

□ Procedure No.: PS/00311/2020

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00285/2020, instructed by the Spanish Agency for

Data Protection to the entity METRO7, EDIFICACIÓN SINGULAR Y

SUSTAINABLE CONSTRUCTION S.R.L. with CIF.: B99409906, owner of the website,

www.metro7.es, (hereinafter, "the claimed entity"), by virtue of a complaint filed

filed by D. A.A.A., (hereinafter, "the claimant"), and based on the following

you:

FACTS

FIRST: On 02/29/20, you have entered this Agency, filed a complaint

by the claimant in which he indicated, among others, the following:

"After going to make a request through the page www.metro7.es, I observe that

uses up to 8 different types of cookies and neither informs nor requests any permission,

also lacks legal notice or any other information on data processing,

including a contact form that collects data".

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of

investigation granted to the control authorities in article 57.1 of the Regulation

(EU) 2016/679 (GDPR). Thus, on 05/29/20, an informative request was addressed to

the claimed entity.

: On 06/29/20, this Agency received a written response to the

THIRD

requirement by the claimed entity, in which it is informed, among others, of

the next:

“That, after the start-up and publication of the new web page of ME-TRO7 ("<https://metro7.es>") on February 28, 2020, through which the content, templates and navigation of it, certain problems appeared in the hosting service that made it impossible for certain functions of said page website were visible to users who accessed it.

That these facts produced that the legally established texts (legal notice, political privacy policy and cookie policy) could not be noticed by the public that accessed the website, which led to the claim of February 29, 2020 that a affected user made before the AEPD.

In order to test this problem with the hosting service, it is attached as a Document No. 1, the email sent to the company with which the contract was signed development of the website «<https://metro7.es/>» in which the existing problems are noted. try certain functionalities of the aforementioned web page.

That, immediately after learning of this problem, the developer of the web adopted the necessary measures to adapt the web page in question to the current regulations on data protection and information services.

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2/7

The pertinent texts that refer to: - Legal notice were included on the web. - Po-Privacy policy. And - Cookies Policy.

You can check the privacy policy published on the web, the purposes for which personal data is processed are: the maintenance of communications between the parts; the resolution of doubts and queries raised by customers; and, provide

the latter from access to information regarding our services. In this sense-

do, the information required by article 13 of the RGD has been included.

That, in reference to the processing of user data and storage of the

themselves, there are certain sections within the website where users can

enter personal data. In this sense, the sections are the following:

“contact” section (<https://metro7.es/contacto/>): which has been entered in the section

Contact form a checklist in which it is required to accept the privacy conditions

(in addition to linking with them) and the use of data and another in which the user grants

Give consent for data processing.

“Find your home” section (<https://metro7.es/encuentra-m7/>): it has been introduced

I have created a checklist in which it is required to accept the privacy conditions (in addition to

link to them) and the use of data, as well as the consent for the storage

information gathering.

“Energy test” section (<https://metro7.es/testenergetico/>): a new

checklist in which it is required to accept the privacy conditions (in addition to linking

with them) and the use of data, as well as the consent for the storage

to of information In addition, Document No. 3 provides the contact information

data received in the web form and web links.

Article 65.3 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights, establishes that: “the Spanish Agency

of Data Protection may inadmit the claim when the person in charge or in charge

treatment, prior warning issued by the Spanish Agency for Protection

tion of Data had adopted the corrective measures aimed at putting an end to the

possible breach of data protection legislation.

It is an obvious fact that the breach occurred in a very short space of time.

short and that all possible measures were taken to put an end to the non-compliance,

Therefore, based on the article cited in the preceding paragraph, the AEPD should reject the claim that is the subject of this answering brief.

That this part understands that it is fully accredited, through the information contributed to this writing, that the rights of the users of the web page that occupies this writing, in terms of the protection of the treatment of personal data is refers, is fully guaranteed.

FOURTH: On 09/20/20, this Agency verified the following:

following aspects, regarding the privacy policy and the cookie policy of the

Web page:

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3/7

On the main page of the website www.metro7.es, through the link: <<contact>>

<https://metro7.es/contacto>, located at the top of it, the web can re-

collect personal data of users, such as name, surname, email

tronic and phone number.

In this form, there is a space intended to include the query made by the

entity with the title: "Tell us what you liked about our website or how we can

work for you: ____", however, in order to send the opinion or query, it is mandatory

I must have previously accepted the following two conditions:

"_ I give my consent for this website to store the information I send for

They can answer my question."

"_ I accept the privacy conditions, as well as the use of data to receive co-

informative communications of METRO 7 SINGULAR EDIFICATION AND CONSTRUCTION

SUSTAINABLE TION S.L”.

- Regarding the Privacy Policy:

There is a link at the bottom of the main page, with the title of "Privacy Policy".

vacidad”, which redirects to a page, <https://metro7.es/aviso-legal-condiciones-de-privacidad-y-politica-de-galletas>

/, in which it is reported: the identification data of the

entity; the legitimacy for the treatment of the data; the recipients of the data;

the rights of users; how long they keep the data; Inform that NO

will communicate data to third parties and informs that international transfer is NOT foreseen

of data. About the purpose for which the processing of personal data is intended,

indicates: “METRO 7 SINGULAR BUILDING AND SUSTAINABLE CONSTRUCTION

S.L., treats the information provided by interested persons in order to maintain

have communication between both parties, the resolution of doubts and queries raised

you give”.

- Regarding the Cookies Policy:

When accessing the main web page, www.metro7.es, (first layer), there is a

banner at the bottom of it, with the following message:

“This website uses PHP cookies to maintain the browser session and cookies

of third parties (Google Analytics) to carry out visit analytics tasks. by continuing

With your navigation we understand that you accept our Cookies Policy”.

<<ACCEPT>>

<<REJECT>>

If the "Cookies Policy" is accessed through the existing link in the banner, the

web redirects to a page where information is provided on, what are the

cookies and identifies the cookies used by this website.

FIFTH: On 10/14/20, the Director of the Spanish Agency for the Protection of

Data agreed to open sanctioning procedure for violation of article 7 of the RGPD

mentioned, as it is mandatory to give consent to receive communications

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4/7

of the entity when the questionnaire is sent to request information or

simply submit an opinion on the web.

SIXTH: Once the initiation agreement has been notified, the entity claimed, by means of a document of faith dated 10/16/20, sends to this Agency, brief of allegations, in which, among others, in-says:

“FIRST: On the one hand, we were told by the Spanish Protection Agency

Data that when giving consent through the website, contact area, is

stated “I accept the privacy conditions, as well as the use of your data for

receive informative communications from METRO7 EDIFICACIÓN SINGULAR Y CONS-

SUSTAINABLE TRUCTION S.L.” As indicated by the agency itself in its letter, this

cho violates the rights of the user since the door is opened for the user to receive

any type of notification, even if it is not related to the ultimate purpose for the

which the personal data has been collected.

In relation to the indicated deficiency, we have carried out the appropriate actions

of adequacy on our website in such a way that the consent given by

users does not necessarily imply the possibility of sending any

type of communication without there being a legal basis for data processing, so

possible informative communications will be made with prior voluntary acceptance. With

In order to prove this point indicated above, we attach a link for your verification.

tion and we show the contact section: <https://metro7.es/contacto/>

SEVENTH: On 02/12/21, this Agency verified the following:

These aspects on the website:

On the main page of the website www.metro7.es, through the link <<contacto>>

<https://metro7.es/contacto>, located at the top of it, the website can

collect personal data from users, such as name, surname, email

email and phone number.

In this form, the space for consultation has the title: "Tell us what you

liked our website or how we can work for you____", but to send the

questionnaire it is mandatory to have previously accepted the privacy conditions.

There is the possibility of giving consent, if desired, for the website to store

the information necessary to respond to the request and also to receive communications

commercial statements of the entity, marking the corresponding boxes, located below

under the form.

PROVEN FACTS

1.- As stated by the claimant in his brief, after going to make a request through

of the page www.metro7.es, I note that the cookie policy and the privacy policy

privacy did not comply with current legislation.

2.- On the part of this Agency, it was found that the website in question could collect data

personal data of the users, through the existing questionnaire the tab, <<con-

touch>> intended to make inquiries to the entity or send opinions about the web,

but to send the questionnaire with the query or with the opinion, it was mandatory to accept

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previously read the privacy conditions and give consent so that the website will store personal data and be able to send commercial communications.

2.- In the Privacy Policy the identification data of the entity was reported; the legitimacy for the treatment of the data; the recipients; the rights of users; for how long they kept the data and informed that they would not communicate data to third parties and that international data transfers would not be made.

3.- Regarding the cookie policy, it was verified that, when accessing the main page of the web, (first layer), there was a banner, with the following message:

"This website uses PHP cookies to maintain the browser session and cookies of third parties (Google Analytics) to carry out visit analytics tasks. by continuing With your navigation we understand that you accept our Cookies Policy".

<<ACCEPT>>

<<REJECT>>

If the "cookie policy" was accessed through the existing link in the banner, the web redirected to a page where information is provided on, what are the cookies and what types of cookies the website uses, its purpose and the time it is laugh active.

4.- After initiating this sanctioning procedure, for infraction of article 7 of the RGPD, the entity claimed, in the period of allegations, sent to this Agency, es-certificate indicating having proceeded to the adaptation of the web page, in such a way that the consent given by users does not imply the possibility of sending of any type of communication without there being a legal basis for the treatment of the data. cough.

5.- On the part of this Agency, it has been possible to verify later that, in the form existing on the web, before sending the query or opinion on the web, it is obligatory

rio to have previously accepted the privacy conditions.

6.- There is the possibility, if the user wishes, to give their consent so that the entity sends you commercial communications, checking the corresponding box if-
tuada in the contact form.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the Parliament-European Act and of the Council, of 04/27/16, regarding the Protection of Natural Persons regarding the Processing of Personal Data and the Free Movement of es-
Data (RGPD) recognizes each Control Authority and, as established in the
art. 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on the Protection of
Personal Data and Guarantee of Digital Rights (LOPDGDD), the Director of the
Spanish Agency for Data Protection is competent to initiate this procedure.

I lie.

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6/7

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the powers
investigative and corrective measures that the supervisory authority may order for this purpose,
mentioning in point 1.d), that of: “notifying the person in charge or in charge of the treatment
to the presumed infractions of this Regulation” and in 2.i), that of: “imposing a
administrative fine under article 83, in addition to or instead of the measures mentioned
mentioned in this section, according to the circumstances of each case.

In the present case, it was claimed that the website www.metro7.es did not meet the

current legislation in its "Cookies Policy" or in its "Privacy Policy".

II

However, this Agency verified that, in its "Privacy Policy", it was informed of, the identification data of the data controller; the legitimation for treatment; the recipients of the data; the rights of users; how long they keep the data; informs that they will not communicate data to third parties and reports that no international data transfers were made.

Regarding the "Cookies Policy" it was found that the existing banner on the page main informed of the use of own and third-party cookies to perform tasks visit analytics. In addition, it made it possible to accept all cookies or reject all. you give the cookies. For its part, in the "Cookies Policy" (second layer), it is provided provided information about what cookies are and what types of cookies this page uses. web page

However, it was found that the website could collect personal data from users. rios, when they made a query to the entity or sent a comment, but to send said query or comment they had to accept that the entity save their personal data and send them commercial communications.

Once the sanctioning file had been opened for this last reason, the entity sent the this Agency written of allegations in which it indicated to have corrected the deficiency Inc. Matter that was corroborated by this Agency, proving that, in the form existing on the web, before sending the query or opinion on the web, it is necessary necessary to have previously accepted the privacy conditions and that, on the other hand, te, to receive commercial communications from the entity, the user must have marked Check the consent box before.

Therefore, in view of the facts exposed, the Board of Directors of the Spanish Agency of Data Protection,

RESOLVE

NOTICE: to the entity METRO7, SINGULAR EDIFICATION AND CONSTRUCTION

SUSTAINABLE S.R.L. with CIF.: B99409906, owner of the website, www.metro7.es

for the violation of article 7 of the RGPD, by not having adapted the collection

of the consent of the users for the sending of commercial communications, until

ta not have received the initiation of this sanctioning file.

NOTIFY: this resolution to METRO7, EDIFICACIÓN SINGULAR Y

SUSTAINABLE CONSTRUCTION S.R.L.

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7/7

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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

LOPDPGDD, 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 the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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