and mechanical reading, as long as the

they are automated, as well as that we transmit them to another person in charge.

#### F) MINORS AND DISABLED:

In the case of persons under 14 years of age or disabled, you must grant the

consent for the processing of personal data the father, mother or guardian of the

minor or incompetent.

#### G) SECURITY MEASURES:

In accordance with current legislation, GASPROMIN INSTALACIONES.SL. I know

obliges to implement the technical and organizational measures that are necessary in

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/9

every moment to guarantee the security of your data and avoid its alteration,

loss or unauthorized treatment.

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 website of the claimed party, \*\*\*URL.1, on the date of opening of the

This sanctioning procedure was not in accordance with the provisions of the regulations

of data protection, by not collecting the information that must be provided when collecting

personal information.

SECOND: On June 10, 2021, the respondent certifies that he has proceeded to rectify the deficiencies object of this procedure, including the clause informative indicated in the fourth antecedent.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to what is established in the articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate this procedure.

Article 63.2 of the LOPDGDD determines that: "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 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

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/9

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:

- 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 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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)



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 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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/9

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) send a warning to any person responsible or in charge of the treatment 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 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, this Agency has verified that the website of the person claimed,

<https://www.calderasgaspromin.com/>, lacked an adequate privacy policy to

the data protection regulations, by not indicating the information required from

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/9

in accordance with article 13 of the RGPD, indicated in the legal basis III,

such as the identity and contact details of the controller, the contact details of the

data protection delegate, the purposes of the treatment to which the data is destined

and the legal basis of the treatment and when the treatment is based on the

article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party,

the recipients or categories of recipients of the personal data and in their

case, the intention of the controller to transfer personal data to a third country or

international organization and the existence or absence of an adequacy decision of the Commission.

On June 10, 2021, allegations are presented by the defendant, proving which has proceeded to correct the indicated deficiencies.

Despite this, it should be noted that the warning for the data continues to be maintained. data that were collected without adequately informing clients, which constitutes an infringement of article 13 of the RGPD.

However, a warning will be sent without the need to adopt measures by of the claimed, since it has already been proceeded by this to the generation of a policy of adequate privacy.

SAW

Faced with this infraction, a warning is issued, 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: ADDRESS GASPROMIN INSTALACIONES S.L. with CIF B86749280, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to GASPROMIN INSTALACIONES SL with CIF B86749280.

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

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

9/9

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)