

□ Procedure No.: PS/00355/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: MADRID MUNICIPAL CONSUMER INSTITUTE (hereinafter, the
claimant) dated June 26, 2020 filed a claim with the Agency

Spanish Data Protection. 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 non-compliance with the regulations of
data protection on the website <https://www.dhmelectricistas.com>

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/06553/2020, 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: On November 26, 2020, the Director of the Spanish Agency
of Data Protection agreed to initiate sanctioning procedure to the claimed, with
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of Article 13 of the RGPD, typified in Article
83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations in which the following can only be read:

“GOOD MORNING, I AM CONTACTING YOU IN REFERENCE TO

A CERTIFIED LETTER THAT ARRIVED AT MY ADDRESS ON THE 29TH OF

DECEMBER 2020 WITH PROCEDURE N° PS/00355/2020 WHERE I

THEY INDICATE SOME FAULTS IN MY WEB PAGE WWW.DHMEL...”

FIFTH: On February 1, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigation actions, E/07683/2020.

SIXTH: On February 7, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency impose

to A.A.A., with NIF ***NIF.1, for an infringement of article 13 of the RGPD, typified in the

article 83.5 of the RGPD, a sanction of warning.

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Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: A claim is filed for the alleged breach of the regulations

of data protection on the website <https://www.dhmelectricistas.com>

SECOND: Allegations are filed on December 30, 2020, but no

expresses nothing beyond the fact that it has received the receipt of the agreement of

initiation of this sanctioning procedure.

THIRD: It is verified that on the website <https://www.dhmelectricistas.com>

They collect data without informing you of the privacy policy.

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.

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

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

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

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

personal through forms included in a web page constitutes a treatment of data, with respect to which the data controller must comply with the provided for in article 13 of the RGD, a precept that has moved since May 25 of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection of Personal Data.

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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 RGD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

“1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

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

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

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

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

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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 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:

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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 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:

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

a) of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679."

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

<https://www.dhmelectricistas.com> without providing them, prior to their collection, all information on data protection provided for in article 13 of the aforementioned RGPD.

Specifically, the content of points 2 to 7 of the Legal Notice must be updated. in accordance with the new personal data protection regulations modifying the reference to Organic Law 15/1999 by Organic Law 3/2018, of Protection of Personal Data and guarantee of digital rights. included in the

SAW

Thus, the exposed facts constitute, on the part of the defendant, a infringement of the provisions of article 13 of the RGPD.

This infraction is sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of www.aepd.es

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

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

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

SECOND: TO REQUEST A.A.A., with NIF ***NIF.1, that under the provisions of article 58.2 d) of the RGD, take the necessary measures to update your "Privacy Policy" to current regulations on data protection

-Regulation (EU) 2016/679 (RGD)-, adapting the information offered to the requirements contemplated in article 13 of the RGD, and must provide the users with users, prior to the collection of their personal data, all the information required in the aforementioned precept, for which said company must take into account the provisions of article 6 of the RGD in relation to the legality of the treatment, as well as what is indicated in article 5 of the RGD in relation to the purpose of the treatment and term of conservation of the data.

Said measures must be adopted within a period of one month computed from the date on which which this sanctioning resolution is notified, and the means of proof of compliance.

THIRD: NOTIFY this resolution to A.A.A.

In accordance with the provisions of article 50 of the LOPDGD, 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 LOPDGD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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