

□ Procedure No.: PS/00455/2020

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 STRM REPARACIONES EXPRES, S.L. with NIF
B86904315 (hereinafter, the claimed one).

The reasons on which the claim is based are the breach of the web
<http://www.strm-electricidad.es> as it lacks a Privacy Policy.

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/06543/2020, transfer of
said claim to the claimed, on August 13, 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.

THIRD: On February 4, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: On April 12, 2021, a resolution proposal was formulated,
proposing that the Director of the Spanish Data Protection Agency
impose STRM REPARACIONES EXPRES, S.L., with NIF B86904315, for a

infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

FIFTH: On April 20, 2021, arguments are presented to the proposal for resolution issued, indicating that using the Facilita tool and following the recommendations of the guide have been implemented, specifically:

1. The way of displaying the information has been changed. At this time it has been implemented the web page to have better accessibility than in a document pdf. The web page created is called legal-notice.html and is located at the root of the domains. Every web page has at least one reference to that page.
na. The page can be accessed from the main menu or from the footer.
na through the link "Privacy Policy".

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2. The legal basis for data processing has been added and the de-missing rights.

3. Following the suggestion of the informative guide the data protection policy
It has been divided into two zones. An area with basic information about protection of data that includes Responsible, Purpose, Legitimation, Recipients and Rights. Each one of these epigraphs has a link to +info... where you can find
Fill in the information for each heading.

4. Also following the suggestions of the guide, a simple language is maintained that allow users to easily understand everything that may or may not happen with your personal information.

5. There are internal links on the page to quickly redirect to each section

information and facilitate user navigation.

6. These modifications have been implemented in all service domains of

STRM Reparaciones Express SL in particular in the domains strm-electricity-

d.es, strmantena.es and mstr.es

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is stated that the website <http://www.strm-electricidad.es> lacks

Privacy Policy.

SECOND: The defendant in writing of allegations states that the website has

been corrected in response to the request received from this Agency in August

2020.

THIRD: By following the link to the website that is the subject of this claim,

the following privacy policy could be read.

"1. RESPONSIBLE FOR DATA PROCESSING The data controller

of data is STRM Reparaciones Express S.L. and will be responsible for the treatment and

data protection

2. PURPOSE OF THE PROCESSING OF PERSONAL DATA PURPOSE

DESCRIPTION For the generation of budgets and invoices on services

borrowed.

Personal and tax data are stored, protected and processed to conform

the necessary documents for the fulfillment of the social contract that binds us to the

users.

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Respond to requests or requests that you make through the Customer Service channels.

Customer We only process personal data that is strictly necessary to manage or resolve your request or request.

Invoices, budgets, clarifications or claims. Usability analysis and quality to improve our services

Sometimes we carry out actions and quality surveys aimed at knowing the degree of satisfaction of our customers and users and detect those areas in which that we can improve.

The personal data of users will be kept later, duly kept and protected during the time in which responsibilities could arise derived from the treatment, in compliance with the regulations in force in each moment.

Once the possible actions are prescribed in each case, we will proceed to the suppression of personal data.

3. RIGHTS OF USERS

We undertake to respect the confidentiality of personal data and to guarantee the exercise of user rights.

The rights can be exercised at no cost by writing us an email email to the email address contacto@strm.es, simply indicating the reason for the request and the right you want to exercise.

If we deem it necessary as a means of identification, we may request a copy of an identity document.

In particular, regardless of the purpose or legal basis under which

process the data, users have the right to:

1. Request access to the user's personal data.
2. Request the rectification of data that is available.

By providing personal data, by any means, the user guarantees that they are true.

and exact.

Any loss or damage caused by reason of a communication of information

erroneous, inaccurate or incomplete in the registration forms, it will be the responsibility

exclusive to the user.

Only personal data will be provided, not those of third parties, except as permitted in this

Privacy and Cookie Policy.

3. Request the deletion of data to the extent that they are no longer necessary for the purpose for which they were assigned.

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4. Request the limitation of the treatment, which means that in certain cases may request the temporary suspension of data processing or its preservation beyond the necessary time when necessary.

Once consent has been provided for the processing of data for any purpose, there is also the right to withdraw it at any time.

To make use of any of the above rights you must make your request to through the email address contacto@strm.es.

Finally, we inform you of the right to file a claim with the authority of

Control in relevant data protection matters, in particular, before the Agency

Spanish Data Protection (<https://www.agpd.es/portalwebAGPD/index-ides-idphp.php>) “

FOURTH: From reading said privacy policy it emerged that although the claimed had proceeded to correct the web page by adding the checkbox acceptance of the policies in your form, in response to the request of this Agency, said web page continued to have deficiencies, since it did not correctly informed about the legal basis of the data processing and it was not mentioned two of the rights that the data protection regulations of a nature personal recognizes, that they are the right of suppression and the right of portability.

FIFTH: The respondent in response to the proposed resolution has directed a writing stating that you have proceeded to make a new update of your privacy policy using the Facilita tool.

SIXTH: It has been verified that the claimed entity has proceeded to correct all the deficiencies of the privacy policy detected in the aforementioned website, following the following link:

<http://www.strm-electricidad.es/aviso-legal.html#proteccion-de-data>

FOUNDATIONS OF LAW

Yo

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:

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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 RGPD, a precept that has moved since May 25 of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection of Personal Data.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

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

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if 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

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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 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.

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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

In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;”

“i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered

mild has:

"They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a)

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

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679."

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In this case, it has been found that the website <http://www.strm-electricidad.es> does not

had an adequate Privacy Policy, but it has been verified that it has

recently proceeded to its update.

Despite this, it should be noted that the warning for the data continues to be maintained.

data that were collected without adequately informing clients, which

constitutes an infringement of article 13 of the RGPD. However, it will be a

warning without the need to adopt measures on the part of the defendant, since it is already

has proceeded by this to the generation of an adequate privacy policy.

SAW

This infraction is sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, considering 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 processing of personal data, since there is no record of the commission of any infringement above regarding data protection.

In view of the foregoing, the Director of the Spanish Agency for Data Protection

RESOLVES:

FIRST: ADDRESS STRM REPARACIONES EXPRES, S.L. with NIF B86904315 for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to STRM REPARACIONES EXPRES, SL with NIF B86904315

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.

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