

□ File No.: PS/00006/2022

IMI Reference: A56ID 157580- Case Register 354215

RESOLUTION OF SANCTIONING 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 complaining party) dated February 19, 2019

filed a claim with the Italian data protection authority. The

The claim is directed against **COOLTRA MOTOSHARING S.L.U.**, with NIF B65874877

(hereinafter, COOLTRA). The reasons on which the claim is based are the following:

In the account registration process in the ECOOLTRA services available to

Through its web portal, the company requested information from the complaining party

after you have provided your driver's license and credit card details

credit. At that time, **the complaining party decided to cancel his account. since**

no way was offered to delete the profile either on the web or in the app, the part

claimant contacted COOLTRA through the email address

info@ecooltra.com and requested the deletion of all your data and payment details,

stored in their systems.

However, the company did not agree to respond to his request, and again requested the

same additional information multiple times. The complaining party resorted to the

"chat" with the Customer Service, and there they confirmed that the deletion of

their data had been realized. To formally register your request,

They urged us to send it to a mailbox, **ciao@ecooltra.com**, which turned out to not accept

input emails. The complaining party addressed the address **rgpd@ecooltra.com**,

indicated in the privacy policy for the exercise of rights of protection of

data, but received no reply either. Instead, later they have arrived

commercial messages from ECOOLTRA to your account.

The temporary description of what happened provided by the complaining party indicates what following:

On October 18, 2018, COOLTRA registered the claimant's account, but

requested additional information about his address and driver's license.

That same day the complaining party requested by email - no offer

no profile deletion function either on the website or through the app -

to info@ecooltra.com to delete your profile along with all your data and details of

payment stored on your website, without providing the additional information that

they had requested.

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On October 20, 2018, COOLTRA requested, once again, the information before

mentioned to finalize the record.

On October 21, 2018, COOLTRA requested, once again, the information before

mentioned to finalize the record.

On October 22, 2018, the complaining party requested by email - there was no

no profiling feature available either on the website or through the

application - to info@ecooltra.com that your request be granted according to your email dated 18

October 2018.

On October 28, 2018 COOLTRA requested, once again, the information before

mentioned to finalize the record.

On October 30, 2018, the complaining party requested by email - there was no no profiling feature available on the website or through the application - to info@ecooltra.com that your request be granted according to your emails emails of October 18 and 22, 2018.

On October 30, 2018, the claimant contacted COOLTRA at through the chat available on their website, in which they assured him that all his data they had been erased. However, you were informed that your request for deletion it should also be sent to ciao@ecooltra.com to be safe.

It seems that the emails sent to ciao@ecooltra.com are not delivered since that account is not enabled to receive emails. The part claimant wrote a message, once again, to info@ecooltra.com.

On November 22, 2018, the claimant received notices sent by mail email from the COOLTRA website.

On November 23, 2018, the claimant sent an email to rgpd@ecooltra.com - there is no delete profile feature available on the site web or through the application - requesting according to the 'Privacy Policy' on the site website that your profile is deleted along with all your data and payment details stored on the website. He also attached his identification.

On December 24 and 31, 2018 and February 11 and 19, 2019, the claimant received more announcements sent by email from the COOLTRA website.

Along with the claim, provide:

- Copy of your ID
- Copy of the COOLTRA privacy policy
- Screenshot with the aforementioned exchange of emails between the party claimant and COOLTRA.

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SECOND: Through the "Internal Market Information System" (hereinafter IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the cross-border administrative cooperation, mutual assistance between States members and the exchange of information, as of October 19, 2020, transmitted the aforementioned claim and was given a date of entry registration at the Agency Spanish Data Protection Agency (AEPD) on October 22, 2020. The transfer of This claim to the AEPD is made in accordance with the provisions of article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Physical Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (in the hereinafter, GDPR), taking into account its cross-border nature and that this Agency is competent to act as main control authority, since COOLTRA has its registered office and unique establishment in Spain. The data processing that is carried out affects interested parties in various Member states. According to the information incorporated into the IMI System, of in accordance with the provisions of article 60 of the GDPR, acts as "control authority concerned" only the Italian data protection authority data.

THIRD: On January 26, 2021, in accordance with article 64.3 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), the claim was admitted for processing

submitted by the complaining party.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and of the powers granted in article 58.1 of the GDPR, and of in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

1. Decision adopted regarding this claim

Upon receiving this claim, the COOLTRA DPO has reviewed all the attached documentation, has contrasted it with the affected departments within the organization (specifically, Legal, Marketing, Customer Service and HR), has checked the enclosed communications and has verified the operation of the response system to the exercise of rights of those affected.

After collecting the information, a change in the protocol has been established. current and is that the email rgpd@ecooltra.com will be managed directly by the DPD, being until then initially managed by the Department of Customer Service.

2. Proof of the response provided to the request of the complaining party, regarding to the exercise of the rights regulated in articles 15 to 22 of the GDPR

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COOLTRA representatives have verified that no express response was given to the complaining party, beyond the indications of the Customer department

Service via chat dated October 30, 2018 that he should go to the mail

ciao@ecooltra.com.

As stated in the entity:

The complaining party sent the first claims to the address

info@ecooltra.com, not being the address indicated in the Privacy Policy (this

was rgpd@ecooltra.com). Although unsubscriptions are also managed in this email, the

The volume of communications is so high that it can happen that some of them are passed, for

it is important that the exercise of rights be done through the established channels

in the Privacy Policy that is accessible on the COOLTRA home page.

Subsequently, via chat, he was told that he could request the cancellation without problems in the

address ciao@ecooltra.com. However, the complaining party erred in

enter the email, as it put ciao@ecooltra.it. Therefore, it was never received.

The complainant's profile remained active, although it was pending verification.

However, having accepted the sending of communications related to the service

cio kept receiving them.

In the communications an almost automatic link was provided to unsubscribe,

but it was not used.

Finally, the complaining party correctly sent the email to find out

discharged to rgpd@ecooltra.com on November 28, 2018, but was not attended in

due to a specific error and because the company was in full implementation

of new protocols.

Subsequently, it was detected that this email had not been answered and the Department

Marketing simply removed him from the system, without proceeding to give him a response.

put. The withdrawal was made on March 1, 2019.

On February 17, 2021, an email has been sent to the claiming party.

keep informing of the cancellation of your data.

3. Report on the causes that have motivated the incidence that has originated the claim

The claim filed by the claimant took place in the month of October of year 2018, year of implementation of the GDPR, and when the law was not yet in force Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights.

The company was in a moment of full implementation of new processes, there were still many practical doubts about how the new regulations would operate and, although there was adequate external advice, COOLTRA still did not he had named no DPD, something he did the following year.

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As the first relevant fact, it should be noted that the emails dated 18, October 20 and 30, 2018 were all sent to info@ecooltra.com, and not by email that was already indicated at that time in the privacy policy, which is that of rgpd@ecooltra.com. (Previously there was also a policy stating the mail ciao@ecooltra.com).

COOLTRA is a company that has more than 1,200,000 users, and despite the fact that

From the email info@ecooltra.com, a response is always given to users who want to unsubscribe, it is not the channel indicated in the privacy policy to exercise the rights of interested persons, which specifically indicates the email rgpd@ecooltra.com since the exercises of user rights are channeled to through a priority channel, in order to guarantee that full compliance is given

in time and form of each and every one of the requests and is answered, by protocol, in less than 24 hours, as well as forwarded, if necessary, to the Legal Department or DPD.

When the complaining party contacted Customer Care and after explaining the situation, he was instructed to send an email to ciao@ecooltra.com. This happened in full process of implementation of data protection measures, and that the workers had not yet received all the new organizational protocols and security, for this reason he was provided with the old email enabled to carry out the cancellations (ciao@ecooltra.com), which also worked, coexisting with the recently implemented rgpd@ecooltra.com until 2020.

However, the claiming party made a mistake in the addressee and sent the email to ciao@ecooltra.it (.it and not .com), and therefore the address came out as invalid. If you had sent the email to the correct address, the cancellation would have been done right the first time.

In relation to the communications you received after requesting the withdrawal, the Representatives of the entity state the following:

The claimant registered with a very particular service, the one that provided the Possibility of using company mopeds parked in your catchment area just by reserving them through the App for that purpose. By regulation, offering this service obliges to request specific personal information, which allows not only verify the identity, but that the user has the corresponding permission to driving.

That is why it is common for there to be users who have started to register, have accepted the terms and conditions, but are in a provisional situation because they have not sent all the documentation.

The user, when requesting the service, can accept the remission of information from

interest related to the service. In no case is indiscriminate "advertising" sent, if not important communications for the correct execution of the service or communications that contains objectively interesting information for the user (free kilometers, contamination levels, etc.).

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Especially at the beginning, when you have not yet submitted all the necessary information, Communications are sent to remind you that the system has not allowed you to validate your identity and suitability and that you are not yet an active user. In parallel, it send communications directly related to the service (not for the sale of alternative services of the company) or simply information of interest with the objective of informing and retaining the user.

As the cancellation was not processed correctly and the service was subscribed to, he received some communications (those that appear in the file, all related to the service for which he registered), taking into account that he had accepted the same previously and in the emails I had the clear option in the footer of "unsubscribe".

COOLTRA acknowledges that a mistake was made, because Ms. A.A.A. states that, finally, he sent email correctly to rgpd@ecooltra.com and this was not answered within the 30-day period required by law. However, the cancellation was finally processed, specifically on March 1, 2019, the day the claimant was given deregistration as stated in the COOLTRA user management platform.

This fact is that it was a specific error as has been verified by the company

that you have reviewed all the communications received and how they have been managed. And the
There are thousands of communications and all of them are recorded as having been managed
correctly.

During the first months of mandatory GDPR, two directions coexisted,
the ciao@ and the rgpd@. The change was not immediate, and the first months the
employees, accustomed, kept indicating the first. But this was not a
problem, because it worked correctly.

But in this case the complaining party made a mistake in the address of the ciao@ and the
address rgpd@, in tests, it was not attended in time due to not being very clear about the
receiver at that moment what should be done (almost everything was still received by ciao@).

The reality is that, with the entry into force of Organic Law 3/2018, of 5
December, and in application of the organizational and technical measures that

A clear action protocol was implemented, facilitated and improved in the event that

Any user would like to exercise their rights of access, rectification, opposition,
limitation and, where appropriate, portability or cancellation.

This protocol was implemented throughout the Department of Customer Service, and
indicated that it was mandatory for any related application, regardless of the
channel, outside in the rgpd@, in the info@, by phone or by chat.

On the other hand, COOLTRA, to manage communications to its users, gave up
registration in an external management platform, from which the user cancellation circuit
became controlled by the marketing department, being the department
of the Customer Service, which is in charge of forwarding the unsubscribe requests of the users
to the marketing department.

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The entity considers that this system works perfectly since its implementation given that the volume of cancellations and requests that are managed is enormous, and in both years and two months of application has only failed in the case of the complaining party.

4. Report on the measures taken to prevent incidents from occurring

similar, dates of implementation and controls carried out to verify their effectiveness

COOLTRA has 1,200,000 users registered on its platform and the claim

of the claiming party is the only claim that COOLTRA has had since it

It started its activity in 2016.

With such a high number of users, the volume of unsubscribe requests is very

high: in 2018, 58,638 cancellations were processed, in 2019 66,313 cancellations and in the

year 2020 43,781 user cancellations. All this without counting the automatic cancellations

derived from the unsubscribe of the emails with information about the service.

During the month of January 2021, only in the email enabled for such

effect rgpd@cooltra.com 22 cancellations have been requested that have proceeded to be carried out in

a maximum period of 24 hours.

The Customer Service team answers all the people who want to register

unsubscribe from the system, whether they request it from the email rgpd@cooltra.com,

as from emails info@cooltra.com,

hello@cooltra.com and

ciao@cooltra.com (specifically for Italy) and inform the department of

marketing so that the user unsubscribes from commercial communications.

The user can also unsubscribe from communications through the link of the

footer of their email. When requested through that channel, the process

It's automatic.

The entity considers that the protocols followed in COOLTRA and the measures organizational and technical procedures established as a result of the entry into force of the LOPDGDD are reliable since of 168,732 applications received since 2018, only one person has filed a claim with the Data Protection Agency and Said claim coincides with the months in which the company was implementing all the security mechanisms so that compliance with the GDPR and LOPDGDD were optimal.

As a result of this problem, it has been decided that it is the DPD who directly receives the email rgpd@ecooltra.com, in order to filter those emails to which you should

Pay special attention and avoid doubts to Costumer Service and Marketing or delays unnecessary in its management.

5. In relation to the transfer of the claim dated October 26, 2020

The representatives of the entity indicate that there are several circumstances that have matched:

1.- First of all, we must bear in mind that COOLTRA is a company that dedicated to renting motorcycles by the minute whose users are, in a proportion

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quite important, coming from tourism, for this reason it is found in the main European capitals.

Since the start of the SARS COVID 19 pandemic, COOLTRA has been seen seriously affected in its sales, and has had to make a plan of restructuring to adapt its workforce to the new world reality, resorting to

ERTES for a very important part of its workforce. This has made many months of 2020 (and the ones we have been in 2021) the active personnel was seen, on occasions, assuming tasks that were not his own and assuming some responsibilities that They were not the usual ones, which undoubtedly entails malfunctions. Even so, the Customer Service Dept. has always remained active and the staff has registration status almost completely, guaranteeing as always that the rights of the affected were safe.

2.- In addition, it was decided by business on the same date (October 2020) to unify all business lines under the same trade name "Cooltra", which includes both the services offered by COOLTRA and by other brands and business lines that the company has Therefore, the months from October to December 2020 were months of structural changes, and this added to the fact that part of the employees were in a situation of ERTE, partially collapsed certain Departments, especially the Legal Dept.

3.- Between October 23 and 24, the DPD for companies in the Group that had not yet registered it (previously, it was only registered in the company Parent, which is the manager of the others, considering that the rest had no obligation till the date).

Precisely with dates October 26-27, 2020, the same date that was issued by the Agency the requirement not met, the DPO registrations of the rest of the group, state and European companies.

The DPD warned the COOLTRA Legal Dept. that during the following days (between 26 and 29 October) would receive quite a few notifications from the AEPD, but they were DPD discharge confirmations and the DPD himself was also notified, so they would receive them and check that everything was correct.

Who is in charge of receiving official notifications in the case of COOLTRA is

***COMPANY.1, consultancy that handles COOLTRA's tax issues, since the

Most of the notifications received in this mailbox are from the AEAT.

On October 26, 2020, COOLTRA's external advisory office downloaded and forwarded to the

legal department 6 notifications in zip format from the AEPD, including

found 5 DPD discharges of those carried out the previous days and the requirement

that was not attended to and is now being answered.

The legal department when opening a pair and seeing that it was the confirmations of

discharge register that we had warned her about, she did not open any more, convinced that all

they were the same since a total of 12 were expected, and therefore he did not realize that between

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the same was the claim and request for information E / 08509/2020. for that

reason the requirement went unnoticed and was not met.

Upon receipt of an email sent dated February 2, 2021 by Don

B.B.B., Data Inspector of the General Subdirectorate of Data Inspection of the

Spanish Data Protection Agency, to the email address info@cooltra.com,

Customer service proceeded to forward to the appropriate departments in

less than an hour from receipt.

This email was given the normal course, receiving the warning by the DPD for

telephone by Mr. B.B.B. and proceeding to respond to the request in time and

shape.

FIFTH: On January 10, 2022, the Director of the AEPD adopted a

Proposal for a draft decision to initiate disciplinary proceedings. Following

the process established in article 60 of the GDPR, on January 12, 2022

transmitted through the IMI system this proposal for a draft decision as

informal consultation and concerned authorities were made aware that they had two

weeks from that time for comment.

SIXTH: On January 24, 2022, the Director of the AEPD adopted a project

decision to initiate disciplinary proceedings. Following the established process

in article 60 of the GDPR, that same day this

draft decision and the authorities concerned were informed that they had

four weeks from that time to raise pertinent objections and

motivated. Within the term for this purpose, the control authorities concerned shall not

presented pertinent and reasoned objections in this regard, for which reason it is considered

that all authorities agree with said draft decision and are

linked by it, in accordance with the provisions of section 6 of article 60

of the GDPR.

This draft decision was notified to COOLTRA in accordance with the established rules

in the LPACAP on February 4, 2022, as stated in the acknowledgment that

work on file.

SEVENTH: On July 20, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against COOLTRA in order to

issue a warning, in accordance with the provisions of articles 63 and 64 of the

LPACAP, for the alleged violation of Article 12 of the GDPR, typified in Article

83.5 of the GDPR, in which it is indicated that you have a period of ten days to present

allegations.

This start-up agreement, which was notified to COOLTRA in accordance with the rules

established in Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (LPACAP), was collected on July 21

of 2022, as stated in the acknowledgment of receipt that is in the file.

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in the LPACAP and after the period granted for the formulation of allegations, the has verified that no claim has been received from COOLTRA.

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Article 64.2.f) of the LPACAP - provision of which COOLTRA was informed in the agreement to open the procedure - establishes that if no allegations are made within the period provided for the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, it may be considered a motion for a resolution. In the present case, the agreement to initiate the disciplinary file determined the facts in which the imputation, the infringement of the GDPR attributed to COOLTRA and the sanction that could impose. Therefore, taking into consideration that COOLTRA has not formulated allegations to the agreement to start the file and in attention to what is established in the Article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case proposed resolution.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts

PROVEN FACTS

FIRST: On February 18, 2018 at 6:27 p.m. an email was sent from the address ecooltra@email.ecooltra.com to ***USER.1@gmail.com, with the subject (in Italian the original) "Confirm your email" with the following text

(in Italian the original):

"Welcome to eCooltra

Press the button to confirm

CONFIRM"

SECOND: On October 18, 2018 at 6:27 p.m. an email was sent

from the address ***USUARIO.1@gmail.com to info@ecooltra.com, with the subject (in

Italian the original) "Deletion of the profile" in which you can read the following text (in

Italian the original): "I request the deletion of my profile, of all the data and of the method

payment registered on your site. Thank you, A.A.A. (...)

THIRD: On October 18, 2018 at 6:37 p.m. an email was sent

from the address ecooltra@email.ecooltra.com to ***USER.1@gmail.com, with the

subject (in Italian the original) "You are about to achieve freedom" and the message (in

Italian the original): "Now it's our turn! We are validating your data so that

you can access our website.

eCooltra and make the planet more eco-sustainable.

Can't wait and want to use the eCooltra today? Then get in

Contact us and we will check your details together at this time.

GET IN CONTACT WITH US"

FOURTH: On October 18, 2018 at 7:06 p.m. an email was sent

from the address registration@ecooltra.com to ***USER.1@gmail.com, with the

subject "[Ticket#(...)] eCooltra" and the message (in Italian the original):

Thank you for signing up! To activate your account, we need the following

information:

☐ Complete address: street, no., city, postal code

☐

Front and back photo of current license (from which the date is shown

until it will be valid)

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Since the photos uploaded to the app get confused and can't be distinguished

correctly the data according to the state, you can attach your driver's license. Tea

We ask that you register on the page attached below and provide the

certificate of your document, when you have the certificate we ask you to send it to

email so you can activate your account.

***URL.1

For any clarification, please do not hesitate to contact us!

Greetings

C.C.C.”

FIFTH: On October 19, 2018 at 01:02 an email was sent

from the address ***USUARIO.1@gmail.com to info@ecooltra.com, with the subject (in

Italian the original) “Deletion of the profile” in which you can read the following text (in

Italian the original): “I request the deletion of my profile, of all the data and of the method

payment registered on your site. Thank you, A.A.A. (...)”.

SIXTH: On October 21, 2018 at 00:07 an email was sent from

the address ecooltra@email.ecooltra.com to ***USER.1@gmail.com, with the subject

(in Italian the original) "Complete your registration to start driving with us" in

which can be read the following text (in Italian the original):

"Hello!

Before you start driving, you must complete your registration. we need some

minutes of your time, so you can use eCooltra for the first time

Please check the following steps:

1. You have confirmed your email
2. You have entered the photo of your license and tax code (health card).
3. You have entered your payment details

COMPLETE REGISTRATION (...)”

SEVENTH: On October 22, 2018 at 00:07 an email was sent

from the address ecooltra@email.ecooltra.com to ***USER.1@gmail.com, with the

subject (in Italian the original) "A.A.A., there is little left" in which the following can be read

text (in Italian the original):

"Hello!

You are not far from being part of eCooltra! Remember that we need some data

so you can move around the city with our scooters.

Please check the following steps:

1. You have confirmed your email
2. You have entered the photo of your license and tax code (health card).
3. You have entered your payment details

COMPLETE REGISTRATION (...)”

EIGHTH: On October 22, 2018 at 11:52 p.m. an email was sent

from the address ***USUARIO.1@gmail.com to info@ecooltra.com, with the subject (in

Italian the original) “Fwd: Deletion of the profile” in which you can read the following

text (in Italian the original): “By continuing to receive emails, I request the

what I asked for.”

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NINTH: On October 29, 2018 at 00:08 an email was sent

from the address ecooltra@email.ecooltra.com to ***USER.1@gmail.com, with the

subject (in Italian the original) "A.A.A., you are one step away from feeling the wind on your face"

in which the following text can be read (in Italian the original):

"Hello!

More than 3,000 electric scooters await you to move around the city.

Please check the following steps:

1. You have confirmed your email
2. You have entered the photo of your license and tax code (health card).
3. You have entered your payment details

COMPLETE REGISTRATION (...)”

TENTH: On October 30, 2018 at 3:23 p.m., the claimant contacted

contact with <http://www.ecooltra.com/> through its chat, in which it indicates that

asked several days ago about the cancellation of his profile by email, but

to date it had not happened. And again ask for its cancellation. they tell him that he is

requested but please send an email to ciao@ecooltra.com for

there is evidence that you no longer want to use the account.

ELEVENTH: On October 30, 2018 at 4:26 p.m. an email was sent

email from the address ***USUARIO.1@gmail.com to info@ecooltra.com, with

the subject (in Italian the original) "Fwd: Delete the profile" in which you can read the

following text (in Italian the original): "I request again the deletion of my profile and

all personal data, otherwise, since the site does not allow it, I will have to

report it to the guarantor for privacy".

the direction

mailer-daemon@googlemail.com

TWELFTH: On November 3, 2018 at 02:24 an email was sent

email from

to

***USER.1@gmail.com, with the subject (in English the original) "Notification of delivery status (Failure)", with the following text (in Italian and English the original): "There was a problem during message delivery at ciao@ecooltra.it. See technical details below or try submitting new in a few minutes.

MORE INFORMATION

Response: The receiving server did not accept our connection requests. get further

[ecooltra.it

37.152.88.55:generic:failed_precondition:connect error (0): error]"

information at <https://support.google.com/mail/answer/7720>

THIRTEENTH: On November 5, 2018 at 09:36 an email was sent

email from the address ***USUARIO.1@gmail.com to info@ecooltra.com, with the subject (in Italian the original) "Re: Deletion of the profile" in which you can read the following text (in Italian the original): "You asked me to write to ciao@ecooltra.it, but the mailbox does not accept emails.

On Tuesday, Oct 30, 2018 at 4:26 p.m. A.A.A. wrote: [Cited text hidden]".

FOURTEENTH: On November 23, 2018 at 04:02 an email was sent

electronic

to

***USUARIO.1@gmail.com, with the subject (in Italian the original) "A.A.A., the Black Friday and we bring you a lot of discounts!", with advertising by COOLTRA.

ecooltra@email.ecooltra.com

address

from

the

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FIFTEENTH: On November 23, 2018 at 6:05 p.m. an email was sent

email from the address ***USUARIO.1@gmail.com to rgpd@ecooltra.com, with

the subject (in Italian the original) "Fwd: Delete the profile" in which you can read the

following text (in Italian the original): "I see that my demands have not yet been

attended. I request the immediate deletion of all my data (including the

credit card and driver's license information). I'm waiting

confirmation. Otherwise, I will feel obliged to resort to the guarantor of the

privacy. Kind regards".

SIXTEENTH: On November 23, 2018 at 6:09 p.m. an email was sent

email from the address ***USUARIO.1@gmail.com to rgpd@ecooltra.com, with

the subject (in Italian the original) "Re: Deletion of the profile" in which you can read the

following text (in Italian the original): "I also attach my identity document,

as indicated in its privacy policy. In which is attached a document with the

name "<4- Carta di identita.pdf>".

SEVENTEENTH: On December 24, 2018 at 10:01 p.m. an email was sent

electronic

to

***USUARIO.1@gmail.com, with the subject (in Italian the original) "Happy green

Christmas", congratulating Christmas.

ecooltra@email.ecooltra.com

address

from

the

EIGHTEENTH: On December 31, 2018 at 8:01 p.m. an email was sent

electronic

to

***USUARIO.1@gmail.com, with the subject (in Italian the original) "Good news

to start 2019", with advertising by COOLTRA.

ecooltra@email.ecooltra.com

address

from

the

NINETEENTH: On February 12, 2019 at 02:00 an email was sent

electronic

to

***USER.1@gmail.com, with the subject (in Italian the original) "AAA, win 1,000

free minutes", with COOLTRA advertising.

ecooltra@email.ecooltra.com

address

from

the

TWELFTH: On February 19, 2019 at 9:04 p.m. an email was sent

from the address ***USER.1@gmail.com to rgpd@ecooltra.com, with the subject

(in Italian the original) "Last hour: 45 min. at 9.99 EUR, buy the MiniPack here",

with COOLTRA advertising.

FUNDAMENTALS OF LAW

Competition and applicable legislation

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

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Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is

the processing of personal data, since COOLTRA performs

the collection and conservation of, among others, the following personal data of

natural persons: name and surname and email, among other treatments.

COOLTRA carries out this activity in its capacity as data controller, given

who is the one who determines the purposes and means of such activity, by virtue of article 4.7 of the

GDPR. In addition, it is a cross-border treatment, since COOLTRA is

established in Spain, although it provides services to other countries of the European Union

The GDPR provides, in its article 56.1, for cases of cross-border processing,

provided for in its article 4.23), in relation to the competence of the authority of

main control, that, without prejudice to the provisions of article 55, the authority of

control of the main establishment or of the only establishment of the person in charge or of the

The person in charge of the treatment will be competent to act as control authority

for the cross-border processing carried out by said controller or

commissioned in accordance with the procedure established in article 60. In the case

examined, as has been exposed, COOLTRA has its unique establishment in

Spain, so the Spanish Agency for Data Protection is competent to

act as the main supervisory authority.

For its part, the right to delete personal data is regulated in article

17 of the RGPD and the modalities of exercise of the rights of the interested parties are

detailed in article 12 of the GDPR.

II

Right of erasure

Article 17 "Right to erasure ("the right to be forgotten")" of the GDPR establishes:

"1. The interested party shall have the right to obtain without undue delay from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete without undue delay the personal data when any

of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which

those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of

in accordance with Article 6(1)(a) or Article 9(2),

letter a), and this is not based on another legal basis;

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c) the data subject opposes the processing in accordance with article 21, paragraph 1,

and no other legitimate reasons for the treatment prevail, or the interested party

object to the processing pursuant to Article 21(2);

d) the personal data have been unlawfully processed;

e) the personal data must be deleted for the fulfillment of a

legal obligation established in the Law of the Union or of the States

members that applies to the data controller;

f) the personal data have been obtained in connection with the offer of services

of the information society mentioned in article 8, paragraph 1.

(...)

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for compliance with a legal obligation that requires data processing

imposed by the law of the Union or of the Member States that applies to the

responsible for the treatment, or for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the person responsible;

c) for reasons of public interest in the field of public health in accordance with

Article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archiving purposes in the public interest, scientific or historical research purposes or

statistical purposes, in accordance with Article 89(1), to the extent that

the right indicated in paragraph 1 could make it impossible or hinder

seriously impair the achievement of the objectives of such treatment, or

e) for the formulation, exercise or defense of claims.”

In the present case, it is clear that the complaining party had requested COOLTRA the

deletion of your personal data on numerous occasions.

Exercise of the rights of the interested party

IV.

Article 12 "Transparency of information, communication and modalities of

exercise of the rights of the interested party" of the GDPR establishes:

"1. The person in charge of the treatment will take the appropriate measures to facilitate the

interested all 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 to a child. Information

shall be provided in writing or by other means, including, if applicable, by

electronics. When requested by the interested party, the information may be provided

verbally as long as the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the exercise of their rights by the interested party.

under articles 15 to 22. In the cases referred to in article 11, paragraph

2, the person in charge will not refuse to act at the request of the interested party in order to exercise

your rights under articles 15 to 22, unless you can show that you do not

is in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information regarding their proceedings on the basis of a request under articles 15 to 22, without undue delay and, in any case, within one month of receipt of the request. This period may be extended by another two months if necessary,

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taking into account the complexity and number of requests. The responsible will inform the interested party of any of said extensions within a period of one month from receipt of the request, indicating the reasons for the delay. when the interested party submits the application by electronic means, the information will be provided by electronic means when possible, unless the interested party requests that it be facilitate otherwise.

4. If the person responsible for the treatment does not process the request of the interested party, he will will inform without delay, and no later than one month after receipt of the application, the reasons for not acting and the possibility of presenting a claim before a control authority and take legal action. (...)”

In the present case, it is clear that the complaining party requested the deletion of his account and your personal data up to 6 times. The last one on the 23rd of November 2018. And just on February 17, 2021 COOLTRA has sent a email to the complaining party informing him of the cancellation of his data, after receiving a request for information from this Agency, together with the corresponding claim. However, it was not until March 1, 2019 that COOLTRA removed the personal data of the claimant from its

systems.

Therefore, according to the evidence available at this time resolution of the disciplinary procedure, it is considered that the known facts are constitutive of an infraction, attributable to COOLTRA, for violation of the Article 12 of the GDPR, in conjunction with Article 17 of the GDPR.

Classification of the infringement of article 12 of the GDPR

V

The aforementioned infringement of article 12 of the GDPR supposes the commission of the infringements typified in article 83.5 of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

(...)

b) the rights of the interested parties in accordance with articles 12 to 22; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very serious" of the LOPDGDD indicates:

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"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

k) The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679. (...)"

Penalty for violation of article 12 of the GDPR

SAW

Without prejudice to the provisions of article 83 of the GDPR, the aforementioned Regulation provides in section 2.b) of article 58 "Powers" the following:

"Each control authority will have all the following corrective powers indicated below:

(...)

b) send a warning to any person in charge or person in charge of the treatment when the processing operations have infringed the provisions of the this Regulation; (...)"

For its part, recital 148 of the GDPR indicates:

"In the event of a minor infraction, or if the fine likely to be imposed constitutes a disproportionate burden on a natural person, rather than penalty by means of a fine, a warning may be imposed. should however special attention should be paid to the nature, seriousness and duration of the infringement, to its intentional nature, to the measures taken to alleviate the damages suffered,

to the degree of responsibility or any relevant prior infringement, to the manner in which that the supervisory authority has become aware of the infringement, to compliance of measures ordered against the person in charge or in charge, to adherence to codes of conduct and any other aggravating or mitigating circumstances.”

According to the evidence available at the present time of

disciplinary procedure resolution, it is considered that the offense in question

is slight for the purposes of article 83.2 of the GDPR given that in the present case,

taking into account that there is no record in this Agency of COOLTRA for not

having duly attended to a right of deletion, to the circumstances so

exceptional circumstances that were the cause of such request not having been duly

attended, to the fact that the complaining party sent some of its requests to an address

email that was not indicated in the privacy policy

corresponding, to the fact that the deletion had been addressed in March 2019 although it did not

had been duly communicated to the complaining party and that, as soon as it had

knowledge of the claim, COOLTRA notified the claimant of the withdrawal

and modified its protocols to prevent an incident of these characteristics from being

repeat, it can be considered a reduction of guilt in the facts, so it is

considers it in accordance with the law not to impose a sanction consisting of an administrative fine

and replace it by directing a warning to COOLTRA.

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Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS COOLTRA MOTOSHARING S.L.U., with NIF B65874877, for an infringement of Article 12 of the GDPR, typified in Article 83.5 of the GDPR, a warning.

SECOND: NOTIFY this resolution to COOLTRA MOTOSHARING S.L.U.

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

Resolution will be made public once the interested parties have been notified.

In accordance with the provisions of article 60.7 of the GDPR, this information will be resolution, once it is final, to the control authorities concerned and to the Committee European Data Protection.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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