

□ Procedure No.: PS/00490/2020

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 ***EMPRESA.1 with NIF ***NIF.1 (hereinafter, the
reclaimed).

The reasons on which the claim is based are the breach of the web
<https://www.solucioneselectron.com> 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/06548/2020, 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.

In response to the request of this Agency, on August 14, 2020, it is stated
the following for the respondent:

“On the company website <https://www.solucioneselectron.com>, the only data
personal information that are collected are the name, email, town and telephone number of
people interested in contacting.

To send the form it is necessary to check a consent box after

read a clause in which you are informed of: responsible for the file, purpose of use of the data collected, legitimacy of the treatment, use of the data, transfers of user data and rights.

Likewise, the claimed party sends a copy of the data protection policy data after its adaptation to the data protection regulations in response to the requirement of this Agency.

Despite this, after reviewing its recent privacy policy, it is notes that it does not inform about the possibility of withdrawing consent or about the right to file a claim with the supervisory authority.

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THIRD: On February 16, 2021, an initiation agreement is issued by the Director of the Spanish Agency for Data Protection in accordance with the provided for in article 58.2.b) of the RGPD, for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD

QUAR

TO: 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.

FIFTH: On April 16, 2021, a proposed resolution is notified to the entity claimed, which on April 22, 2020 presents a brief of allegations

affirming that it has updated its web page, which it confirms by sending the following

link: <https://www.solucioneselectron.com/politica-de-privacidad/>

FACTS

FIRST: It is reported that the website <https://www.solucioneselectron.com> lacks

Privacy Policy appropriate to current data protection regulations.

SECOND: On April 22, 2020, a brief of allegations is presented by the

claimed entity stating that it has updated its website,

THIRD: This Agency confirms that the website has been updated

object of this complaint, which can be seen by following the following link:

<https://www.solucioneselectron.com/politica-de-privacidad/>

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:

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

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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.

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

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- 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.

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."

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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) 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:

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

In this case, it has been found that the website <https://www.solucioneselectron.com>,

did not have a Privacy Policy but it has been verified that it has proceeded

recently to its update.

Despite this, it should be noted that the sanction of warning for the

personal data that was collected without adequately informing customers, which

which is constitutive of an infringement of article 13 of the RGPD. However, it will be a

sanction of warning without the need to adopt measures by the defendant,

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because it has already been proceeded by this to the generation of a privacy policy

adequate.

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

SECOND: NOTIFY this resolution to ***EMPRESA.1 with NIF ***NIF.1

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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