

□ Procedure No.: PS/00042/2021

## 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 INSTALACIONES Y SERVICIOS SURTELEC S.C.M.  
with NIF F85321834 (hereinafter, the claimed).

The reasons on which he bases

<http://electricistasmadridsurtelec.com/> does not have an adequate privacy policy,

claim are

website

the

the

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

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

Data proceeded to carry out preliminary investigation actions for the

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

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

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

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law

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

digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed one and that the privacy policy of said website is as follows:

“FACILITIES AND SERVICES SURTELEC, S. COOP. MAD. hereinafter THE OWNER OF THE WEBSITE, has adapted this website to the requirements of the Law Organic 15/1999, of December 13, on the Protection of Character Data Personal (LOPD), and Royal Decree 1720/2007, of December 21, known as the Development Regulation of the LOPD. It also complies with the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 regarding the protection of natural persons (RGPD), as well as with Law 34/2002, of 11 July, Services of the Information Society and Electronic Commerce (LSSICE or LSSI), so that users can freely and voluntarily decide if they wish to provide the personal data requested on their website.

FACILITIES AND SERVICES SURTELEC, S. COOP. MAD. it reserves the right to modify the PRIVACY POLICY according to its criteria, due to a legislative change, jurisprudence or business practice. If you enter any modification, the new text will be published in this same link. In any case, the relationship with users will be governed by the rules established at the precise moment in which the link is accessed.

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RESPONSIBLE FOR THE TREATMENT: FACILITIES AND SERVICES SURTELEC,  
S. COOP. MAD.

PRINCIPLES -In the processing of personal data, the following will apply principles that meet the requirements of the new European protection regulation of data:

□ Principle of legality, loyalty and transparency: Consent will be required for the processing of your personal data for one or more specific purposes.

□ Principle of data minimization: We will only request data strictly necessary in relation to the purposes for which we require them. The minimum possible.

□ Principle of integrity and confidentiality: The data will be treated in such a way way to ensure adequate security of personal data and confidentiality is guaranteed. All necessary precautions are taken to prevent unauthorized access or improper use of the data of our users by third parties.

PURPOSE: The collection and processing of personal data by FACILITIES AND SERVICES SURTELEC, S. COOP. MAD., has the purpose of maintenance of the contractual relationship established with the user and/or client, the management, administration, provision, expansion and improvement of the services provided, as well as to develop advertising actions and commercial prospecting of products and services of our professional activity and the maintenance of a history of business relationships.

The collection and automated processing of personal data also includes the sending email messages related to its services, according to the completed form.

LEGITIMATION: Execution of a contract, Consent of the interested party.

RECIPIENTS: No data will be transferred to third parties, except legal obligation.

RIGHTS: You have the right to access, rectification, opposition, deletion, portability

and limitation of the treatment as well as to reject the automated treatment of the personal data collected, as well as those indicated and additional information, which You can exercise by contacting the address of the data controller.

#### ADDITIONAL INFORMATION ON DATA PROTECTION

Who is responsible for the processing of your data?

Identity: INSTALACIONES Y SERVICIOS SURTELEC, S. COOP. MAD.. – CIF:

F85321834

Postal address: CALLE LA SAL 43 BJ-3, 28982 PARLA (MADRID)

Telephone: 695816653

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Email: SURTELEC\_@HOTMAIL.COM

For what purpose do we process your personal data?

In FACILITIES AND SERVICES SURTELEC, S. COOP. MAD. we treat the information provided by interested persons in order to: maintain of the contractual relationship established with the user and/or client, the management, administration, provision, expansion and improvement of the services provided, as well as to develop advertising actions and commercial prospecting of products and services of our professional activity and the maintenance of a history of business relationships.

How long will we keep your data?

The data will be kept as long as you do not request its deletion, and in any case, during for the years necessary to comply with legal obligations.

What is the legitimacy for the treatment of your data?

We indicate the legal basis for the treatment of your data:

☐

Execution of a contract: Provision of the requested services.

☐ Consent of the interested party: Sending commercial communications.

To which recipients will your data be communicated?

No data will be transferred to third parties, except legal obligation.

Data transfers to third countries?

Data transfers to third countries are not planned.

What are your rights when you provide us with your data?

Any person has the right to obtain confirmation as to whether the FACILITIES AND SERVICES SURTELEC, S. COOP. MAD. we are treating personal data that concern or not.

Interested persons have the right to access their personal data, as well as to request the rectification of inaccurate data or, where appropriate, request its deletion when, among other reasons, the data is no longer necessary for the purposes for which it was collected.

In certain circumstances, the interested parties may request the limitation of the treatment of your data, in which case we will only keep them for the exercise or defense of claims. Likewise, in the legally established, you will have the right to the portability of your personal data.

In certain circumstances and for reasons related to your particular situation,

Interested parties may oppose the processing of their data. In this case,

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MICROVEN, S.A.L. will stop processing the data, except for compelling legitimate reasons, or the exercise or defense of possible claims.

You can materially exercise your rights in the following way: by sending an email to SURTELEC\_@HOTMAIL.COM or a letter to calle La Sal 43 BJ-3, 28982

Parla (Madrid)

If you have given your consent for a specific purpose, you have the right to withdraw the consent granted at any time, without affecting the legality of the treatment based on the consent prior to its withdrawal.

In the event that you feel your rights have been violated with regard to the protection of your personal data, especially when you have not obtained satisfaction in the exercise of your rights, you can file a claim with the Authority of

Control in terms of competent Data Protection through its website: [www.aepd.es](http://www.aepd.es).”

THIRD: On March 22, 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: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,  
WHO

This resolution is issued taking into account the following:

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: It is denounced that the website <http://electricistasmadridsurtelec.com/> lacks

Privacy Policy appropriate to current data protection regulations.

It is verified that in the privacy policy of the respondent, the Law

Organic 15/1999, of December 13, Protection of Personal Data

(LOPD), and Royal Decree 1720/2007, of December 21, known as the

Regulations for the development of the LOPD, despite the fact that there are currently

repealed.

SECOND: The Spanish Agency for Data Protection has notified the claimed

the agreement to initiate this sanctioning procedure, but it has not

presented allegations or evidence that contradicts the facts denounced.

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## FOUNDATIONS OF LAW

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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

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.

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>).

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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 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.

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

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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:

(...)

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;”

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“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  
It has been found that the website <http://electricistasmadridsurtelec.com/> refers

to Organic Law 15/1999, of December 13, on the Protection of Character Data Personal (LOPD), and Royal Decree 1720/2007, of December 21, known as the Development Regulation of the LOPD, both repealed, since currently it is only Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

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

SAW

This infraction is sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of personal data, since there is no record of the commission of any previous infraction in matter of data protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is ordered to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from the themselves to the requirements contemplated in article 13 of the RGPD, as well as the provision of supporting evidence of compliance with the requirements.

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Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE INSTALACIONES Y SERVICIOS SURTELEC S.C.M., with

NIF F85321834, for an infringement of article 13 of the RGPD, typified in article

83.5 of the RGPD, a sanction of warning.

SECOND: REQUEST INSTALACIONES Y SERVICIOS SURTELEC S.C.M., with

NIF F85321834, under the provisions of article 58.2 d) of the RGPD, which

adopt the necessary measures to update its "Privacy Policy" to the

current regulations on the protection of personal data, -Regulation (EU)

2016/679 (RGPD)-, adapting the information offered to the requirements contemplated

in article 13 of the RGPD, and must provide users, prior to the

collection of their personal data, all the information required in the

cited precept, for which said company must take into account the provisions of the

article 6 of the RGPD in relation to the legality of the treatment, as well as what is indicated in

Article 5 of the RGPD in relation to the purpose of the treatment and term of

data preservation.

Said measures must be adopted within a period of one month computed from the date

in which this sanctioning resolution is notified, and the means must be provided

proof of compliance.

THIRD: NOTIFY this resolution to FACILITIES AND SERVICES

SURTELEC S.C.M., with NIF F85321834

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 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.

Finally, it is pointed out 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the [www.aepd.es](http://www.aepd.es)

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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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.



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