

□ Procedure No.: PS/00037/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Various claims have been filed with this Agency against
the entity EDP COMERCIALIZADORA, S.A.U. in which substantially
denounces the processing of personal data without the consent of the interested party. sayings
treatments occur within the framework of the contracting of gas services
allegedly carried out by a representative of the client, without said entity
can prove the existence of such representation. Such claims have given
resulted in the initiation of various sanctioning procedures by this
Agency, among which it is worth mentioning PS/0025/2019, which has concluded by declaring
the existence of an infringement of the provisions of the data protection regulations.

SECOND: In view of the background mentioned in the previous number, on the 3rd of
June 2019, the Director of the Spanish Agency for Data Protection urged the
Subdirector General for Data Inspection the beginning of previous actions of
investigation in order to prove, where appropriate, the existence of a regular conduct and
continued possible violation of data protection regulations by
EDP COMERCIALIZADORA, S.A.U.

THIRD: On December 17, 2019, the Subdirector General for Inspection
makes a request to EDP COMERCIALIZADORA, S.A.U to facilitate the

Next information:

1. Specification of the contracting channels (telephony, internet, distributors
own or subcontracted, sales force with own home visits or

outsourced,

EDP

COMERCIALIZADORA, S.A.U. to natural persons.

services marketed by

etc....)

of

2. Description of the contracting procedure followed through each of the

previous channels when the contracting is carried out by a third party in

representation of the natural person holding the contract. In this regard, it is requested to contribute,

In addition to all the information it deems appropriate for the purpose of documenting the

procedure, the following:

2.1. Copy of the documents (model forms, contracts, arguments

telephone numbers, etc.) used to collect the personal data of the owner and the third party

that acts representing it, with an indication of the channel or channels for which it is used

each.

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2.2. Description of the procedures enabled through each of the channels

of contracting so that a third party can accredit the representation of a holder to the

sign a contract with EDP COMERCIALIZADORA, S.A.U.

23. Specification of the procedure followed by EDP COMERCIALIZADORA,

S.A.U. to store the evidence that accredits the capacity of representation

of the third party in the procedures in which this type of contracting is carried out, with

indication of the channel or channels for which each is used.

2.4. Attach models and/or examples of type evidence collected under the procedure followed in section 2.3.

3. Information on the number of contracts signed in 2018 and 2019 by third parties in representation of the holders of the services (individuals) with distinction of:

3.1. By virtue of what such representation is supported (power, degree of kinship, etc.)

3.2. Procedure or formula for accreditation of the representation followed.

3.3. Telephony contracting channel, internet, own distributors or subcontractors, sales force with own or subcontracted home visits, etc....)

FOURTH: On January 13, 2020, the entry in the AEPD of the written response from EDP COMERCIALIZADORA, S.A.U. at the request of previous information. Said document states the following:

"FIRST- Specification of the contracting channels (telephony, internet, own distributors or subcontractors, sales force with own home visits or outsourced,

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COMERCIALIZADORA, S.A.U. to natural persons.

services marketed by

etc....)

of

EDP has different channels to formalize the contract, distinguishing the following:

A. Telephone Channel, with partial or definitive closure of the contracting process through a phone call. Includes the following subchannels:

- CAC Inbound: Reception of calls, from clients to EDP. They are generally

and to EDP customers who identify themselves from the beginning of the call through a

security protocol, although calls from clients can also be received

potentials.

- Telemarketing: Issuance of calls, from EDP to own databases of already customers for upselling or dropout recovery. It is used for the realization of the call the telephone number that appears in the client's file, and that has been provided by that person previously.

- LEADS: Emission or reception of calls, about users who have manifested a interest in any platform or web page (sweepstakes, promotions, comparators of offers, blogs, advertising agencies, etc.) leaving your basic data to be contacted or by contacting themselves at the phone number shown to them.

Normally these users do not yet have active contracts with EDP.

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B. Web channel, with closure through a digital form. The user accesses through a website and initiates a totally online contracting process, without interaction with agents.

C. Distributors, with face-to-face or digital closure of the contracting process, including:

- EDP's own Commercial Offices. Normally, EDP customers who come proactively to the office, although it can also be potential clients.

- External stores (eg ***STORE.1). In general, new clients who come to carry out their purchases and are interested in EDP's offer.

D. External Sales Forces, with face-to-face closing of the contracting process,

including:

- Stands at Fairs, Shopping Centers, etc. Generally new customers coming to said events or places and are interested in EDP's offer.
- Home visits with prior request. Clients or potential clients who have provided your data and consent to receive proposals from an EDP agent to home.

SECOND.- Description of the contracting procedure followed through each one of the previous channels when the hiring is carried out by a third party in representation of the natural person holding the contract.

A. Telephone Channel:

Next, the procedures implemented in EDP are described in those cases in which the hiring is carried out by a third party in representation of a natural person by telephone:

A.1 – CAC INBOUND 1) When the user indicates that he wishes to make a contract as a representative, you are asked about your relationship with the owner and if you have authorization of that person. 2) Once the previous point has been confirmed, identification data of the representative, and all the data of the owner necessary to formalize the contract. 3) Finally, the Consent is read and recorded in audio representative express. 4) The holder of the contract, for information purposes, is sent in duplicate, with stamped envelope, the contractual documentation in compliance of the provisions of the regulations for the protection of consumers and users.

A.2 – TELEMARKETING 1) When the user indicates that he wishes to make a contracting as a representative, you are asked about your relationship with the owner. 2) Once the previous point has been confirmed, identification data of the representative is requested, and all the data of the owner necessary to formalize the contract. 3) Then the Express Consent of the representative is read and recorded in audio. 4) Finally

durable support is sent to the phone/sms provided by the representative, and is expected

to your confirmation. 5) The holder of the contract, for information purposes, is sent by

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duplicate, with stamped envelope, the contractual documentation in compliance with the

provided in the regulations for the protection of consumers and users.

A.3 – LEADS 1) When the user indicates that he wishes to carry out a contract as

representative is asked about his relationship with the owner. 2) Once confirmed the

previous point, identification data of the representative is requested, and all the data of the

owner necessary to formalize the contract. 3) It is then read and recorded in

audio Express Consent of representative. 4) Support is then sent

to the phone/sms provided by the representative, and await confirmation.

5) To the holder of the contract, for informative purposes, it is sent in duplicate, with an envelope

stamped, the contractual documentation in compliance with the provisions of the

regulations for the protection of consumers and users. 6) In this channel, by mode

contracting and the characteristics of the clients that use it, it is underway,

as a pilot test, communication via SMS or e-mail to the principal (in cases of

not related to the representative to study its effectiveness and receptivity.)

B. Web: The contracting option with a representative is not offered.

C. Distributors:

In the case of contracts made at EDP's own Commercial Offices (in

outside stores there is no possibility of contracting in the name and representation of

a third party) the procedure is as follows:

1) In those cases in which the user indicates that he wishes to make a contract

As a representative of a third party, you are asked about your relationship with the owner. 2) One

Once the information is obtained, the identification data of the representative is requested, and

all the data of the owner necessary to formalize the contract. Likewise, it

requires a photocopy of the NIF, both of the representative and the represented. 3)

The presentation of an authorization document is also required.

completed and signed by both interested parties (representative and owner).

D. External Sales Forces:

In the case of contracts made by external sales forces (fair stands,

shopping centers and home visits, provided there is a prior request by the

of the interested party), the contract will collect the identification data of the representative,

also requesting the holder's data necessary to formalize the contract.

In the contract, it is expressly specified that the representative declares to have

of sufficient powers to sign the contract on behalf of the client to whom

responsible for informing of all the conditions of the same. It is required, on the other

part, of a photocopy of the NIF of the representative.

Next, a verification of the hiring is recorded in audio where you are

twice indicates to the representative the fact that he is acting on behalf of the

owner of the supply and the relationship-kinship that links them is confirmed.

Therefore, to prove the representation, the contract book is formalized

where the representative declares to have sufficient powers to sign the

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contract on behalf of the client who is responsible for reporting all

conditions of this. Likewise, a copy of the NIF of the representative is provided.

In this regard, it is requested to provide, in addition to all the information that it considers appropriate

for the purposes of documenting the procedure, the following:

2.1. Copy of the documents (model forms, contracts, arguments

telephone numbers, etc.) used to collect the personal data of the owner and the third party

that acts representing it, with an indication of the channel or channels for which it is used

each.

A. Telephone Channel:

A.1 – CAC INBOUND

The collection of data is carried out in the system of each of the providers,

following the order that corresponds according to the type of client, contracted product

or campaign.

Documents:

1) Sales data template (Evidence 1)

2) Express Consent Sales Representative CAC (Evidence 2)

Exhibit 2 contains the following:

"[XXXXXX] we're going to record your agreement, okay?

It is [hh:mm] on the day [dd] of [mm] of [20XX], and Mr./Mrs. [name and surname]

with DNI [DNI number], as [husband/wife/son/attorney-in-law/representative] and in re-

presentation of the holder [name and surnames / company name] with DNI / CIF [number

DNI/CIF] phone [phone] and email [email] has called and accepts the

EDP offer for address [supply address] consisting of [con-

tions of the plan -dto. in the light-] for [CUPS LUZ: ES...] about the EDP price

current electricity [power price (€/kW month) and term energy price

(€/kWh)] and/or [plan conditions -dto. in gas] for [CUPS GAS: ES...] and pre-

Current EDP gas price [availability term price (€/month) and term price energy (€/kWh)]; and/or It works [annual price of the service, plan conditions promotion works].

[If the payment date is not chosen] The payment method chosen is [direct debit account in your current account/in the account...] and will be charged on the date indicated on the invoice.

[If the collection date is chosen] The payment method chosen is [bank direct debit]. would be in your current account/in the account...] and will be charged on a date specifically, the days [DD] of the month. In that case, the payment period may be shorter. greater than or greater than the 20 days established in the regulations".

"On behalf of his client, and after passing an analysis of the risk of the operation, ration, we will take the necessary steps to activate the access contracts, moment from which the new contract will enter into force, being terminated previous.

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The contract(s) will have a duration of 1 year, extendable for the same period except complaint in advance of 15 days. Are you satisfied with the above information? mation and conditions of the contract(s)? [Yes / Ok].

In a few days you will receive the contract including withdrawal document by duplicate, of which you will only have to return one of the copies signed in the self-stamping envelope, which does not need a stamp, which we will enclose.

You have 14 calendar days to exercise your right of withdrawal. No ob-

However, if you request it, we can start the process now. Then,

If you subsequently withdraw from the contract, you must pay the corresponding amount.

tooth to the supply period provided. Do you want your contract to be processed?

you immediately? [OTHERWISE].

You will still receive some invoice from your current company for a period likely-

less than normal mind. Thereafter, from the entry into force of the contract

You will receive the EDP invoice with all our advantages.

Your personal data and those of your representative will be processed by EDP Comer-

SAU and EDP Energía SAU for the management of their contracts, prevention

fraud prevention, profiling based on customer information and

EDP, as well as the realization of personalized communications on products

services directly related to their contracts, being able in any

oppose them at any time".

"Additionally, so that at EDP we can advise you with the best

proposals:

Do you allow us to present your client with offers related to energy

adapted to your profile after the end of the contract, or send you at any

moment information on non-energy products and services, on companies

Collaborators or EDP? [OTHERWISE]

Do you allow us to complete the commercial profile of your client with information

of third-party databases, in order to send you personalized proposals

and the possibility of contracting or not certain services? [OTHERWISE]

Your request has been registered with the code that I am going to indicate. If you wish,

you can take note [COD. IGC]".

A.2 – TELEMARKETING

The collection of data is carried out in the system of each of the providers,

following the order that corresponds according to the type of client, contracted product or campaign.

Documents:

- 1) Sales data template (Evidence 1)
- 2) Express Consent Sales Representative TLMK (Exhibit 3)

The text of evidence 3 is as follows:

"[Mr. Mrs. XXXXXX] to hire you, I need to record your agreement.

agreement?. [Yes].

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Well, it's [hh:mm] on the day [dd] of [mm] of [20XX

[Mrs./Mrs.] [name and surname] with DNI [DNI number] as [husband/wife/son/guardian

rado/representative] and on behalf of the holder [name and surnames / reason

social] with DNI/CIF [DNI/CIF number], telephone [telephone] and email [email]

accepts EDP's offer for the address [supply address] consisting

in for [CUPS LUZ: ES.....] on the current EDP price of electricity

[power price (€/kW month) and term energy price (€/kWh)] and/or [conditions

nes of the plan - disc. in gas] for [CUPS GAS: ES.....] and price

Current gas EDP [term availability price (€/month) and term price

energy (€/kWh)]; and/or It works [annual price of the service, plan conditions

promotion works]. The method of payment chosen is [bank direct debit in

your current account/on account.....] and will be charged [on the date indicated

on the invoice / on A SPECIFIC DATE, ON THE DAYS (DD) OF THE MONTH. IN

IN THAT CASE, THE PAYMENT PERIOD MAY BE LESS OR LONGER THAN THE 20 DAYS ESTABLISHED IN THE REGULATION]. On behalf of your representative seated, and after passing an analysis of the risk of the operation, we will tions necessary to activate the access contracts, moment from the which the new contract will enter into force, the previous one being terminated.

The contract(s) will have a duration of 1 year, extendable for the same period except complaint in advance of 15 days.

Are you satisfied with the above information and conditions of the contract(s)?"

[Yes / Ok]. "Thank you very much."

In a few days you will receive the contract (including withdrawal document) by duplicate, of which you will only have to return one of the copies signed in the self-stamping envelope, which does not need a stamp, which we will enclose.

You have 14 calendar days to exercise your right of withdrawal in the way you deem appropriate. However, we can start the procedures during during that period if you request it, in which case if you withdraw from the contract

You must pay the amount proportional to the part of the supply provided. Of-

Whether your hiring is processed immediately? [OTHERWISE]

You will still receive some invoice from your current company for a period likely-less than normal mind. With the entry into force of the contract you will receive the invoice of EDP with all our advantages.

Your personal data and those of your representative will be processed by EDP Comer-SAU and EDP Energía SAU for the management of their contracts, prevention fraud prevention, profiling based on customer information and EDP, as well as the realization of personalized communications on products services directly related to their contracts, being able in any oppose them at any time.

Additionally, so that at EDP we can advise you with the best

proposals:

Do you allow us to present your client with offers related to energy

after the end of the contract, or send you at any time information about

products and services of the financial, insurance and automotive sectors, of

Collaborating Companies or EDP?

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[OTHERWISE]

Do you allow us to complete the commercial profile of your client with information

of third-party databases, in order to send you personalized proposals

and the possibility of contracting or not certain services?

[OTHERWISE]

We remind you that you may at any time exercise your rights to

access, rectification, opposition, deletion, limitation and portability, through

any of the ways indicated in the General Conditions that can

check our website www.edpenergia.es.

[Only in the case of contracting gas] "For your safety, we remind you of the obligation

legal obligation to collaborate with your Distribution Company by facilitating access to

your installations."

In order to process your request we need you to confirm your acceptance of this

offer that has the Code, please take note: "COD CIG".

A.3 – LEADS

The collection of data is carried out in the system of each of the providers, following the order that corresponds according to the type of client, contracted product or campaign.

Documents:

- 1) Sales data template (Evidence 1)
- 2) Express Consent Sales Representative LEADS (Exhibit 4)

The content of evidence 4 is as follows:

"[Mr. Mrs. XXXXXX] to hire you, I need to record your agreement.
agreement?. [Yes].

Well, it's [hh:mm] on the day [dd] of [mm] of [20XX] and [Mr./Mrs.] [name and surnames] with DNI [DNI number] has requested the call from EDP and as [husband/wife/son/attorney-in-law/representative] and on behalf of the owner [name and surnames / company name] with DNI/CIF [DNI/CIF number], telephone [telephone] and email [email] accepts EDP's offer for the address [address of supply] consisting of [plan conditions -dto. in the light for [CUPS LUZ: ES.....] on the current EDP price of electricity [price of power (€/kW month) and term energy price (€/kWh)] and/or [conditions of the plan -dto. in gas] for [CUPS GAS: ES.....] and EDP price current gas [availability term price (€/month) and energy term price (€/kWh)]; and/or It works [annual price of the service, plan conditions promotion works]. The method of payment chosen is [bank direct debit in your current account/on account.....] and will be charged [on the date indicated on the invoice / on a specific date, the days (dd) of the month. in that case the payment period may be less than or greater than the 20 days established in the normative]. On behalf of his client, and after passing a risk analysis of the operation, we will take the necessary steps to activate the contracts of

access, moment from which the new contract will enter into force, being

resolved the above.

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The contract(s) will have a duration of 1 year, extendable for the same period

except complaint in advance of 15 days.

Are you satisfied with the above information and conditions of the contract(s)?"

[Yes / Ok]. "Thank you very much."

In a few days you will receive the contract (including withdrawal document) by

duplicate, of which you will only have to return one of the copies signed in

the self-stamping envelope, which does not need a stamp, which we will enclose.

You have 14 calendar days to exercise your right of withdrawal in the

way you deem appropriate. However, we can start the procedures

during that period if you request it, in which case if you withdraw from the

contract must pay the amount proportional to the borrowed part of the

supply. Do you want your contract to be processed immediately? [OTHERWISE]

You will still receive some invoice from your current company for a period

Probably lower than normal. With the entry into force of the contract you will receive

the EDP invoice with all our advantages.

Your personal data and those of your representative will be processed by EDP

Comercializadora SAU and EDP Energía SAU for the management of their contracts,

fraud prevention, profiling based on customer information

and EDP, as well as carrying out personalized communications about

products or services directly related to their contracts, being able to oppose them at any time.

Additionally, so that at EDP we can advise you with the best proposals:

Do you allow us to present you with energy-related offers adapted to your profile after the end of the contract, or send you at any time information on non-energy products and services, on companies Collaborators or EDP?

[OTHERWISE]

Do you allow us to complete the commercial profile of your client with information of third-party databases, in order to send you proposals and the possibility of contracting or not certain services?

[OTHERWISE]

We remind you that you may at any time exercise your rights to access, rectification, opposition, deletion, limitation and portability, through any of the ways indicated in the General Conditions that can check our website www.edpenergia.es.

B. Web: The contracting option with a representative is not offered.

C. Distributors:

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In the case of EDP's own commercial offices, data collection is carried out in the system of each one of the suppliers, following the order that corresponds

according to the type of client, contracted product or campaign.

Documents provided:

- 1) Sales data template (Evidence 1)
- 2) Authorization template for representative procedures (Evidence 5)

Regarding the content of evidence 5, the document contains three

differentiated boxes, in the first it is indicated that "the HOLDER (D.,,,, DNI or CIF) in

own name or representation of the company." The second box indicates that

"AUTHORIZES (D.,,,, DNI... or CIF) to carry out the management of (indicates 4 possibilities:

registration/deregistration, change of ownership, change of direct debit, and/or other procedures)

The box next to each of them must be checked. In the third box,

collects "SIGNATURE" and leaves the spaces corresponding to the place, date (day, month and year) and space for the signature of the authorizing and authorized.

Next, the following legend is highlighted with a red background:

"NOTE: TO BE VALID, THIS AUTHORIZATION MUST BE PRESENTED
ACCOMPANIED BY A PHOTOCOPY OF THE DNI OF THE HOLDER AND THE AUTHORIZED.
WHEN IT IS AN AUTHORIZATION GRANTED BY A REPRESENTATIVE
DEL TIPO S.A., S.L., A.I.E, U.T.E, CB, COMMUNITY OF OWNERS,
FOUNDATIONS, SCHOOLS, ..., IN ADDITION, A PHOTOCOPY OF THE
TIMELY POWER OF ATTORNEY."

This is followed by the following text;

"The interested parties are informed that the personal data provided in

this form will be treated as data controller by EDP ENERGÍA,

S.A.U. and EDP COMERCIALIZADORA, S.A.U. so that they can be used

for the processing of the authorized management.

The personal data that you provide us will be used, in the manner and with the

limitations and rights recognized by the General Data Protection Regulation

(EU) 2016/679.

Interested parties whose data is processed may exercise the rights of access, rectification, deletion, portability, limitation and opposition to the treatment of these data, proving their identity, by email addressed to cclopd@edpenergia.es or by writing to the data controller at address Plaza del Fresno, 2 – 33007 Oviedo (Asturias). Also, you can put in contact with the EDP Data Protection Delegate, at the same address postal or email dpd.es@edpenergia.es, if you understand violated any of your rights related to data protection, or in your case, file a claim with the Spanish Agency for Data Protection "

D. External Sales Forces:

In the case of external sales forces (trade fair stands, shopping centers and home visits, provided there is a prior request by the interested party), the

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Data collection is done on a paper checkbook. These data are digitized into the Channel Management Tool (HGC).

For verification, data collection is performed on the service provider's system. check.

Documents:

- 1) Sales stub (Exhibit 6)
- 2) Sales data template (Evidence 1)
- 3) Verification script (Exhibit 7)

With regard to evidence 6, which the respondent calls the Checkbook of sales, the document, under the title "contract for the supply of energy and/or services", It contains three boxes on its first page.

The first contains spaces to fill in the data relating to the point of supply (address, electricity cup, gas cup) and separate boxes to check contracting electricity + gas contract or one of the two services individually. I know They also contain spaces to fill in the data of the contract holder (name, surnames, telephone and email) and data of the representative (name, NIF and address and several boxes are included to mark that the representative is in status of spouse/registered partner, ascendant/ descendant or proxy) below of such boxes, a text indicates that "it declares to have sufficient faculties to sign this contract on behalf of the client who is responsible for report all the conditions thereof.

Below this box is the following legend; "The client hires, for the indicated supply, gas supply with EDP Comercializadora, S.A.U. and the supply of electricity and/or complementary services with EDP Energía, S.A.U., (hereinafter jointly and/or individually, as appropriate, referred to as "EDP") with in accordance with the Specific Conditions listed below and the General Conditions in annex.

The customer requests that the provision of the supply/supplies and/or services be start during the withdrawal period contemplated in the general conditions."

In the second box entitled specific conditions of the contract and in which separately depending on whether it is gas or light, certain information is contained on rates and in which there are spaces to be completed and boxes to check relating to the services that are contracted, appears both in the gas part and in the light a box that must be checked to indicate that the owner is changed. I also know

includes a space to fill in the data related to the current account for

domicile the charges (this space is common to all contracted services)

Below this box is the following text: "EDP reserves the right to

renounce this contract if the actual data of the supply do not conform to the

declared by the client at the time of contracting." Next, there is a box to

mark that "The client expressly declares to know and accept the previous

Specific conditions." And another to mark that "The client declares to have been

informed and received the annex with the General Conditions, which he accepts." It adds

below that "The client, if he had the status of consumer, has the RIGHT

TO WITHDRAW from this contract if it had been formalized remotely or outside the

establishments of the marketer as indicated in the general conditions

and acknowledges that the corresponding withdrawal document has been delivered to the

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effect." Below is a box to mark that "The client declares to have

received the withdrawal document and have been informed of it."

In the third box, under the heading CUSTOMER/REPRESENTATIVE after noting that the

information regarding data protection can be read on the back, allows marking

the following consents:

☐ I consent to the processing of my personal data once the relationship has ended

contractual, for the realization of commercial communications adapted to my profile

of products and services related to the supply and consumption of energy. Likewise,

I consent to the aforementioned treatments during the term and after the end of the

contract, on non-energy products and services, both of the companies of the Group

EDP as third parties.

☐ I consent to the processing of my personal data for the preparation of my profile commercial with information from third-party databases, for the adoption, by EDP, of automated decisions in order to send personalized commercial proposals, as well as to allow, or not, the contracting of certain services.

On the back of the first page there is a section entitled "Basic information on Data Protection": in which the following appears:

"Personal data will be processed by EDP COMERCIALIZADORA, S.A.U. and EDP ENERGÍA, S.A.U. (hereinafter, jointly, EDP) as Data Controllers, for the maintenance, development, compliance and management of the contractual relationship, fraud prevention, profiling based on information provided by the Client and/or derived from the provision of the service by part of EDP, as well as sending commercial communications, related to products and services related to the supply and consumption of energy, maintenance of settings and equipment, and that can be customized based on your profile of Client, as reported in the General Conditions, being able to oppose in any time to send commercial communications. Additionally, the Client You give your explicit consent for the processing of personal data collected on the obverse. Without prejudice to the consents given, the client may exercise, at all times, their rights of access, rectification, opposition, deletion, limitation and portability, through any of the channels indicated in the Conditions Generals."

In the part of general conditions, the following information regarding personal data protection:

“LOPD Purposes of the processing of personal data. According to

provided in the current regulations, the client is informed that all the data

provided in this contract are necessary for the purposes of its formalization.

These data, in addition to those obtained as a result of the execution of the

contract, will be processed by EDP COMERCIALIZADORA, S.A.U, with address at

c/General Concha, 20, 48001, Bilbao and by EDP ENERGIA, S.A.U with address at

Plaza del Fresno, 2 -33007, Oviedo in their capacity as Data Controllers,

in order to manage, maintain, develop, complete and control the

contracting of electricity and/or gas supply and/or complementary services of and/or

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gas and/or complementary review services and/or technical assistance and/or program of

points, and/or improvement of the service, to carry out actions to prevent

fraud, as well as profiling, personalized commercial communications

based on information provided by the Client and/or derived from the provision of the

service by EDP and relating to products and services related to the

supply and consumption of energy, maintenance of facilities and equipment.

These treatments will be carried out in strict compliance with the legislation

in force and to the extent that they are necessary for the execution of the contract and/or the

satisfaction of the legitimate interests of EDP, provided that the latter are not

other rights of the client prevail.

Provided that the client has explicitly accepted it, their personal data will be

treated, even once the contractual relationship has ended and provided that no

produces the opposition to said treatment, to:

(I) The promotion of financial services, payment protection services, automotive or similar and electronic, own or third parties, offered by EDP and/or participation in promotional contests, as well as for the presentation of commercial proposals linked to the energy sector after the end of the contract, (II) The preparation of commercial profiles of the Client through the aggregation of the databases of third parties, in order to offer the Customer personalized products and services, thereby improving the customer experience, (III) Decision-making automated, such as allowing the contracting, or not, of certain products and/or services based on the Client's profile and particularly, on data such as the non-payment history, hiring history, permanence, locations, data of consumption, types of devices connected to the energy network, and similar data that allow knowing in greater detail the risks associated with contracting. (IV)

Based on the results obtained from the aggregation of the indicated data, EDP may make personalized offers, specifically aimed at achieving the contracting certain products and/or services of EDP or third parties depending on whether the client has consented or not, being in any case treated data whose age will not exceed one year. In the event that this process is carried out carried out in an automated way, the client will always have the right to obtain intervention by EDP, admitting the challenge and, where appropriate, assessment of the resulting decision.

Categories of processed data

By virtue of the contractual relationship, EDP may process the following types of data

Personal: (I) Identification data (name, surnames, DNI, postal address, address of electronic mail, point of supply, etc.), (II) Codes or identification keys of user and/or Client, (III) Data of personal characteristics (date of birth,

gender, nationality, etc.), (IV) Data on social circumstances (hobbies, style of life, marital status, etc.), (V) Energy consumption data and derived lifestyle habits of these, (VI) Economic, financial, solvency and/or insurance data.

Personal data will be kept for the duration of the contractual relationship.

and at most, during the statute of limitations for legal actions

corresponding, unless the Client authorizes its treatment for a longer period,

Organizational and security measures are applied from the beginning of the treatment

to ensure data integrity, confidentiality, availability and resiliency

personal

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Communications and recipients of personal data.

All personal data derived from the provision of the service and those obtained in

under this contract may be communicated to the following entities:

Yo)

ii)

iii)

i)

i)

saw)

The corresponding distribution company, producing with it an in-

exchange of permanent information for the proper provision of the service,

among them the request for access to your network, the readings (which in the case of con-

remotely managed meter will be hourly) and/or estimation of consumption, quality control
quality of the supply, request for supply cuts, modifications in the
holding, etc.

The Organisms and Public Administrations that by Law correspond.

Banks and financial entities for the collection of services provided.

Other companies of the business group, solely for administrative purposes
and the management of contracted products and services.

National capital solvency and credit services (Asnef-Equifax,
...) to which in the event of non-payment, without just cause by the Client,
may communicate the debt, as well as fraud prevention services,
for the sole purpose of identifying erroneous or fraudulent information provided during
you the hiring process.

EDP suppliers necessary for the adequate fulfillment of the obligations
contractual provisions, including those that may be located outside the State.
European Economic Pact, being in such a case duly adequate
international data transfer.

Rights of the data owner

The client will have at all times the possibility of exercising freely
and completely free of charge the following rights:

Access your personal data that is processed by

Yo)

EDP.

Rectify your personal data that is processed by

ii)

EDP that are inaccurate or incomplete.

iii)

Delete your personal data that is processed by EDP

Limit the processing by EDP of all or part of your

i)

personal information.

i)

Object to certain treatments and decision-making

automated processing of your personal data, requiring human intervention

hand in the process, as well as to challenge the decisions that are final

mind adopted by virtue of the processing of your data.

Port your personal data in an interoperable and self-service format.

saw)

enough.

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Withdraw at any time, the consents granted

vii)

previously.

In accordance with current regulations, the user can exercise their

rights requesting it in writing, and together with a copy of the certified document

proof of identity, at the following address post-

such: Plaza del Fresno, 2, 33007 Oviedo or in the email cclo-

pd@edpenergía.es

Likewise, you can contact the protection delegate

of EDP data at the following postal address Plaza del Fresno, 2,
33007 Oviedo or by email at dpd,es@edpenergía.es, at
in the event that you understand that any of your rights related to
with data protection, or where appropriate, file a claim
before the Spanish Data Protection Agency, at Calle
of Jorge Juan, 6, 28001. Madrid “

Evidence 7 refers to a sales process with express online verification.

(Outgoing call from the verifier to the agent's phone)

(Agent call to the number ***PHONE.1 or ***PHONE.2)

SCRIP VERIFIER-AGENT

Part 1

VERIF-EDP Verifications, good morning. Can you tell me your phone number so
perform verification?

AGE- Good morning, my phone number is XXXXX.

VERIF-I proceed to issue the outgoing call.

Part 2

VERIF: Good morning, can you tell me ID? XXXXX Can you tell me your name and surnames and
collaborating company? If the tool returns the collaborator's data (and the
same is active) we will check if they coincide, if so we continue, in
If they do not match, we will request the data/s that do not match again to
reconfirm the discrepancy, if it continues we will indicate: «We cannot carry out the
verification, the data you provide us is incongruous"). In case the
tool does not return anything to us, we will request the DNI again and if you continue
without appearing, we indicate: «We cannot carry out the verification, your company has not
accredited".

VERIF- Can you tell me the name, surnames and DNI of the signatory? XXXXX How many contracts

He has signed? XXXX (maximum 6 contracts per call) made at the EDP Stand

in the CC XX/in the store of the collaborator XX

VERIF- Is the signatory the owner of the contract(s)? If you are the owner, request contact telephone number and province. If signing as representative, request name, surnames and DNI of the holders (maximum 3) and contact telephone number and main province of each owner.

VERIF-Can you tell me the telephone number of the signatory to carry out the verification?

XXXXXX

VERIF-I proceed to issue the call to start the verification.

Part 3

VERIF CUSTOMER- Good morning, I'm XXXX from the company ***COMPANY.1

EDP collaborator. For security reasons, I inform you that this call is

being recorded, can you confirm that you are a SIGNATORY NAME with DNI XXXX and that

has just signed XX contracts at the EDP stand/collaborator's store (in case of

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(Outgoing call from the verifier to the verification phone)

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sign as representative indicate “on behalf of name-surname HOLDER

with DNI) Yes/No. What relationship-kinship do you have with the owner? (this question is not performed when the owner is a company).

-Tenant, I have the house rented. Request that it be passed on to the agent and

tell you that it is not possible for a tenant to sign as a representative. KO verification.

-Family member or proxy: continue verification.

Perfect, please put me through with the agent to take some information and make the verification, thanks.

2.2. Description of the procedures enabled through each of the channels

of contracting so that a third party can accredit the representation of a holder to the sign a contract with EDP COMERCIALIZADORA, S.A.U.

A. Telephone Channel:

A.1 – CAC INBOUND

Recording of the legal text where the representative confirms the data provided by the represented.

A.2 – TELEMARKETING

Recording of the legal text where the representative confirms the data provided by the represented and durable support via sms/email where the representative confirms new such data.

A.3 – LEADS

Recording of the legal text where the representative confirms the data provided by the represented and durable support via sms/email where the representative confirms new such data.

Additionally, in the pilot test of this channel, another sms/email informing of the representative's action.

B. Web: The contracting option with a representative is not offered.

C. Distributors:

In the case of EDP's own commercial offices, it is requested completed and signed by both interested parties (representative and owner) a document of express authorization in which the data of both people and copies of their NIF.

D. External Sales Forces:

In the case of external sales forces (trade fair stands, shopping centers and home visits, provided there is a prior request by the interested party), the compilation, the contract stub is kept where the representative declares have sufficient powers to sign the contract on behalf of the client who is responsible for reporting all the conditions of this.

Likewise, the verification recording is available and kept where the with the representative the data of the represented, as well as the relationship / kinship that unites them.

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23. Specification of the procedure followed by EDP COMERCIALIZADORA, S.A.U.

to store the evidence that accredits the capacity of representation of the third party in the procedures in which this type of contracting is carried out, with indication of the channel or channels for which each is used.

A. Telephone Channel:

A.1 – CAC INBOUND

The recording is stored linked to the commercial management system of Contacts where the request is registered.

A.2 – TELEMARKETING

The recording and the durable medium are stored in the storage system.
Channel business management.

A.3 – LEADS

The recording and the durable medium are stored in the storage system.

Channel business management.

B. Web: The contracting option with a representative is not offered.

C. Distributors

In the case of EDP's own Commercial Offices, the authorization document is stored linked to the commercial management system of Contacts where the request is registered.

D. External Sales Forces:

The contract stub and the recording of the verification call are located stored digitally in the Channels commercial management system.

For its part, the paper copy is sent to the supplier commissioned by EDP for the custody of these documents.

2.4. Attach models and/or examples of type evidence collected under the procedure followed in section 2.3.

A. Telephone Channel:

A.1 – CAC INBOUND

An example is provided with the recordings (Evidence 8) It is an audio with the Recording of a contracting of services in a specific case carried out through representation. Its content is the same as in Exhibit 2.

A.2 – TELEMARKETING

Examples of recordings and durable media are provided (Exhibits 9 and 10, respectively) Evidence 9 consists of an audio with the recording of the contracting services with a client's representative. Play the content of exhibit 3. Exhibit 10 is a document with the following text:

“Confirmation of acceptance of communication by sms:

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Y

Activate

discounts.

Thanks.

On 2019-04-26 15:50:06 an SMS was sent from the phone number

***PHONE.3 with the text:

EDP Offer: ***OFFER.1 Please reply YES to this SMS to

to accept

Details:

<http://edpconfirma.es/OOUSEAVSXK> to the recipient phone number

***PHONE.4.

Said message was answered with the notification ID OOUSEAVSXK, on the day

2019-04-26 15:50:46 and with the text: If which we accept as valid for the

processing of the product offered in the document shown below

continuation. Below are the personal data of the contracting party and

the offer and the following information: Your personal data will be processed by

EDP Comercializadora SAU and EDP Energía SAU for the management of their

contracts, fraud prevention, profiling based on information

of the client and of EDP, as well as carrying out communications

personalized information about products or services directly related to their

contracts, being able to oppose them at any time.

We remind you that you can exercise your rights to

access, rectification, opposition, deletion, limitation and portability, through

any of the ways indicated in the General Conditions that can

check our website www.edpenergia.es.”

A.3 – LEADS

Examples are provided with recordings and durable media (Exhibits 11, 12, and 13, respectively)

B. Web: The contracting option with a representative is not offered.

C. Distributors:

As far as own Commercial Offices are concerned, a document model is attached of authorization completed by the representative in favor of the principal (Exhibit 14).

D. External Sales Forces:

With respect to the evidence generated by the external sales forces, attached contract stub model where the representation is collected (Evidence 15), as well as the recording in which it is confirmed, as well as the relationship-kinship that binds them (Evidence 16).

THIRD. - Information on the number of contracts signed in 2018 and 2019 by third parties on behalf of the owners of the services (individuals) with distinction of: 3.1. By virtue of what such representation is supported (power, degree of kinship, etc.) 3.2. Representation accreditation procedure or formula Following. 3.3. Telephony contracting channel, internet, own distributors or subcontractors, sales force with own or subcontracted home visits, etc...)

In relation to the request for information regarding the number of contracts signed in the years 2018 and 2019 by third parties on behalf of natural persons, it is put into knowledge of the AEPD the following information regarding each of the channels:

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A. Telephone Channel: 11656

A.1 – CAC INBOUND

Year Channel

2018 CAC

2018 CAC

2019 CAC

2019 CAC

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

1,346

394

983

278

Number of Contracts

2,865

82

1,201

42

Representation

Relationship

no relation

Relationship

no relation

A.2 – TELEMARKETING

Year Channel

2018 TELEMARKETING

2018 TELEMARKETING

2019 TELEMARKETING

2019 TELEMARKETING

A.3 – LEADS

Year Channel

2018 LEADS

2018 LEADS

2019 LEADS

2019 LEADS

B. Web: Contracting with a representative is not contemplated.

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

5,518

849

6,127

1,160

Representation

C. Distributors (own commercial offices):

Year Channel

2018 OOCC Kinship

2018 OOCC No relation

2019 OOCC Kinship

2019 OOCC Unrelated

D. External Sales Forces: (fair stands, shopping centers - home visits)

Number of Contracts

194

67

174

78

Year Channel

2018 FVE

2018 FVE

2019 FVE

2019 FVE

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

10,758

118

1,556

58

FIFTH: In writing dated May 29, 2020, sent on June 1, 2020, it is

makes a new request for information to EPD COMERCIALIZADORA, S.A.U

requesting the following:

1. Copy of the content included in the Record of Processing Activities (article

30 of the RGD) in relation to the activities of processing personal data

carried out in the context of contracting services with EDP

COMERCIALIZADORA, S.A.U.

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2. Copy of the content included in the Risk Analysis or Assessment carried out by the

entity in compliance with article 32 of the RGD in relation to the processing of

personal data collected in the context of contracting services with EDP

COMERCIALIZADORA, S.A.U.

3. Enter the information previously provided by the entity to the AEPD, registered

with the number 001390/2020, it is specified recursively (see evidences 2, 3, 4,

6, 10, 12, 14, 15) that the personal data will be processed for the set of

purposes described, in addition to by EDP COMERCIALIZADORA, S.A.U., by another

legal person (EDP ENERGIA, S.A.U). In this regard, the following is requested

information:

3.1. Reason that justifies that both entities process the personal data collected.

3.2. Detail of the circumstances that determine, if any, that the treatments carried out on specific personal data are executed by one or the other entity.

3.3. Details, where appropriate, of the procedures and mechanisms used to guarantee the separation of the personal data processed by one and another entity of so that each one only has the possibility of dealing with what corresponds to it according to of the legitimate purpose pursued at all times.

SIXTH: On June 17, 2020, this Agency has received a written document from EDP COMERCIALIZADORA, S.A.U. in which the following is stated with respect to the last question raised in the requirement of this Agency referred to in point previous:

“THIRD.- Among the information previously provided by the entity to the AEPD, registered with the number 001387/2020, it is specified on a recurring basis (see evidence 2, 3, 4, 6, 10, 12, 14, 15) that the personal data will be processed for the set of purposes described, in addition to EDP COMERCIALIZADORA, S.A.U. by another legal entity (EDP ENERGIA, S.A.U.). In this regard, the following is requested information:

3.1. Reason that justifies that both entities process the personal data collected.

3.2. Detail of the circumstances that determine, if any, that the treatments carried out on specific personal data are executed by one or the other entity.

As these two questions are directly related to each other, the answer is joint to them.

In relation to the evidence provided and that correspond to supports that are used to carry out the contracting through the different channels is made reference, both to EDP COMERCIALIZADORA, and to EDP ENERGÍA S.A.U. (EDP

ENERGY), because the company with which the services are contracted will be one or another depending on the product and/or service requested, being highly probable that the same client when requesting the contracting of electricity and gas supply, is contracting with both companies at the same time.

For this reason, the "dual" contract has been prepared and structured in such a way that a customer can obtain discounts or additional benefits for hiring both energies with two companies of the same business group, and in order to

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keep updated the discounts in each of the energies and information derived, it is necessary for both societies to know if the energy initially contracted with the other Group company remains active in order to maintain and correctly manage the discounts/advantages applied.

For this reason, and in order to provide the maximum possible transparency to a process carried out eminently in writing, such as the contracting of services energy, is why in the clause on data protection it is reported that

The personal data provided during the contracting process will be processed by both entities, always respecting the functions of each one in accordance with the contract signed in each case and particularly the type of energy services that finally get hired.

On the other hand, and regardless of the foregoing, we inform that

Agency that the existence of two companies within the Group with the role of entities marketers is due to a merely formal issue, a consequence of the

corporate structure and shareholding composition of the companies acquired by the

EDP Group at the time of its establishment in Spain, but not

corresponds to the operational functioning of said marketers, given that

only one of them, EDP COMERCIALIZADORA, currently has

employees and management and operational capacity. Thus, in practice, all

Treatments are carried out by said entity, either as the person responsible for the

treatment or as in charge of the treatment of EDP ENERGÍA.

Additionally, indicate that the EDP Group had planned the corporate reorganization

of EDP COMERCIALIZADORA and EDP ENERGÍA and the adaptation of its structure

corporate identity with that of its actual operation and its business operations. Bliss

reorganization has currently been affected by a sale process to TOTAL

in which both companies are immersed, and if it materializes, it could alter or

complete this integration.

3.3. Details, where appropriate, of the procedures and mechanisms used to

guarantee the separation of the personal data processed by one and another entity of

so that each one only has the possibility of dealing with what corresponds to it according to

of the legitimate purpose pursued at all times.

As already stated, all users with access to the system are employees of

EDP MARKETING.

In this way, EDP agents access the personal data of EDP customers.

said entity as data controllers or have access to the

personal data of EDP ENERGÍA customers, in its capacity as Data Processor

Treatment, in compliance with the provision of customer management services of

EDP ENERGÍA that EDP COMERCIALIZADORA has entrusted to it, being

managed as the two different roles they occupy by virtue of the

contractual regulation that we make available to this Agency.”

Together with said response, an extract from the Record of Treatment Activities is provided.

which includes the records relating to the activities carried out within the scope of the contracting of products and/or services and the risk analysis carried out in relation to the

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treatments that are carried out in the context of contracting products and/or services.

The risk analysis is contained in an Excel document, it does not contain a date or signature. 15 risk factors are listed; 1. Commercially sensitive information, 2.

Commercial Communications, 3. Data Origin (external or internal source), 4. Transfers of data. 5, Treatment Managers. 6. International transfers. 7. Activities of scoring/ profiling. 8. Automated decisions. 9. Systematic monitoring of Headlines. 10. Special categories of data. 11. Large-scale data processing.

12. Data interconnections/ Big Data. 13. Minor Data / Vulnerable Owners. 14.

Application or use of innovative technologies.15. Unavoidable Treatment/ Restriction

exercise rights or service access. Regarding the potential assessment of the risk

inherent, the risk scale has 4 levels: low, with a rating from 0 to 12;

medium rating from 13 to 25; high from 26 to 38 and very high from 39 to 51. The assessment or

weight given to each of the risk factors is from 1 to 4. In the analysis of

risks, a yes or no is marked for each of the sales channels in each of the

15 risk factors listed above. The sum of the weight attributed to each of

the factors for each channel determine the inherent risk. The result of the risk

inherent is average in all contracting channels, except for web channels and

external forces through home visits in which the result of the risk

inherent is low. No risk correction measures are indicated.

SEVENTH: Information is obtained on the volume of sales of the entity being

the results of the turnover during the year 2019 of 989,491,000 euros. The

capital according to the information obtained from the Mercantile Registry is 1,487,895

euros.

Information is obtained on the number of clients of the entity. According to the report of

supervision of the changes of marketer, corresponding to the first quarter of

2019, of the National Commission of Markets and Competition, the number of

supply points of the entity as of March 31, 2019, corresponding to the scope

domestic, amounted to 893,736, constituting 11.4% of the total gas sector in

this domestic sphere.

EIGHTH: On July 16, 2020, this Agency has received a written document from EDP

COMERCIALIZADORA, S.A.U stating that "In the framework of the above procedure

referenced EDP was required by the AEPD to clarify, among other things

extremes, certain information related to the contracting procedures

implanted in EDP carried out with the intervention of a third party authorized by the owner,

as well as address the suggestion made in previous procedures communicated by

part of the AEPD in which modifications were suggested in the way in which

that these types of contracts are made.

2. That, for all of the above, EDP has reviewed the procedure to be followed in the

contracting by third parties on behalf of the owner, in order to strengthen said

procedure and reduce the risks of possible identity theft carried out

in bad faith by the contracting party in this type of process, taking into account,

additionally, the particular needs identified due to the state of

alarm decreed last March and that has necessarily required that

All hiring is carried out remotely.

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3. That in order to inform the AEPD of the specific actions that are being carried out in relation to this matter by EDP, in compliance of your duty of proactive compliance (accountability), we enclose the "Procedure of contracting by third parties on behalf of the owner", so that they have visibility on the modifications that are being implemented in said processes in order to meet your request in this regard, as well as to highlight the EDP's proactivity regarding its suggestion to adapt said process."

Next, the following aspects are detailed in three sections: purpose, contracting procedure with third parties and data and interests of those affected.

In the first section, called purpose after exposing the situation, it states the following proposal: "A contracting procedure that, through correct use and technology insurance, facilitate the contracting of EDP services by the customers through a third party acting under a mandate in the terms of Title IX of the Fourth Book of the Civil Code, protecting in any case the rights of the client and agent about your personal data, which will only be treated in accordance with an adequate basis of legitimacy and in compliance with the principles of the RGPD, ensuring that they are informed about the treatment and that they can exercise their rights at all times, as well as act in case of identifying any action irregular."

In the second section relating to the contracting procedure with third parties, distinguishes the procedure followed with a representative with the written authorization of the Followed with agent with verbal authorization. In the first case, the following steps: the representative is informed, the data and authorization are collected and contracts on behalf of the client. In the case of the agent with verbal authorization, the The steps to follow are the following: EDP proceeds to the information to the representative and collection of data, to contracting by the representative on behalf and representation of the client, sending the client information about the contracting and possibility for the client to disavow the contract.

With regard to information to the agent and collection of data consists, as stated, in the following:

- Services are offered and explained
- It informs about the need to collect certain data for contracting, as well as as the use that will be made of them and the place where you can get more information about it.
- The data of the agent and the client are requested
- The representative provides EDP with his own data and that of the client and confirms that he is empowered to negotiate and sign the contract on behalf of the client
- The contract includes all the information required by the applicable regulations and in in relation to the processing of personal data derived from the contract.

With regard to contracting by the agent on behalf of the client difference between contracting in own commercial offices and outside the establishment mercantile, in which the information is collected in the contract and delivered in support durable or digital to the agent and remote contracting (by phone)

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distinguishing between incoming calls to the EDP CAC, in which the conversation or outgoing calls (telemarketing, making calls by EDP providers) in which the conversation is recorded, and the contract is sent in durable support to the president. (It is clarified that the conversations are recorded after having previously informed the user that the conversation will be recorded.

The following is noted regarding the step relating to sending information to the customer about hiring.

-Once the contract has been formalized by the agent, when there is no written authorization, is sent to the client, by email or SMS, depending on the communication channel available in each case, a communication in which It includes: o Confirmation of the contract made through its representative, including the data of the agent o Link to URL to access the contract signed by the representative on your behalf (with guarantees of content integrity and accreditation of the exact date of realization) where you can exercise your right to disallow contracting in a simple and intuitive way (with a single click) View, print, or download the contract and withdrawal document

The contract collects all the information on the processing of customer data by part of EDP, in addition to the details of the contracted services.

Clarifies that the contracting procedure based on double authentication factor has been designed taking into account the procedure approved by the National Commission of Markets and Competition for carrying out portability and contracting in the telecommunications sector, a very similar sector in terms of regarding the contracting procedure.

The communication is made through a trusted third party that accredits the shipment

SMS/mail as follows:

-SMS message:

EDP XXXXXXXXX. NAME REP LAST NAME REP has contracted energy/services in your name.

Details:

<https://edpcontrato.es/VER/JAOCOARGPG>

Before 14 days you can cancel it.

-E-MAIL message:

SUBJECT: Hiring of NAME TIT SURNAME TIT with EDP

Hello, we inform you that NAME REP LAST NAME REP has performed on your behalf contracting XXXXXXXXX related to your supply of energy/services. Have 14 days to disavow such management.

See details at: <https://edpcontrato.es/VER/JAOCOARGPG>

The step related to the "Possibility for the client to reject the contract" consists in the following:

The client is sent a link, through which he accesses a portal from which he is

It allows:

- View contract with the possibility of downloading or printing it or
- Deauthorize the hiring by means of a single click. Evidence is generated that guarantees the traceability of the action (exact time of performance, as well as completeness of associated evidence) or
- Download the withdrawal document.

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With regard to the third section, data and interests affected, the following is indicated:

Next:

It has been determined that to achieve the purpose of the treatment, it is essential to processing of the following categories of personal data:

-With written authorization

Customer data: Identification (includes a copy of the DNI), Contact, Services contracted, Bank details, Supply point details

Data of the agent: Identification (includes a copy of the DNI), Relationship with the owner (yes/no), Contact

- With verbal authorization:

Customer data: Identification, Contact, Contracted services, Bank details, Supply point data.

Data of the representative: Identification, Kinship with the owner (yes/no), Contact.

NINTH: The website indicated in evidences 3 and 4 is accessed (www.edpenergia.es) in order to download the General Conditions of Hiring.

The procedure followed to download the document containing the Conditions General Contracting, as stated in the diligence of the acting inspector, has been the following:

-Access through the

<https://www.edpenergia.es/es/>

browser

of

Internet

a

the direction

- Introduction in the search engine of the text page itself: "General Conditions"

Internet

site of

-The

<https://www.edpenergia.es/es/buscadorGeneral.do?tiposBusqueda=C%7CM>

%7CD&idMenuSegmento=18&textoSearch=General+Conditions, 2 tabs

one called Related Information and the other Documents.

the following address:

sample,

bass

-The "Documents" tab of the Search Results is selected. Is

offers a total of 78 results, the third of them corresponding to the

"General contracting conditions".

-The "General contracting conditions" are selected and automatically

Open a new browser window pointing to the following internet address:

<https://www.edpenergia.es/resources/doc/comercial/2019/09/10/condicionesgenerales->

contracting.pdf

-Download the document

The content of the general conditions in the "LOPD" section coincides with the

transcribed as evidence 6, with the same LOPD title within the conditions

general, in the fourth number of this Agreement to Initiate the procedure

sanctioning

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TENTH: On July 31, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the EDP entity

COMERCIALIZADORA, S.A.U, in accordance with the provisions of article 58.2 of the

Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016,

regarding the Protection of Natural Persons with regard to the Treatment of

Personal Data and the Free Circulation of these Data (General Regulation of

Data Protection, hereinafter RGPD), for the alleged violation of article 25

of the RGPD, typified in article 83.4.a) of the aforementioned Regulation; for the alleged

infringement of article 6 of the RGPD typified in article 83.5.a) of the aforementioned

Regulation; for the alleged infringement of article 22 of the RGPD, typified in the

Article 83.5.b) of the aforementioned Regulation; and for the alleged infringement of article 13 of the

RGPD, typified in article 83.5.b) of the aforementioned Regulation, determining that the

sanction that could correspond would amount to a total of 3,500,000.00 euros, without

prejudice to what results from the instruction.

: Notified of the aforementioned initiation agreement, the investigated entity

ELEVENTH

presented on August 4, 2020 a letter in which he requested an extension of the term to the

purpose of submitting claims. Granted the extension of the term, they presented

allegations on 08/24/2020 which are mainly the following:

FIRST: ALLEGED BREACH OF THE PRIVACY PRINCIPLE BY

DESIGN IN CONTRACTING PROCESSES THROUGH REPRESENTATIVE.

The AEPD intends to justify the initiation of this disciplinary proceeding in the alleged

non-existence of documentation that has never been requested. In this regard, it must

It should be noted that EDP COMERCIALIZADORA has a methodology for risk identification, analysis and management, both to identify risks inherent, and specifically to assess the need for the realization of the Impact Assessments, alleges that it includes as an annex the documentation justification that amply proves that EDP COMERCIALIZADORA complies fully and fully with these obligations and that is specified in the following: -

“Risk Analysis Methodology and Impact Assessments” -

“Record of Treatment activities and risk assessment of treatments related to the contracting of EDP COMERCIALIZADORA” - “Evaluation of Privacy Impact: Channel of Leads to Convert by Telemarketing” - “Evaluation Privacy Impact: Telemarketing to clients for upselling or recovery of dropouts” - “Privacy Impact Assessment: CAC Channel to Clients OR Clients Potential (Inbound)” - “Privacy Impact Assessment: OOCC Channel to customers or potential customers (Reactive Sales)” - “Impact Assessment of Privacy: Outside Stores Channel for sale to potential customers (Reactive Sales)” -

“Privacy Impact Assessment: External sales forces through booths in fairs and shopping centers (reactive sales)” - “Impact Assessment of Privacy: Treatment activity: Scoring of B2C Clients prior to the hiring”.

Likewise, and as a consequence of the measures adopted as a result of the recommendations derived from risk analyzes and impact assessments carried out by EPD marketer, a large number have been developed by the DPD of procedures for compliance with data protection obligations from the design and by default that are provided as Annex 2: Specifically, include in this Annex 2 the following procedures related to Privacy

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from the Design and by Default, which are part of the System of Government, Risks and

Data protection regulatory compliance of EDP COMERCIALIZADORA: •

EDP Data Protection by Design and Default Methodology •

Operational instruction Privacy By Design and Privacy by Default of the commercial area •

Characterization form and record of treatment activities for analysis

of Privacy by Design and Privacy by Default • Flowchart of the Privacy By Design process
and Privacy by Default.

It is really striking that the AEPD grants the relevance it grants to the fact

specifically that EDP COMERCIALIZADORA had not taken into consideration in

its risk analysis, the specific analysis of the risks associated with the possibility

contracting through a representative, when the AEPD itself, in its own "Guide

Risk Analysis Practice in data processing subject to the RGPD"

(published on its website (<https://www.aepd.es/sites/default/files/2019-09/guiaanalisis-de-riesgos-rgpd.pdf>) does not contain any direct or indirect reference to the need

to assess the specific risk in relation to data processing, either in

contracting or in other processes, carried out by authorized third parties.

Second, it alleges that all data processing carried out by

EDP COMERCIALIZADORA were analyzed to verify their degree of compliance

of the obligations related to RGPD, proposing measures for its correct

adaptation, regardless of whether assessments were necessary

impact or not. Delving into the specific risk related to the contracting carried out

by third parties, it must be indicated that the content of the analyzes carried out was

updated at the time, taking into account the considerations that the AEPD has transferred to EDP COMERCIALIZADORA in the administrative procedure related to this issue that began at the end of 2019 and that, we understand, is the cause of the sanctioning procedure in which we find ourselves in these moments. Indeed, as we have already had the opportunity to expose in the framework of said sanctioning procedure previously initiated by the AEPD, the processes of contracting through authorized third parties had not been identified by the AEPD as an inherent risk factor that would be relevant, taking into account that: 1) The virtual inexistence of claims for part of customers in connection with this reason. 2) EDP COMERCIALIZADORA does not. Until now, there were no disciplinary proceedings open for this reason. 3) The contracting carried out through a third party as verbal agent is expressly recognized in the Civil Code of 1889.

Although the potential risks identified by the AEPD are perfectly possible, the probability of materialization of said risks, in the specific case of EDP COMERCIALIZADORA, was practically nil and that therefore their diligence, in what regards the performance of the risk analysis, has been amply accredited.

Specifically, this fact is based on the very low number of claims for this reason that EDP COMERCIALIZADORA has received. Indeed, there is one (1) single claim with respect to a total of 33,848 contracts made, as

It is stated in the information provided in the file itself, what we understand, that as the AEPD will surely agree with EDP COMERCIALIZADORA, in probabilistic terms, it could be considered a value that, objectively, does not require an independent and detailed assessment.

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It asserts that the possibility of concluding a contract between two parties through the intermediation of a third party is an exclusive matter of Civil Law, so the need, or not, of formalities associated with the accreditation of the representation has to be governed by the provisions of the Civil Code and, where appropriate, by the provisions of the consumer protection regulations. In this regard, the requirement by the AEPD that the representation referred to by the representative is recorded in a medium that allows its accreditation could be considered logical in an isolated interpretation of data protection regulations, but it loses meaning when put into context with the rest of the legal system, more specifically, with the provisions of the Code Civil, which contemplates, among others, the possibility of contracting by representative collected in article 1259, or the figure of the "mandate", regulated in articles 1709 to 1739 of the same and that establish that: "by the mandate contract, a person to provide a service or do something for the account or commission of another" and for which total freedom of form is allowed, establishing that «the mandate can be express or implied" and that, likewise, "acceptance may also be express or tacit, the latter deducted from the acts of the president. In this case, it does not seem that such a wide freedom of form is compatible with obtaining evidence of the existence of the representation or the mandate, beyond the manifestations of the agent, protected by contractual good faith. Also, it is little

It is understandable that a separate consent is required for the treatment of your data or a confirmation of the order by the principal, since this would imply distorting the representation, since it would be absurd that whoever is appointed to enter into a contract in favor of a third party cannot provide

the data of the person on whose behalf it acts, or that confirmation is necessary separate from it to authorize said communication, since the need to addressing the principal directly would make the intervention of the representative useless, because it would be meaningless.

Likewise, and in relation to the possibility that the principal may provide additional consents to the contract itself, it should be noted that this possibility may well have been authorized by the principal in a specific, but by governing the same freedom of form for the granting of this authority (which the rule does not oblige in any case to have in writing), nor is it

Reliable accreditation is required at the time of contracting. About this

In particular, it should be noted that to date there have been no assumptions in the that no type of incidents have been reported by those represented related to the granting of said consents.

With regard to other risks identified by the AEPD, it should be noted that the risk of identity theft is very low, since the representative is identified personally by reliable means when the hiring is face-to-face and providing your ID data when you do it remotely. However, as well the AEPD knows the theory of risks, it does not maintain that the existence of a low risk could be considered a non-existent risk. In this sense, the risks of the existence identity theft do not differ from those that correspond to the contracts in their own name, since the same checks are carried out for avoid it, based on the risks and threats detected in relation to each form hiring. For all these reasons, it cannot be taken for granted that this risk has not been taken into consideration by EDP COMERCIALIZADORA, nor that they have not been adopted measures aimed at its mitigation, as will be explained below

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in the explanation regarding the contracting procedure. On the other hand, in what refers to the potential economic damages, although this is a more linked again to the civil field of contracting than to data protection personal, it must be indicated that in the cases in which the annulment of the contracts for any reason, EDP COMERCIALIZADORA assumes the costs of the services provided, so there would be no economic damage to the affected, proof of this is that EDP COMERCIALIZADORA has not received until time no claim for the alleged damages put forward by the

AEPD

Regarding the way in which the contracting is carried out, as was already stated and it is both in the information made available to that Agency and in the Background de Facto of the Home Agreement, the contracting of the services is preceded by a series of guarantees that allow identifying the author of the contracts, following the common practices throughout the supply services contracting sector and companies of what is known as "Utilities", both in person and remotely, leaving this information registered, so that, in the event of any incident there is proof of who is the person who has carried out the hiring. Contrary to the insignificance that the AEPD intends to grant to the declaration of the representative, perfectly identified, on his condition of representative of the person on whose behalf you contract, it should be noted that this manifestation has binding legal consequences, which, as already stated, are subject to regulation and are expressly recognized by our

Legal System, and that imply responsibilities, both from the point of civil view, as criminal, so it is not a "mere demonstration", as the comes to denominate the AEPD in the Foundations of Law of its writing of initiation of sanctioning procedure, but rather it is a legal act, such as the own consent of the owner, defined by the RGPD itself as a "manifestation of will". Consequently, it does not appear that a legal defense can be made discrimination of the relevance of some manifestations compared to others, due to the fact that that are collected or not within a specific regulation, or manifested in a form, or another. Similarly, as stated in the factual records, although later it seems to be ignored in the Foundations of Law, in all cases in which the contracting is carried out remotely, it is indicated that: "To the holder of the contract, informative purposes, it is sent to you in duplicate, with a stamped envelope, the contractual documentation in compliance with the provisions of the regulations of consumer and user protection. That is why, in any case, the holder has the possibility of knowing the terms in which the hiring.

Notwithstanding all of the above, as a result of the sanctioning procedures opened in the year 2019, and following the criteria transferred by the AEPD in the resolution of the PS/0025/2019 (do not sign on the day of the presentation of this document, due to being appealed) EDP COMERCIALIZADORA has proceeded to identify the risk related to the intervention of third parties in the contracting, making the corresponding detailed analysis of this matter and have elaborated proposals for improvement, in order to comply with the considerations of the AEPD of so that in the contracting procedures the person in question is always informed whose name is contracted. The proposed contracting protocol has been put into knowledge of the AEPD on July 16, 2020 and registration number

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025308/2020, presented in any case before receiving the Start Agreement letter

of Sanctioning Procedure, being a Request for information with number

for EPD ENERGÍA and EDP COMERCIALIZADORA without, to date, the

AEPD has ruled on it with the corresponding legal report

assessment, as requested, in order to implement a system that

was fully in accordance with the criteria and interpretations of the AEPD, limiting itself

to date to be included in the Startup Agreement sent to EDP

MARKETER certain considerations in relation to it.

Specifically, the doubts raised in relation to the proposed procedure, which

we understand are the only ones that the AEPD has, they are the following: 1) it is not clarified if

applies to all recruiting channels, including the Leads subchannel that is not

makes no reference; 2) Situations in which information cannot be reported are not considered.

to the person represented by the indicated means (email or SMS); 3) not reported

to the client of the consents given by the representative for other

processing for purposes other than contracting the service requested during

the contracting process, nor the possibility of revoking such consents. 4) not

effective dates of implementation of this procedure are indicated.

Again, incomprehensibly, instead of requesting additional information from EDP

COMERCIALIZADORA in relation to the proposed procedure, the AEPD opts for

negatively interpret information whose content is not clear to him. Nope

However, and as we understand that the will of the AEPD, like that of EDP

COMERCIALIZADORA, is to achieve a procedure that allows not only to give compliance with the different contracting modalities provided for in the Civil Code, recognized by the consumer authorities and the competent courts in matters contract, but also to the considerations of the AEPD, then, we proceed to clarify what we understand would be the only doubts of the AEPD in relation to the modifications to the contracting procedure submitted: 1) The proposed procedure will be applied to all contracting channels with which EDP COMERCIALIZADORA works, including the "Leads" and any other that in the future implement EDP COMERCIALIZADORA. 2) Regarding the question raised in around what would happen in the event that the contracting person does not have none of the means provided to carry out the confirmation of the contract (email or SMS), indicate that the alternatives will be: a. make it your own headline b. Presenting written authorization and a copy of the DNI of the representative and represented 3) Regarding the consents granted and the possibility of revoke them, it should be noted that the communication gives access to the contractual documentation, where each of the consents is stated. The user, once this information is known, has the possibility of modifying them. Nope However, following the comment of the AEPD in which it questions the validity of the Authorization of the representative for the authorization of additional consents to the hiring, EDP COMERCIALIZADORA proposes to allow representation only for this purpose and will obtain the additional consents directly from the owner. 4) In Regarding the implementation date, it depends precisely on the opinion that about this procedure the AEPD manifests, since it would not make sense to put it launched if the supervisory authority considers that it does not meet its criteria for consider it an adequate procedure, taking into account the economic costs associated with this implementation, in addition to the resources of time and dedication

necessary for the deployment of these measures.

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It is alleged that the alleged breach of the obligations of article 25 RGPD, and the consequent quantification of possible sanction to be imposed on my client derived from said alleged non-compliance, lack any basis for their consideration. In addition, and, in any case, the quantification of said possible sanction it lacks any hint of being proportionate.

SECOND. - ALLEGED NON-COMPLIANCE IN RELATION TO THE

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CONSENT GIVEN BY THE INTERESTED PARTY

It alleges that it is interested in stating that the treatment relating to the creation of a commercial profile based on the information of third parties for the referral of advertising information is not, in practice, being carried out, nor at the date of issuance of these allegations, nor prior to them. For the

Therefore, the treatment that could potentially have been carried out has not had place in any case, at any time, so that, even if it can be questioned from the perspective of the other requirements of the RGPD, it is not possible to attribute to EDP

MARKETING COMPANY carrying out an unlawful conduct that may be punishable derived from the mere obtaining of the consents related to a data processing that, to date, has been non-existent and therefore has not generated the alleged damage to the fundamental rights of citizens

wielded by this Agency. The commission of the reference infraction, regulated in the

Article 83.5 (a) RGPD and 72.1.b) of the LOPDGDD, necessarily requires that

a treatment has actually been caused and that there has been no

identified or the adequate legal basis has not been regularized, stating: "1.

Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following: (...) b. The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the Regulation

(EU) 2016/679".

In relation to informed consent, in the Agreement to Start the Procedure

Sanctioning party to consider that the required consent is not valid, it is based on

the consideration that the information provided to the interested party is not

sufficient, insofar as neither what third-party databases are going to be consulted nor

what type of data will be collected, so that the interested party does not know

absolutely what it is that you are consenting to. And it is appreciated that a single

consent for two different purposes. In this regard, it is alleged that the

information is provided in accordance with the good practices enunciated by the company itself.

AEPD and ratified by the LOPDGDD, so that the interested parties are informed

through the double layer system, so that the interested party can reinforce

the information provided through the query contained therein, through the

different mechanisms that are granted for this purpose (informative locution, reverse of the

physical document or website of EDP COMERCIALIZADORA.

In relation to the absence of clear identification of third-party sources or the

categories of data, it should be noted that such information may be derived from the

information provided to the client in the first layer (by clearly identifying that the

treatment will be carried out with third-party sources) as in the second layer, whose

content is contained in the section called "general conditions of the contract",

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whose content indicates: "(II) The elaboration of commercial profiles of the Client

by aggregating EDP databases with data from

databases of third parties, in order to offer the Client products and services

customized, thus improving the customer experience. (III) The adoption of

automated decisions, such as allowing the hiring, or not, of certain

products and/or services based on the Client's profile and particularly, on data

such as, the history of non-payments, the history of contracts, permanence,

locations, consumption data, types of devices connected to the energy network, and

similar data that allow knowing in greater detail the risks associated with the

hiring. (iv) Based on the results obtained from the aggregation of the

indicated data, EDP may make personalized offers and specifically

aimed at achieving the contracting of certain EDP products and/or services.”

As reflected in the cited text, EDP COMERCIALIZADORA has identified

in extensive detail the types of data that are processed for the detailed purposes, being

sources consulted for this an obvious derivation of the above.

The indication made about obtaining third-party sources is therefore

sufficient content for the user to be fully aware that their

authorization will suppose the possibility that the authorized entity can obtain said

information. It must be remembered that there is no legal requirement that imposes that, in the

At the time of collecting the data of the interested party, the questioned information must

be contemplated directly in the requested consent. That is, being the origin of the data the interested party, it is only up to the Entity to inform in accordance with the provisions of article 13 RGPD, a provision that does not establish, in none of its precepts, the obligation to identify neither the source nor the type of the data. Only in the event that said treatment had been reached carry out, the Entity should have reported such extremes, since only in At that time, the provisions of article 14 RGPD would apply. given account of the non-materialization of said enrichment, this information did not become transferred to the interested party, not appearing in EDP databases MARKETING data other than those that have been provided or generated on the occasion of the contractual relationship maintained between the parties. In addition, it must It should be noted that, in the event that data has been obtained from a third party, would be the one who, in his capacity as transferor of the data, would be obliged to legitimize the communication of the data on the basis of the consent of the interested party, notwithstanding that EDP COMERCIALIZADORA would also do so, in compliance with its information obligation once obtained data from a third party of in accordance with the provisions of the RGPD. In this sense, such a situation could only occur, in the event that the interested party, exercising his right to dispose of the data and with full awareness of it, would have expressed their authorization to that your personal data travel to another company, such as EDP MARKETER, who could only make use of them, in the event of who had also expressed their consent, by marking the box or the express indication, indicating that "Yes" in case of making telephonically.

On the other hand, in relation to the alleged accumulation of treatment purposes, when pointing out that the interested party would authorize the sending of advertising and, secondly, the

use so that EDP COMERCIALIZADORA can assess the viability of the

contracting by said user. In relation to this point, we must

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state that the assessment made by the AEPD is based on an erroneous premise,

consider that they are two different treatments, in a case in which

it is clear that it is a single purpose, such as the generation of a profile

commercial, whose use is limited to two contexts linked to each other: (i) the first,

to carry out the assessment of the possibility of contracting and, (ii) the second, to

issue the corresponding commercial offers to the user in question. Thus,

both assumptions are necessarily interrelated, since there is no

doubt that it would be meaningless to design a customer profile, based on the data

provided by the user and those derived from the service provided, for the referral of a

commercial offer that was sent to an interested party who did not meet the parameters

internal of the Entity to carry out a contract at the time of your request.

In relation to this aspect, it is well known by this company that the RGPD requires

that the consents that are collected are specific, as well as it is

unanimous criterion of the control authorities point out that the grouping of purposes

related to each other, as would happen in this case, has a full place in said

concept, without such grouping giving rise to the consideration, per se, that it has not been

specifically obtained consent. In this area, the approach

on which the AEPD maintains the non-compliance attributed to EDP

COMERCIALIZADORA, ignores the regulation established by the LOPGDD, in which

Article 6.2 states that: "2. When it is intended to base the processing of data on the consent of the affected party for a plurality of purposes will be necessary to It is specifically and unequivocally stated that said consent is granted for All of them." In light of the above, there is an evident specific regulation that enables the grouping of purposes that the AEPD is now questioning

As an additional matter, it is indicated by this Agency that the consent obtained is not in accordance with the regulations, considering that it is not explicit, but obtained in the same way as a general consent, although there are no clearly identified the reasons why it would not meet the criteria issued. For these purposes, the inclusion of the analyzed consent is carried out in a separate context to the acceptance of the contract itself, so that either is collected in a box in those contexts in which there is documentary support for it, or in an informative locution that is read and that must be expressly ratified by the interested party to understand that it has been provided respect, in the absence of clarity in the regulations on the ways that will allow determine that a consent deserves to be considered explicit (understood as a reinforced consent to the one already required by the RGPD), in the aforementioned

Guideline 5/2020 mentions various nuances that help in this clarification. Of it is extracted that, in addition to meeting the requirements defined in the article 7 GDPR, the validity of an explicit consent does not require the attention of exact requirements, which may be valid both in written documents and in telephone recordings. At this point, it is interesting to emphasize an issue essential: although there is neither a legal precept nor an opinion from the authorities of control that clearly determine the requirements to consider that the consent obtained is explicit, nor the differences that correspond to the "regular" consent, yes, it is attributed to EDP COMERCIALIZADORA, and to

any other entities that act as data controllers, the work

to define at its own discretion in which situations such requirement shall be understood to have been fulfilled.

Said casuistry can only cause serious legal insecurity, which in the

course that concerns us is not solved, not even with the foundation that

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It is stated in the document of the Agreement to Start the sanctioning procedure, since in

At no time is it clearly stated what factor, element or action has not been

executed by EDP COMERCIALIZADORA, to determine that its conduct has

unlawful result and that deserves a sanction of such magnitude. According to

this, the request to the client of an obvious action, such as the verbal indication that

yes consent or the marking of a box, whose content clearly exposes the

purposes for which the data will be used, which is unrelated to any other

acceptance and that is not subject to other purposes, must be considered as a

explicit consent in order to comply with the obligation imposed by the

data protection regulations. In view of the extremes mentioned, EDP

COMERCIALIZADORA complies with all the requirements

legally required, from which it must necessarily be concluded that the work of the

Entity to obtain the consent of the client, in an explicit way, have been

rigorously attended. Proof of this is that, both in telephone channels,

such as those in which they are carried out in writing, obtaining the consent

is carried out differently from the contract itself, it is stated that it is

additional to it and is understood to be collected, only, in cases in which the

client checks the box or clearly states that they do consent. Of all this there is no more than concluding that the consent collection process has been carried out at the light of the criteria required by the applicable regulations, being therefore adjusted to Law.

Thus, the process of obtaining consent that EDP

COMERCIALIZADORA has been using is not something new for the AEPD, who has had the opportunity to analyze it prior to the start of this file sanctioning party, in those files (requirements for information and/or sanctioning procedures) open due to any claim of any

Username. Within the framework of these, the AEPD had full knowledge of the process of contracting and the type of consent obtained from the interested parties, as the contracts were provided by EDP COMERCIALIZADORA as evidence of compliance. Needless to say, the end result of both turned out to be that of the filing of the same (see the claims with reference E/00915/2019, which neither was not even admitted for processing, and file E/02714/2019), without any additional assessments on compliance with the regulations, which leaves no more to delve into the bewilderment that this party has in the face of the very serious accusations discharged on EDP COMERCIALIZADORA by this Agency.

Additionally, and without prejudice to the arguments set forth, it is noteworthy that presumption made in the Agreement to Start the Sanctioning Procedure, in which the valuation relative to the infractions is carried out taking as a premise a double attribution: (i) the first, derived from the absence of adequate information and, (ii) the second, as a consequence of the execution of a non-consensual treatment. To these purposes, it should be noted that, even if the information provided to the interested party is deficient, this fact cannot lead to the determination of a infringement of article 6 RGPD, since the treatment that would be carried out takes

as a starting point the adequate legitimizing base. Thus, the definition made by EDP COMERCIALIZADORA regarding the legal basis that would allow it to treating the data for the purposes that have already been mentioned, would be strictly adhered to the corresponding legitimacy. In other words, on the part of EDP COMERCIALIZADORA, carry out the necessary actions to obtain the corresponding consent

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of the interested party, granting him the possibility of granting it or not, voluntarily, by marking the box provided or the express indication in the cases of

These are collected by phone call. For all these reasons, you cannot

observe a conduct that may be legally reprehensible to EDP

MARKETING COMPANY, given that it has rigorously subscribed to the terms

required by the norm, when proceeding to request the interested party an action of will

express, free, unequivocal and not conditioned to another purpose. And for that it cannot be imputed to me represented the commission of any infraction of those typified in article 83.5.a)

RGPD, in relation to its article 6.

THIRD. - ALLEGED NON-COMPLIANCE IN RELATION TO THE

DATA PROCESSING RELATED TO AUTOMATED DECISIONS AND

PREPARATION OF CUSTOMER PROFILES.

Thirdly, the Agreement to Start the Sanctioning Procedure establishes in its

Basis of Law IV a series of alleged breaches linked to the

apparent lack of observance by EDP COMERCIALIZADORA of the

obligations derived from the provisions of article 22 of the RGPD, regarding the

consideration by the AEPD of the existence of an impediment, the obstruction or repeated non-attention to the exercise of the rights established in Articles 15 to 22 of Regulation (EU) 2016/679 in relation to decisions automated and the preparation of customer profiles, typified in article 83.5.b) RGPD and, qualified as a very serious breach for the purposes of prescription in the Article 72.1.k) of the LOPDGDD. Specifically, the AEPD maintains that: 1) EDP COMERCIALIZADORA does not grant the possibility to users to exercise their right regarding not being the subject of automated decisions, as well as not granting the user the due information regarding this right, 2) The user is unaware of the possibility of refuse to make such decisions. Thus, the proposed penalty by the AEPD starts from the fact that the information provided by EDP COMERCIALIZADORA to the holders of the data is insufficient and imprecise, without damage that is recognized by the AEPD that EDP COMERCIALIZADORA facilitates and makes available to users the documents with information related to the compliance with data protection regulations, both at the time of contract, as in durable support at the end of the contract.

Firstly, regarding the information provided by EDP MARKETING COMPANY in relation to the legitimate basis (consent in the case that concerns us) we must emphasize that the information that is provided to the users regarding the treatments that, being additional to the contract itself same, require the consent of the user, is duly provided to the users. Specifically, in the so-called Evidence 6 presented by EDP COMERCIALIZADORA during the substantiation of the informative file of which the This sanctioning file brings cause, it is reflected in the contract model supply the following boxes: "You can read the information regarding the treatment of your personal data on the back. ☐ I consent to the processing of my data

once the contractual relationship has ended, to carry out

commercial communications adapted to my profile of products and services related to the energy supply and consumption. Likewise, I consent to the aforementioned treatments during the term and after the end of the contract, on products and services not

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resources, both from EDP Group companies and from third parties. ☐ I consent to the treatment of my personal data for the elaboration of my commercial profile with information from third-party databases, for the adoption, by EDP, of automated decisions in order to send commercial proposals personalized, as well as to allow, or not, the contracting of certain services” In this case, and expanding information regarding the processing of data of users in the general conditions, we find the following information;

“As long as the client has explicitly accepted it, their personal data will be treated, even once the contractual relationship has ended and provided that no produces opposition to said treatment, for: (I) The promotion of services financial, payment protection services, automotive or related and electronics, own or third parties, offered by EDP and/or participation in contests promotions, as well as for the presentation of commercial proposals linked to the energy sector after the end of the contract, (II) Profiling Customer's business by aggregating third-party databases, with in order to offer the Client personalized products and services, thus improving the customer experience, (III) The adoption of automated decisions, such as

allow the contracting, or not, of certain products and/or services based on the Customer profile and particularly, in data such as the history of non-payments, the hiring history, permanence, locations, consumption data, types of devices connected to the energy network, and similar data that allow knowing in greater detail the risks associated with contracting. (IV) Based on the results obtained from the aggregation of the indicated data, EDP may carry out personalized offers, and specifically aimed at achieving the hiring of products and/or services of EDP or third parties depending on whether the client so has consented or not, being in any case processed data whose age is not will exceed a year. In the event that this process is carried out automated, the client will always have the right to obtain human intervention by part of EDP, admitting the challenge and, where appropriate, assessment of the decision resulting.

From these fragments, it can only be concluded that (i) both for the preparation of profiles, such as for data processing by adopting automated decisions EDP COMERCIALIZADORA requests the explicit and specific consent of the user, without that can be interpreted that the adoption of automated decisions is treated under other legitimizing basis, as well as that (ii) the information related to the preparation of profiles and automated decisions, complies with the requirements of article 13 of the RGPD, since it informs about the existence of automated decisions, including the profiling and provides meaningful information about the applied logic, as well as as the significance and anticipated consequences of such processing for the interested. For all these reasons and taking into account the first aspect raised by the AEPD regarding the alleged breach committed by EDP COMERCIALIZADORA in relation to the information provided to users to obtain the specific consent, there is no interpretation regarding the lack of

confusing information and processing by EDP COMERCIALIZADORA, which includes the information corresponding to the specific treatments, facilitating all the information required in the RGPD.

Secondly, in relation to the information provided to the owners of the data

With respect to

it should be noted that EDP

exercise of rights,

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COMERCIALIZADORA expressly informs users of the information that

facilitates its specific right to "oppose" "the adoption of decisions

automated processing of your personal data, requiring human intervention in the

process, as well as to challenge the decisions that are finally adopted by virtue of

of the processing of your data" In this sense, the AEPD considers that EDP

COMERCIALIZADORA fails to comply with its obligation to inform the holders of the data

by the mere fact that the information provided does not appear, expressly and

literal the right to "revoke consent", appearing in its place the verb that

grants the right of the owners of the data to "oppose" to "the adoption of

automated decisions of your personal data, requiring the intervention

in the process, as well as to challenge the decisions that are ultimately

adopted by virtue of the processing of your data". We are sure that the nuance

semantic and technical associated with both verbs "opposition" and "revocation", both

experts that the AEPD has, such as those that EDP has

COMERCIALIZADORA are able to differentiate between them, and determine which

It deals with two legal concepts, but that Agency will also agree with us,

than the average user (a concept widely used by that Agency throughout

throughout the procedure that concerns us) will hardly be able to differentiate these

concepts. In the case at hand, what is really important is the effect that

in practice have the user's request, which, ultimately, is the one that is relevant

for the owner of the data, and that generates positive or negative effects on their rights

fundamental, this being what the RGPD really protects, and not the use of

one verb or another, even more so when they can be used as synonyms.

In this case, the only thing that is intended to be used in the information that is provided to the

users the term "opposition" regarding automated decisions, is to be able to

provide the user with a clear, concise and transparent understanding of the information that

is made available to you, and facilitating, in the event that the request of said interested party

complies with the regulatory requirements, the exercise of the different

Rights. Thus, according to the definition contained in the RAE Dictionary, revoking

means "to render without effect"; and to oppose, "to put something against another thing to prevent its

effect", so except for those who have knowledge in the matter and

can appreciate the nuance that differentiates one from the other, the truth is that, for purposes of

majority of the population, both terms would be synonymous and would suppose, in the

practice, same thing.

Notwithstanding all of the foregoing, we must highlight, by the

relevance that this has in this allegation, the information contained in Clause 16

of the General Conditions of Contract, regarding data protection. In

said clause, in the section corresponding to "Rights of the owner of the data"

expressly refers to the possibility of revoking the consent previously

granted, thus, it is expressly indicated "(VII) Withdraw, at any time,

the consents granted.

It refers to its internal procedure, and states that therefore, not only the

Users are informed at all times of the possibility of revoking the

consents granted, but that EDP COMERCIALIZADORA itself, as

internal procedure and in order that those in charge of managing the

applications have the necessary knowledge in relation to the different

possibilities, expressly express said right, regardless of the

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technical term used, since the main purpose is to inform and that the user

know the possibility of not being subject to automated decisions. Thus, the

internal procedure referenced above even includes models of

response to be able to attend to the different requests in general. All this,

without prejudice to the fact that each one of the requests is treated in a particular way and in accordance

to the specific circumstances affecting the specific case, and it is necessary to

adaptation of said response model depending on the specific casuistry of

each request. Annex 3 provides the procedure related to the management and

answering the exercises of rights.

In view of the foregoing, the AEPD addresses the lack of knowledge of the average user,

as an argument to consider informative clauses as not very transparent,

aspect that nevertheless considers substantially essential when relating only

as a valid exercise the opposition of the interested party. Considering that the right

related to not being subject to automated decisions is collected with

independent and express character in the general contracting conditions, requiring, where appropriate, the explicit and specific consent of the user, and being the same duly reporting specifically, as is justified by the evidence provided, as well as the possibility of opposing to be subject to automated decisions, it is at least surprising that the AEPD considers that EDP COMERCIALIZADORA does not comply with article 22 RGPD for not offering the client the possibility to “revoke consent” literally, it is that is, a strictly formal and semantic aspect, that an average user without knowledge in the matter does not have the capacity to understand the difference with the word “opposition”, understanding that Agency that it is not valid to report the possibility of “opposing”, as a synonym, such treatment, which is what effectively carries out EDP COMERCIALIZADORA.

In line with the above, it should be noted that EDP COMERCIALIZADORA, in No case has denied the exercise of rights that have not been requested/drafted with precise character, directing in case of doubt the request to the user, so that it can be resolved effectively, satisfactorily and without procrastination

Likewise, as has already been reflected in previous points, in relation to the automated decisions, the possibility is offered to the client to obtain intervention human, admitting challenge and, where appropriate, assessment of the resulting decision, which is why, in addition to informing about the possibility of not being subject to automated decisions, the client is empowered as an alternative to intervene human. For all of the above, it cannot be reasonably interpreted that the holder of the data may, even remotely, be unaware of the possibility or right to that your data is not subject to automated decisions, nor that EDP COMERCIALIZADOR places limitations, or does not make available to said

interested parties the necessary mechanisms to be able to make the request, being able to any time "oppose" such treatment, or better said, "revoke" the consent given for the adoption of such decisions, as well as to request human intervention, which on the other hand, in the case of EDP COMERCIALIZADORA always occurs, because although the query of the information is automated, the final decision is made by an employee after analyzing its content. I know provides as Annex 4, by way of example, exercises of right of opposition and

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revocation of consent that have been processed during the last year, to those effects that the AEPD can know, first hand, what kind of rights are exercised by the holders, in what modality they are received, as well as specifically how they are duly attended to by EDP COMERCIALIZADORA.

Furthermore, and in order to address the true scope of the alleged infraction, despite the fact that EDP COMERCIALIZADORA includes the possibility of carry out profiling and adopt automated decisions, the only profiling carried out is the one related to the qualification of clients in terms of fraud prevention, treatment for which there is legal authorization and is based on the interest legitimate interest of EDP COMERCIALIZADORA, in order to safeguard the good future of contracts made by EDP COMERCIALIZADORA, as well as prevent customers, whose sole purpose is to consume the energy service without paying invoices become part of the customer portfolio. Without prejudice of the previous, The holders of the data are informed that said profiling is reviewed and processed

finally by EDP COMERCIALIZADORA personnel, which is why it cannot be considered as an automated decision in itself, taking into account in this literal sense of the concept established by the authorities. In other words, there is no data processing based on automated decisions, nor is there any statement about such treatments, since outside of those strictly necessary to continue with the service and those provided by law, are not carried out, which is why, not only can it not be considered that there is a breach of article 22 of the RGPD, since the requirements are met collected by the regulations, but that there are not, nor can there be data owners who may have been affected by said treatments, so we refer to the extensive jurisprudence previously enunciated in this section for being of full application to the case at hand.

This is enough so that there is no basis whatsoever in order to attribute to my client any infraction of those typified in article 83.5.b) RGPD in relation to its cited article 22, however, for dialectic purposes and in the unlikely event that if the commission of said infraction could be considered proven, we state what follows in relation to the amount of the sanction foreseen for said alleged infraction in the Agreement to Start the sanctioning procedure.

Thus, in relation to the quantification of the specific sanction for the alleged breach of article 22 RGPD, after assessing the aspects set out in the this section, and in accordance with the evaluation criteria contained in the RGPD employees to graduate the alleged infraction, it must be said in the first place, that in its brief, the AEPD limits itself to stating some aggravating factors that it considers to be application, without displaying the slightest activity of substantiation of why, what that apart from assuming a total lack of motivation, implies an added difficulty to the right of defense of EDP COMERCIALIZADORA.

Notwithstanding the foregoing, the criteria by which

understands that the aggravating circumstances considered by the AEPD would not concur in this case

concrete, beyond the fact that, as it has been justified, there is no breach of its

obligations on the part of EDP COMERCIALIZADORA, to the extent that it is not

produce the requirements of the normative type, to the extent that EDP

COMERCIALIZADORA does not carry out the treatment object of the sanction, this being a

essential requirement so that the application of the sanction can take place. After

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assess the aspects set forth in this section, and in accordance with the criteria

evaluators collected in the RGPD;

"The nature, seriousness and duration of the infraction" taking into account the same

criterion "the nature, purpose of the treatment operation in question as well

such as the number of interested parties affected and the level of damages that

have suffered;" As stated in this section, the information

provided to users does not constitute an infringement, since there is no breach by

part of EDP COMERCIALIZADORA, being even more decisive, that the

number of people affected by the treatments related to profiling and the adoption of

automated decisions, is null and therefore the damages that may have

be caused, are non-existent. Similarly, by not assuming an illegal action, nor having

materialized it is not possible that it has been dilated in time, reason

for which, and taking into account the specific circumstances, when qualifying the

potential administrative fine to be imposed would be a mitigating criterion.

In any case, it should be remembered that in order to qualify as aggravating the damages caused to those affected, in addition to materializing, the same must be accredited and demonstrated, an aspect that in no case has been proven, nor exposed in the Agreement to Start the Sanctioning Procedure.

“The intentionality or negligence appreciated in the commission of the infraction;” Just like

It follows from these allegations, neither EDP COMERCIALIZADORA has had any intention to infringe data protection regulations, or to cause damage or prejudice to any user, nor has there been any negligence in their actions. to major abundance, there is no evidence that there may be negligence and much least one intention on the part of EDP COMERCIALIZADORA, which is why which, the potential applicable sanction should be reduced.

“The high link between the activity of the offender and the performance of treatment of personal information;” The main activity of EDP COMERCIALIZADORA is not based in the processing of personal data, but in the energy supply, assuming the linking of the activity with the performance of the treatment in question, minimal. Reason for which, said aspect would appear as extenuating, reducing the potential applicable sanction.

“The continuing nature of the offense;” “High volume of data and processing which constitutes the object of the file;” and “High number of interested parties;” As that in other criteria indicated individually, these three criteria remain subsumed with the one raised in the first place, and from article 83.2 a) of the RGPD, so its evaluation must be carried out jointly with the indicated and, therefore, Therefore, do not suppose an additional aspect to the one mentioned for the calculation of the potential applicable penalty.

In view of completing the evaluative criteria, it is convenient to mention the following:

“c) any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties; as it has been

accredited,

those who act EDP

MARKETING, both in relation to the exercise of rights, the protocol of

relative action with the qualification of the user with purposes of prevention of

fraud, collect the fundamental characteristics to attend to all types of exercise

of rights and the characteristics related to the appraised treatment of qualification of the

the procedures

low internal

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user for the necessary prevention against fraud. For all this, taking into

Note that these procedures are part of the measures and proactive attitude of

EDP COMERCIALIZADORA, in no case could the omission of actions be interpreted,

nor passivity of EDP COMERCIALIZADORA.

“e) any previous infraction committed by the person in charge or the person in charge of the

treatment;” It should be noted that EDP COMERCIALIZADORA has not been

claimed, nor has he been sanctioned by said precepts at any time, for

there are neither procedures nor previous sanctions, what is more, as we have already

exposed in previous points, EDP COMERCIALIZADORA has been implementing

new measures to alleviate any potentially compromised situation, acting

always diligently.

In this case, not only is the rationale embodied in the Agreement of Start to interpret violation of article 22 of the RGPD -related to decisions automated individuals, including profiling - but the amount proposal for the alleged infringement, amounting to 1,000,000 euros, is the point What has most surprised this part. All this because:

- 1) EDP COMERCIALIZADORA has not been sanctioned, has not been involved in any procedure for infringement of article 22 of the RGPD nor has it received any claim in relation to an alleged violation of this provision,
- 2) in the history of procedures published by the AEPD itself, there are no sanctions covered by non-compliance with the aforementioned normative precept.

In other words, not only are there no records in which EDP has been a part COMERCIALIZADORA, but there are also no prior sanctions by the Control Authority that have been based on the violation of article 22 of the RGPD. For all these reasons, the fact that the infraction is considered very serious and the sanction proposal amounts to said high amount, requires that it be substantiated with exhaustive character, since it escapes from any criterion followed until now by the AEPD.

that
informative of the
f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement; From the beginning of proceedings
brings cause this EDP procedure
COMERCIALIZADORA has acted collaboratively and proactively, contributing in at all times the information and documentation requested by the AEPD in time and form. For this reason, said aspect would appear as a mitigating factor, reducing the

potential applicable sanction. Lastly, and by way of conclusions, in the Agreement of Home is neither duly substantiated nor motivated in accordance with the provisions of regulations, the decision to impose an administrative fine, much less, a fine with the amount proposed, as well as not considering EDP MARKETING COMPANY as the offending subject of the claims included in the Agreement, since as we have indicated in this section, the arguments expressed by the AEPD to sanction under the legal precept contained in article 22 of the RGPD and 72.1 k) of the LOPDGDD, are not given.

In this sense, in addition to informing in accordance with the applicable regulations, and granting also to users the possibility of exercising their rights, EDP

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COMERCIALIZADORA does not carry out treatment based on decisions automated outside of what is strictly necessary to carry out the prevention of fraud. Reason for which neither the alleged infraction has been committed, nor are there sufficient arguments to consider infringed the precepts mentioned in the this section. Furthermore, throughout this procedure, there has been no evidence of existence of infringement due to breach of article 22 RGPD, nor has fully substantiated the seriousness, nor the criteria that allow setting such high amount of penalty in this case.

FOURTH.- ALLEGED BREACH IN RELATION TO THE DUTY TO TRANSPARENCY.

The AEPD, in its Agreement to Initiate Sanctioning Procedure, attributes to EDP

MARKETER the infringement of Article 13 of the RGPD, assuming a breach of duty of information that is proper to him as responsible for the treatment, typified in article 83.5.b) and classified as mild for the purposes of prescription in article 74.a) of the LOPDGDD. Specifically, consider the existence of said infraction due to:

1) lack of information to the interested parties about the possibility of accessing information required in article 13 of the RGPD.

2) the web address provided does not lead directly to the required information in accordance with article 13 of the RGPD, without allowing immediate access to the information, nor is access easy for anyone. EDP

COMERCIALIZADORA has no other choice but to state, once again, and as it has fact and demonstrated in the rest of the alleged breaches alleged by this Agency, which cannot share the assessments made by the AEPD, so

Next, the reasons why he understands that effectively,

EDP COMERCIALIZADORA fully complies with the requirements demanded by the data protection regulations in terms of transparency in relation to the information provided to the holders of personal data in the processes of hiring.

As regards the CAC inbound channel, on which it is stated that the information provided is incomplete, it must be indicated that, since these are incoming calls, there is start of the call, before the recording starts – and regardless of the management that intends to carry out who calls the customer service department of the entity-, a telephone announcement informing, among other aspects, of the rights that attend the interested parties, as well as where to find information additional, so that users receive this information whenever they call, which not only means that this information is provided to them in the call in which they go

contracting the supply, but also when they are already customers and are going to carry out any procedure (be it a query, request a change of power, make a payment, request an installment or file a claim).

In this sense, it should be noted that the RGPD itself expressly provides in its point 13.4 that: "The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the interested party already has the information. So, clients receive all the required information in a first layer of information

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verbal, which can be completed by accessing the EDP COMERCIALIZADORA website or either directly in the call itself, depending on the management that is carried out.

Thus, this information is provided in layers, distinguishing on the one hand the layer

1. "This call may be recorded. The data you provide us will be processed by EDP Energia, S.A.U. and/or EDP Comercializadora, S.A.U. for the management of your request or consultation. You can exercise the rights of access, rectification, deletion, opposition, limitation and portability at any time. See the Privacy Policy at our website edpenergia.es or press 0"

And on the other layer 2, which collects information in more detail, which is activated automatically if the user dials 0, following the instructions

of the first layer: "The use of this TELEPHONE CHANNEL does not oblige the user to provide any information about yourself. However, to use certain services or access certain content, users must provide previously some personal data. In the event that the user provides

information of a personal nature, we inform you that the data will be processed by EDP Energia, S.A.U. and EDP Comercializadora, S.A.U., with registered office in Oviedo, Plaza del Fresno 2, 33007 and NIF A33543547 and A95000295 respectively, in hereinafter “EDP”, as data controllers, as established by the General Data Protection Regulation ((EU) 2016/679), hereinafter “RGPD”, and its implementing regulations.

Specifically, your data may be processed, when the user so requests, to manage the attention and follow-up of the requests and queries directed through the website, as well as for conducting surveys and participating in sweepstakes, games and promotions. The data requested will be mandatory and limited to those necessary to proceed with the provision and/or management of the requested service, which You will be conveniently informed at the time of collecting your personal data. personal character. If you do not provide them or do not provide them correctly, you will not be can provide the service.

In these cases, the user guarantees that the personal data provided is truthful and is responsible for communicating any changes to them.

In the case of procedures processed through the TELEPHONE CHANNEL and the registration in it, the data processing carried out is based on the relationship law arising from your request.

Data processing for conducting surveys is based on legitimate interest of EDP in order to improve the quality of services provided to customers and/or users, being able to oppose said treatments at any time, without

This affects the legality of the treatments carried out previously.

In no case may they be included in the forms contained in the CHANNEL TELEFONICO personal data corresponding to third parties, except that the applicant had previously obtained his consent in the

terms required by article 7 of the RGPD, responding exclusively to the

Breach of this obligation and any other regarding personal data

staff.

The personal data of users registered on the website may be transferred to

the Public Administrations that correspond by law, to other companies of the group

company for internal administrative purposes, and to the suppliers of the person in charge

of the treatment necessary for the adequate fulfillment of the obligations

contractual.

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Personal data will be kept during the term of your contract of

supply with EDP, in all other cases, for the time necessary to answer the

your requests or to analyze the content of your responses to surveys. A

Once the contractual relationship has ended, your requests have been answered or your

answers, as appropriate in each case, your personal data will be deleted,

keeping the rest of the information anonymized solely for the purposes of

statistics. Notwithstanding the foregoing, the data may be kept for the period

established to comply with the legal obligations of maintenance of the

information and, at most, during the statute of limitations for legal actions

corresponding, the data must be kept blocked during the aforementioned

prescription period. After this period, the data will be deleted.

In application of the provisions of article 32 of the RGPD, EDP undertakes to

comply with the security obligations of the data provided by users,

trying to establish all the technical means at its disposal to avoid loss, misuse, alteration, unauthorized access and theft of the data that the user provides to through it, taking into account the state of the technology, the nature of the data provided and the risks to which they may be exposed. Without prejudice of the previous, the user must be aware that the security measures in the CHANNEL TELEFONICO are not impregnable.

EDP will treat the user's data confidentially at all times, keeping the mandatory duty of secrecy over them, in accordance with the provisions of the application regulations.

The user can exercise their rights of access, rectification, deletion, opposition, limitation and portability, as well as the revocation of the consents granted previously, in the legally established terms, communicating it in writing to EDP, to the following address: LOPD Communication Channel, Plaza del Fresno, nº2, 33007 Oviedo. You can also exercise these rights by sending an email with your personal data to cclopd@edpenergia.es. In both cases it must attach a photocopy of the holder's DNI or document that proves their identity. Likewise, you can contact the Protection Delegate of EDP data, at the following postal address: Plaza del Fresno, 2 33007 Oviedo or at the email dpd.es@edpenergia.es, in the event that you understand that it has been violated any of your rights related to data protection, or where appropriate, file a claim with the Spanish Agency for Data Protection in the address Calle de Jorge Juan, 6, 28001 Madrid"

Next, it is indicated by that Agency that "the provisions of the Article 11.1 of the LOPDGDD in the other two telephone channels (Telemarketing and Leads), nor is the interested party informed that they can access all the information required in accordance with article 13 RGPD at the indicated electronic address. Nevertheless,

such affirmation is made after reproducing the AEPD the texts in which it informs the clients of the identity of the person in charge of the treatment, the purposes of the treatment, as well as the rights they can exercise and the website where they can obtain information additional. Therefore, it does not seem that such a statement corresponds to the reality of the facts, so we understand that the Agency will see fit to modify and eliminate this alleged non-compliance in its draft resolution proposal.

The analysis continues by referring to the fact that the general conditions of contracting to which the information is sent, indicating that those hosted on the web they are not easily accessible. In this regard, it is interesting to specify that:

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1) Article 11 of the LOPGDD refers to the fact that this information must be provided to the interested "indicating an electronic address or other means that allows access to simple and immediate way to the rest of the information" and that, in this case, as informs the interested party in the locution, after contracting a copy of the contract in which, obviously, the general contracting conditions are included, therefore, direct access to said information is provided. Complementarily, This information is available at all times on the web.

2) Faced with the alleged difficulty alluded to by the AEPD in finding the aforementioned general conditions contrasts the fact that, as exemplified, a simple search to access them directly, using the search engine available on the website. Performing the search for "contract conditions" or "general contracting conditions", the first results are published

documents related to the general contracting conditions that are of application in both Spanish, Galician, Catalan, and Basque, leaving clearly identified the documentation that refers directly to the document in PDF format, as evidenced at the following address:

<https://www.edpenergia.es/resources/doc/comercial/2019/09/10/condicionesgenerales-contracting.pdf>

3) Regarding what is required to be "searched in the general conditions (which include numerous aspects related to contracting) the information related to the data protection", it must be made clear that the general conditions

They are composed of four pages, of which practically one of them is exclusively dedicated to providing information on the treatment of personal data made by EDP COMERCIALIZADORA, as we are insurance that the AEPD has been able to verify during the procedure for preparing your sanction proposal letter.

In relation to this alleged non-compliance, it is worth mentioning the guidelines provided by the Article 29 Working Group, in which it recommends including the access to information regarding the processing of personal data through means in which the interested party can immediately recognize where and how access this information, (direct links or in the form of an answer to a question in natural language, in the FAQ section, or pop-ups).

However, it also states that "depending on the circumstances of the collection and data processing, a data controller could be forced to use additionally. [...]". Other possible ways of transmitting the information to the interested parties derived from the following different environments of personal data could include the following modes, listed below, applicable to the relevant environments. a) On paper, for example, when concluding contracts by means

postcards: written explanations, brochures, information in contract documents,

cartoons, infographics or flow charts; b) By phone: explanations

verbal expressions directly by a person to allow a conversation and the

response to questions, or automated or pre-recorded information with the possibility of

hear more detailed additional information;

The Article 29 Working Group, solely and exclusively provides this information to

recommendation mode, without in any case being considered a bad practice,

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nor of course a regulatory breach the fact of making the publication to

through a simple method that, taking into account that the service requires the

conclusion of a contract, the essential method and format and therefore that prevails in this

course is the same as indicated in the guidelines of the GT29, through the

medium in paper and telephone support. All this, without prejudice to keeping accessible

through the web for anyone interested who decides to carry out and attend the

content in an intuitive and simple way and without prejudice to the obligation to deliver in

durable support all the contractual information both with the previous information, as well as

with the contract itself. In this sense, we can see that the possibility of

linking "immediately" is likely to be interpreted.

The AEPD itself on its website makes it the interested party who must "get it right" or

"find out" which of the treatments included in the record of activities of the

entity are those that really affect its relationship with the AEPD, since the

purposes are included within the description of each of them and not in the

privacy policy that is accessed.

As far as the identity of the data controller is concerned, the information already provided after the request for additional information on June 3, 2020 in which EDP COMERCIALIZADORA was required, for this purpose, within the Information Request E/05549/2019 in which it was explained that the fact of that information from both entities is included is due to the fact that it is not possible to know form prior to contracting the services that will be requested by the interested party (gas and or electricity) nor, therefore, by which of the companies will they be provided, so this can only be specified when said services are identified by the own client. highly probable that the same client when requesting the contracting of the electricity and gas supply, is contracting with both companies.

For this reason, the so-called "dual" contract of way that a client can obtain discounts or additional advantages for the fact of contract both energies with two companies of the same business group, and in order to keep updated the discounts in each of the energies (electricity and gas) and derived information, it is necessary for both societies to know if the energy initially contracted with the other Group company remains active in order to maintain and correctly manage the applied discounts/benefits.

As a result of the foregoing, in the clause on data protection it is reported that the personal data provided during the contracting process may be processed by only one of the entities or both entities, depending on the type of contracted energy services. Therefore, there is no inconcretion, but the explanation of who is the specific person responsible for the treatment in each case is contains literally in the first section of the contract, which identifies the parties, as stated in Evidence 6 provided in the response to the Request of Information made to this company during the processing of the aforementioned

informative file of which the present sanctioning file brings cause: "The customer contracts, for the indicated supply, the supply of gas with EDP Comercializadora, S.A.U. and the supply of electricity and/or services with EDP ENERGIA, S.A.U., (hereinafter joint and/or individually, as applicable, referred to as "EDP") in accordance with the Terms Specific that are collected below and to the General Conditions in annex."

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Therefore, customers know which company will process their data based on the requested supply (electricity or gas), something that we understand is perfectly clear and is derived both from the explanations of the sales agents, and from the tenor literal of the first clause of the contract. In case of being both services, the data will be treated by both entities.

To date, neither in the field of data protection, nor in relation to any of the the regulations applicable to the regulated sectors of electricity or gas, or the referred to the defense of consumers there has been no request for additional information, claim, or complaint in this regard, nor by the users themselves. consumers, nor by the multiple regulators that control and they control the activity of the trading companies, so it seems evident that the information provided does not create problems for customers or other regulators of the country, rather than the AEPD itself.

Additionally, we reiterate two essential aspects in the sector's own operations in which EDP COMERCIALIZADORA develops its activity, whose exhibition is

contemplated in the previously submitted information: 1) The existence of two companies within the Group with the role of marketing entities is due to a merely formal matter, consequence of the corporate structure and composition shareholding of the companies acquired by the EDP Group at the time of its establishment in Spain, but that does not correspond to the operation operation of these marketers, given that only one of them, EDP COMERCIALIZADORA, currently has employees and the capacity to management and operations. Thus, in practice, all treatments are carried out by said entity, either in its capacity as data controller or as in charge of processing EDP COMERCIALIZADORA.

2) The EDP Group planned the corporate reorganization of EDP COMERCIALIZADORA and EDP ENERGIA and the adaptation of their corporate structure with that of its actual operation and its business operations. This reorganization is has currently been affected by a sale process to TOTAL in which both companies are immersed, and that, if materialized, could alter or terminate said integration.

For all of the above, it understands that transparency is perfectly justified in in relation to how the information is provided, as well as the fact that it is perfectly understandable for the average customer.

The AEPD continues its analysis referring to the purposes and legitimizing bases of the treatment. In the first place, reference is made to those treatments reported whose legal basis is the contract itself -existing contractual relationship- or the legitimate interest of the company.

On this particular, it is pointed out that "It is not easy for anyone, without knowledge of the matter of data protection, differentiate what treatments derive from the contract and which are based on the legitimate interest of the controller".

This appreciation is debatable, since for any person it can be evident

that treatments such as “managing, maintaining, developing, fulfilling and controlling the contracting of electricity and/or gas supply and/or complementary services of and/or

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gas and/or complementary review services and/or technical assistance and/or program of

points, and/or improvement of the service” are closely related to the execution of the

contract, the others being assignable to legitimate interest. In this regard, we can

compare this information with that provided by the AEPD itself regarding its

treatments when these have diverse bases of legitimacy, as is the case of

called

your website

([https://www.aepd.es/es/laagencia/transparencia/otro-tipo-de-informacion/registro-](https://www.aepd.es/es/laagencia/transparencia/otro-tipo-de-informacion/registro-activities-treatment-aepd/management-hr)

[activities-treatment aepd/management-hr](https://www.aepd.es/es/laagencia/transparencia/otro-tipo-de-informacion/registro-activities-treatment-aepd/management-hr)), in whose information it can be seen that

various bases of legitimacy are identified, without indicating to what specific purpose

refers to each of them.

“HR Management”,

published in

Therefore, although there is nothing to object to in this part about the fact that the AEPD's criteria

can be a good practice in terms of the level of transparency, it seems

to consider the fact of not having reached this level of management of the

information, cannot be considered a breach of the norm, especially if

We take into account that not even the body that issues the guides of

transparency (and who is now proposing a sanction of nothing more and nothing less than a million euros for this reason), has considered such a distinction necessary in its website, as has been duly evidenced.

Regarding the alleged omission by EDP COMERCIALIZADORA

to inform of "what is the legitimate interest that the person in charge attributes", it must

It should be noted that they are clearly exposed and placed in relation to the

purposes that are pursued, that is: prevention of fraud and marketing, in

in relation to the sending of personalized commercial communications. In these cases

it is obvious that there is an identification between the informed purpose and self-interest

persecuted, so making a separate allusion to the latter would be redundant.

Similarly, for illustrative purposes, it should be noted that the direct competitors of

EDP COMERCIALIZADORA uses informative formulas similar to those

implanted in my client, without procedures known to date

against the same

On the other hand, the high number of requests for rights received in the channels

willing to do so demonstrate that customers fully understand the content

of the information and the rights that assist them, and they are perfectly clear about what

is what they want to achieve with their request and EDP COMERCIALIZADORA executes

said requests in all cases, always with a marked character of

compliance with regulations and protection of the fundamental rights of

users.

With regard to the need to report on the weighting carried out to

assess whether the legitimate interest is preponderant in this case, it is relevant to mean that

These two assumptions have been addressed by the legislator himself, who in the

Recital 47 of the RGPD expressly refers to the possibility of carrying out these

processing based on the legitimate interest of the data controller.

Specifically, it is provided that: “the processing of personal data strictly necessary for the prevention of fraud also constitutes an interest of the data controller in question. Data processing

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personal information for direct marketing purposes may be considered made by legitimate interest”.

The AEPD itself has also ruled on the latter in its report 195/2017 indicating that “if the data came solely from the information that provided by the entity in relation to the products or services contracted by the client, without it being completed with that originating from other different sources, certainly the conduct of the entity, consisting of carrying out a profiling for the referral of offers of products or services to its clients, it would turn out to be less invasive of the rights and interests of the clients, being able in this case consider the applicability of the provisions of article 6.1 f) of the Regulation general data protection.

Therefore, in both cases the weighting of the legitimate interest has already been carried out, both by the legislator and by the Control Authority and, therefore, the reason given by the WG29 to recommend its publication so that those affected can file a claim with said authority when they “doubt whether the weighing examination has been carried out fairly” would be meaningless in this case, having to present said claim before the Court of Justice itself.

Justice of the European Union, in order to examine the legality of the provision

introduced in the RGPD, or where appropriate, before the control authority itself and/or competent national courts. In any case, GT29 itself identifies this possibility as a good practice and, as stated in the report itself, its objective is to “indicate the approach that, in the opinion of the WG29, those responsible for treatment must assume in terms of acting with transparency”. It is not about, therefore, of a legal obligation whose defective fulfillment may entail a sanction, as is the case with many other issues that the AEPD is trying to sanction in this procedure, lacking the slightest principles of characterization, guilt and evidence, these facts that do not cease to surprise us in what that we understand that it is an action that should be subject to compliance full and rigorous by the sanctioning Administration.

The AEPD continues its analysis, stating that the treatments for which it is requested consent, considering that it is not easy to understand for a person without specialized knowledge. However, he offers no explanation for reach that conclusion (beyond a vague reference to point four).

Contrary to the criteria of the AEPD, we understand that the information is given in a simple language, understandable for anyone. The information contained in This second layer must be related to the requested consents.

The first consent says: “I consent to the processing of my personal data once Once the contractual relationship has ended, to carry out communications commercials adapted to my profile of products and services related to the supply and energy consumption. Likewise, I consent to the aforementioned treatments during the validity and after the end of the contract, on non-energy products and services, both of the companies of the EDP Group and of third parties.”

In the second layer this information is expanded indicating which are the sectors to those belonging to the third parties about which communications can be sent “(l) The

promotion of financial services, payment protection services, automotive or

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related and electronic, own or third parties, offered by EDP and/or participation in promotional contests, as well as for the presentation of commercial proposals linked to the energy sector after the end of the contract.”

As can be seen, not a single technical term is used that makes it difficult to understanding of these texts, and the conditions of consent are fully clear.

The second consent requested says: “I consent to the processing of my data personal for the elaboration of my commercial profile with information coming from third-party databases, for the adoption, by EDP, of decisions automated in order to send personalized commercial proposals, as well as to allow, or not, the contracting of certain services.”

The second layer details the content of this consent, indicating: (II) the possibility of processing personal data of third parties to be added to your profile (III) the contractual information used by EDP COMERCIALIZADORA in the preparation of the profile (IV) the detail of the purposes of the aggregation of this information.

Finally, information is given on the rights that attend the interested parties in the case of that automated decision-making occurs in these processes. Therefore, the clear objective of EDP COMERCIALIZADORA is to allow interested parties to have a detailed knowledge of the uses for which consent is requested in the absence of will or any intent to hide the information. Likewise, the AEPD points out that

There is a lack of clarity in the information provided regarding the aggregation of third-party information, as it is not distinguished if it is referred to the purpose regarding point (II) (the possibility of processing personal data of third parties to be added to your profile) or (III) (the contractual information used by EDP MARKETER in the elaboration of the profile). In this regard, it seems obvious that the word aggregation is concise enough, and refers to the sum of both informations. The word add is in common use in everyday life and, according to the RAE, means: "to unite or join some people or thing to others". In this case, from context it is clearly inferred that it would be a matter of joining the data that EDP already has COMERCIALIZADORA, with which it could obtain from third parties.

Beyond this, it is unknown what is the specific information whose understanding it can be complex, since no clarification is provided in this regard. EDP COMERCIALIZADORA has tried at all times to use clear language and understandable and there are no technicalities that can complicate the reading of the text, something it seems that now the AEPD considers a negative action that penalizes good faith of EDP COMERCIALIZADORA in relation to compliance with the regulations.

Finally, the AEPD refers to the information related to the exercise of rights, regarding which, as in the previous cases, it does not seem to be enough for the AEPD the information provided in this regard. Thus, under the heading "Rights of the owner of the data" EDP COMERCIALIZADORA informs that: "The client will have at all times with the possibility of exercising freely and completely free of charge the following rights: i) Access your personal data that is processed by EDP. ii) Rectify your personal data that is processed by EDP that are inaccurate or incomplete. iii) Delete your personal data that is treated by EDP. iv) Limit the processing by EDP of all or part of your

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personal information. v) Oppose certain treatments and decision-making automated processing of your personal data, requiring human intervention in the process, as well as to challenge the decisions that are finally adopted by virtue of of the processing of your data. vi) Carry your personal data in a format interoperable and self-sufficient. vii) Withdraw at any time, the consents previously granted.

In accordance with current regulations, the user can exercise their rights requesting it in writing, and together with a copy of a reliable document of accreditation of identity, at the following postal address: Plaza del Fresno, 2 33007 Oviedo or at the email cclopd@edpenergia.es

Likewise, you can contact the data protection delegate of EDP, at the following postal address: Plaza del Fresno, 2 33007 Oviedo or by mail email dpd.es@edpenergia.es, in the event that you understand any of the your rights related to data protection, or where appropriate, file a claim before the Spanish Agency for Data Protection at the address Calle de Jorge Juan, 6, 28001 Madrid.”

The AEPD considers the mention made by EDP COMERCIALIZADORA to be insufficient regarding the possibility of objecting to "certain treatments" without specifying one by one to which treatments we are referring, to the extent that the AEPD states that "it must be clear to the interested party what are the treatments that may be object of opposition.

This party does not share this appreciation, since this supposed obligation that the

AEPD highlights and seems to impose on EDP COMERCIALIZADORA is not required by the RGPD, nor does it have any legal support, which, as you well know, that Agency is condition “sine qua non” to be able to sanction

. Moreover, and for greater abundance, this part would like to once again highlight that the formula used by EDP COMERCIALIZADORA is precisely the recommended by the AEPD itself in its multiple guides and tools related to duty of information in accordance with the RGPD, and even on the AEPD website itself, something which, once again, does not cease to surprise this part, since that Agency considers an infringement of the RGPD, proposing for said infringement a penalty of one million euros, for an alleged breach in relation to a certain practice that she herself recommends performing. In this line, it is worth noting

1) The Guide for compliance with the duty to inform, in which the following example

3)

2) 2) The FACILITA Tool, of the AEPD, intended for entities to carry out the adequacy according to the RGPD, including the informative clauses in accordance with the applicable regulations (fictitious data has been included):

Report on privacy policies on the internet. Adaptation to the RGPD, where the AEPD itself presents as a valid example to adapt the policy of GDPR privacy.

4) Privacy policy of the AEPD, does not collect the alleged information either which is now required from EDP COMERCIALIZADORA, and includes formulas as "when appropriate"

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Consequently, EDP COMERCIALIZADORA cannot be criticized for not including of information that is not even indicated as a good practice in the guides elaborated for the adequate fulfillment of their obligations by the responsible for the treatment, and that neither the AEPD itself complies with its Privacy Policy Privacy and other informative clauses used on its website.

Neither does the reference to "It is imprecise to point out that the Interested party can oppose the adoption of automated decisions of their data personal". It is obvious that the information provided using the word "oppose" is understood as a right both when the treatment is legitimized in an interest legitimate as in a consent (in any case the possibility of object at any time to the consents granted). The proof is that, When exercising their rights, the interested parties rarely use any of these terms and are limited to requesting the "unsubscribe" or directly requesting that they stop using their data for certain purposes, without using formalisms as has been evidenced in this procedure through the contribution of innumerable examples. Additionally, it is in this party's interest to show once again that the AEPD has had the opportunity to analyze both the general contracting conditions, as the information provided in the different contracting processes of which EDP COMERCIALIZADORA has available during the different requirements of information and, where appropriate, sanctioning procedures that the AEPD has initiated up to the moment, without the AEPD having ruled on possible breaches of the duty of transparency, having proceeded to file the multiple files in which this documentation was subject to review by the AEPD.

Therefore, having brought this information to the knowledge of the AEPD and having been analyzed by it, without having ruled against the itself, EDP COMERCIALIZADORA continued to make use of these documents and procedures in the legitimate expectation that this was adjusted to the requirements regulations, to the extent that the AEPD, having first-hand access and knowledge hand of these alleged breaches, did not at any time indicate to EDP MARKETER that there was any irregularity, now proposing a sanction of one million euros for an alleged non-compliance, of which he would have had knowledge years ago, but that he did not consider no longer sanctioning but not even warn EDP COMERCIALIZADORA. In this regard, it should be noted that the The purpose of this control authority is none other than to guarantee compliance with the regulations, so that in the absence of legal justification that motivates the opening of Sanctioning Procedure on some aspects that were previously known and even subject to an archive, there can be no place for later imposition of a sanction of the amount that is exposed.

As a conclusion of all the above, it cannot be interpreted that EDP COMERCIALIZADOR fails to comply with its duties set forth in article 13 of the GDPR.

In relation to the weighting of the sanction proposed by the AEPD, as that in the previous points, after evaluating the aspects exposed in the present section, and according to the evaluation criteria related by the AEPD, although,

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Without having justified the reason for which they are included, the following are included:

comments regarding its possible concurrence.

“The nature, seriousness and duration of the infringement” to what the RGPD itself continues with “taking into account the nature, purpose of the operation of treatment in question, as well as the number of interested parties affected and the level of the damages they have suffered; As has been stated in the present section, the information provided to users complies with the legal requirements to which throughout the entire contracting process and even afterwards, without therefore interpret that there is a breach by EDP COMERCIALIZADORA. Likewise, As has been expressed in the previous points, in order to qualify as aggravating the damages caused to those affected, in addition to materializing, they must be accredited, an aspect that has not been tested in the this Procedure.

“The intentionality or negligence appreciated in the commission of the infraction;” The alleged inaccuracies in the information provided by EDP COMERCIALIZADORA do not imply any breach of the regulations so, in any case, it could be recommendable some improvement in the way it is embodied, but nothing more.

The intention to inform those affected of all the aspects related to the processing of your personal data in a transparent manner, therefore that in no case is it possible to speak of an intention to breach the norm, much less least negligent or willful behavior.

“The high link between the activity of the offender and the performance of treatment of personal information;” As indicated, this is an ambiguous factor. It must be taken into account of the great deployment of media carried out by EDP COMERCIALIZADORA to allow information to be provided to all interested parties through all channels by which it is possible to collect personal data.

“The continuing nature of the offense;” “High volume of data and processing which constitutes the object of the file;” and “High number of interested parties;” As that in other criteria indicated individually, these three criteria remain subsumed with the one raised in the first place, and from article 83.2 a) of the RGPD, so its evaluation must be carried out jointly with the indicated and, therefore, Therefore, do not suppose an additional aspect to the one mentioned for the calculation of the potential applicable penalty.

“The status of the responsible entity as a large company and its volume of business”.

As already stated, this is not an evaluation factor for the amount of the sanctions. Consequently, EDP COMERCIALIZADORA cannot be penalized for compliance with its duty of transparency, much less in the amount proposed in the Agreement to Start the Sanctioning Procedure to which we replied in the present writing.

FIFTH.- ABOUT THE AGREEMENT TO START THE SANCTION PROCEEDINGS AND THE ASSESSMENT OF THE POSSIBLE PENALTY. LEGAL BASIS AND PROPORTIONALITY OF THIS.

A. NON-COMPLIANCE WITH THE PRINCIPLE OF INTERDICTION OF ARBITRATION

In relation to this principle we must attend to two specific questions:

- 1) The recommendations and publications of the AEPD,

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- 2) The amounts of the sanctions that have taken place in previous cases

Similar.

In the first place, certain practices recommended and even applied by the AEPD regarding the collection of consent and the information to be provided to the interested parties, have served in this case to argue and motivate the alleged infractions committed by EDP COMERCIALIZADORA.

These criteria are expressed both in the form of jointly compiling the purposes whose legitimating basis is the consent of the user, as collected in the Second Allegation, as well as in the presentation of the information related to the exercise of rights of the interested parties collected in the Fourth Allegation. These aspects, which a priori the AEPD recommends and puts into practice, considering them examples that are adapted to the applicable regulations, are used as elements offenders to justify the alleged breach of different legal precepts by EDP MARKETING.

All of this, and said in strict terms of defence, not only implies that the AEPD considers insufficient what the Authority itself has incorporated in its clauses informative, resulting therefore, said insufficient information in accordance with the RGPD, but the fact of modifying the criterion adopted invalidating aspects without motivation, nor any justification, implies a clear situation of legal insecurity, contrary to the constitutional principle of interdiction of arbitrariness contained in the article 9.3 of the Spanish Constitution; principle that implies that the authorities do not can make arbitrary decisions, understanding by such, those that suppose a infringement of the principle of equal treatment of the administered before the application of the law and objectively determined rules.

Secondly, the amounts of the previous sanctions in cases of fact similar are not comparable, to the proposals in this case.

Specifically, we must bring up the Penalty Procedure

PS/00097/2019, directed against the entity of the same business group, EDP ENERGY, in which, after having analyzed the contracting system and the information provided to each of the parties involved, both the representative and the represented, the file of the file is dictated, validating therefore all the documents that accompanied the procedure, that is, the documentation linked to the hiring process.

Likewise, it should be noted that, last March 2019, EDP ENERGIA, also received file of actions of the information request E/04707/2018, initiated after a complaint filed by Mr. ***A.A.A.. In this case, the AEPD resolves that it is not appropriate to process the claim received, considering, therefore, the contracting procedure and documentation provided, in accordance with the law.

As in the first section of this point, the proposed sanctions, carried out without motivation or due justification, they go against legal certainty, a principle Constitution contained in article 9.3 of the Spanish Constitution, as well as against the principle of legal foundation. In other words, every decision made by the AEPD must be objective, well-founded and typified.

In this sense, it is worth mentioning the Judgment of the Supreme Court of the 3rd Chamber Contentious-administrative, Section 3, Judgment of May 13. 2015, Rec. 28/2013, in which the interested party appeals, stating, among other things, allegations the infringement of the principles of interdiction of arbitrariness, security

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legal and equality established in articles 9.3 and 14 CE, under article

88.1.d) LJCA and the Court upholds said motivation. From this resolution it is worth noting the next:

“c) The constitutional requirement of the motivation of the sentences, included in the article 120.3, in relation to 24.1, of the Constitution, appears justified, without further to underline the ends to which it tends to achieve, which, above all, it aspires to do patents the submission of the Judge or Court to the rule of law and contributes to achieving the conviction of the parties in the process about the fairness and correctness of a decision court, facilitating the control of the sentence by the Superior Courts, and operates as a guarantee or preventive element against arbitrariness.

d) The breadth of the motivation of the judgments has been nuanced by the doctrine of Constitutional Court, indicating that it does not authorize to demand judicial reasoning exhaustive and detailed of all the aspects and perspectives that the parties may have of the matter to be decided, but must be considered sufficiently motivated those judicial resolutions that are supported by reasons that allow us to know what have been the essential legal criteria underlying of the decision, that is, the "ratio decidendi" that has determined that (judgments of the Constitutional Court 14/1991, 28/1994, 145/1995 and 32/1996, among many others). So The Constitutional Court itself has recognized this when it refers to the fact that it is not an exhaustive or exhaustive examination of the arguments of the parties is necessary, and when it even allows the argumentation by references to reports or other resolutions. The Judgment of the Constitutional Court No. 122/94 of April 25, affirms that this right to motivation is satisfied when the judicial resolution explicit or implicit contains reasons or elements of judgment that allow knowing the criteria underlying the decision.

As a result of the above, it should be noted that the AEPD identifies as an example of a sanction, the Sanctioning Procedure with file number PS/0025/2019, file that

it is in a contentious process and therefore, it does not become firm. For all this, you can't

be considered a file that affects the diligence operated by EDP

COMERCIALIZADORA, nor can it be considered as a precedent, since

This sanction is not yet final. Analyzed the above, as well as the doctrine and

jurisprudence embodied in this section, we can only conclude that we

We are faced with a series of proposals for administrative sanctions, whose motivation

are separated from the interpretation recently made by this Agency. By

Therefore, it must be understood that the situation caused generates damages derived from the

absence of legal certainty, whose motivation is set out in the sections that

follow.

B. LACK OF PROPORTIONALITY At this point, it should be remembered that the principle

proportionality is a general principle of law. Reason why, the AEPD

should take this principle into account both when determining the criteria

evaluators, as well as when determining the applicable sanction, a principle that, as

It should be appreciated from the procedure, from the beginning of the investigation and that is, in the

strictest sense of defense, has not been applied by the AEPD in the Agreement of

Start of the Penalty Procedure.

It should be noted in this section that the sanctioning capacity of the AEPD is

is limited by the principle of proportionality, a limitation embodied in the

Article 29 of Law 40/2015, of the Legal Regime of the Public Sector (hereinafter,

“LRJSP”). This requires that every sanction be suitable, necessary and adequate to the

seriousness of the act constituting the offence. Therefore, we recall the criteria

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evaluators collected throughout the writing, as well as the following fragments of the article 83.2 of the RGPD that applies jointly.

“k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

In this regard, of the already mentioned few or non-existent claims in

In relation to the alleged breaches, it can only be interpreted that EDP

COMERCIALIZADORA generally and majority complies with the requirements

collected in the RGPD, a criterion that must be taken into account as a mitigating factor for a potential applicable sanction.

Firstly, with regard to the alleged infringement of article 25 of the RGPD, the

AEPD, seems to intend to sanction taking for granted the non-existence of

legally required documentation, without the Authority itself having required it.

For this reason, the AEPD in the sanction proposed in the document of the Agreement to Commence

Sanctioning Procedure, is based on a fiction, because the reality of the situation is

that the documents on which non-existence or inaccuracy is alleged comply with

all the obligations associated with data protection from the design and by

defect, providing, as is stated in the corresponding point, of

relevant risk analyzes and impact assessments, including all

corrective measures, having followed both the analyzes and the internal plans

with the criteria indicated by the AEPD.

Therefore, the proposed sanction is not only disproportionate in accordance with the foregoing

in this writing, but it is not applicable to the facts before which we

we find.

Second, as stated in the second allegation, the alleged

infringement of article 6 of the RGPD, EDP COMERCIALIZADORA has not carried out any treatment related to the realization of a profiling and its subsequent use with commercial purposes, nor has it provided insufficient information regarding the identification of the responsible, being the same embodied at the contractual and informative level both in the first layer, as in the second, an aspect that in any case would affect what was collected in article 13 of the RGPD. Furthermore, as we have shown previously, the collection of the purposes jointly, when these are are subject to the same legitimizing basis, is approved by the AEPD itself. Therefore, the proposed sanction is disproportionate and contrary to the legal system. legal since neither the existence of any infraction has been justified, nor has it been perform the treatment in question.

Likewise, as we have already explained previously, the AEPD, up to now, has not sanctioned in any file based on the violation of article 22 of the RGPD, requiring therefore, a review and detailed and justified justification, so that the proposed sanction is not considered disproportionate.

Finally, based on what is stated in the fourth allegation regarding the infringement of the article 13 of the RGPD and in relation to what is included in this section, the information collected and provided to interested parties complies with legal requirements required, not being punishable in any case the non-implementation of recommendations that the AEPD intends to impose on EDP COMERCIALIZADORA, as well as aspects that even despite being defended and applied by the AEPD itself at one point,

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are currently arguments to justify the non-existent infringement by
of EDP COMERCIALIZADORA of its duty of information.

For all these reasons, as has been evidenced and broken down throughout this
written, EDP COMERCIALIZADORA meets both the requirements set forth by the
applicable regulations, as indicated by the guides and legal texts published by
the AEPD itself.

Likewise, the AEPD considers EDP COMERCIALIZADORA as an entity with a
great business value, assuming said volume a relevant aspect when it comes to
raise the sanction, without proving, however, that the business value is sufficient to
that the widely elevated sanctions can be considered as
proportional.

Likewise, as has been explained in each point, each and every one of the
alleged infringing actions have mitigating factors that do not seem to be
taken into account, since only criteria are considered that, in addition to
expressed independently of what is included in the articles themselves, increase the
amount of the potential sanction to be imposed.

These aspects show the total disproportion and arbitrariness of the sanctions
proposals, without there being any basis in the Start Agreement that would allow
the AEPD to motivate the amounts proposed, nor the reasons why some
same facts that until now had not even been sanctioned by the
Control Authority previously - infringement of article 22 of the RGPD-,
thus departing from the considerations of other procedures, as well as from the
evaluative criteria to determine amounts lacking motivation and
disproportionate.

Therefore, the proposed sanction should not be applicable, since there is no
infraction, nor any non-compliance, nor does it meet the criteria covered by the

principle of proportionality.

Added to the above, in the Judgment of October 15, 2012 (JUR/2012/353649),

appeal 180/2010, the Chamber applying the principle of proportionality, attended to the lack

of accreditation of the effects of the conduct as a criterion to reduce the sanction,

pointing out the essential character of the principle, allowing the Chamber to eliminate or reduce the

sanction imposed:

“As the appellant points out, there is no proof that the conduct

anticompetitive had any effect on the market, since there is no reasoning in the

appealed resolution what has been the effect on consumers or users in this

case public hospitals (...) In Spain, the Supreme Court has recognized the

ability of the court to rectify the graduation of sanctions

imposed by the Court for the Defense of Competition. Thus, in a sentence of 5 of

March 2001, May 24, 2004, June 12, 2006, February 14, 2007

points out that "the mentioned principle of proportionality or individualization of the

sanction to adapt it to the seriousness of the act, make the determination of the

sanction a regulated activity and, of course, it is possible in jurisdictional venue not

only the confirmation or elimination of the sanction imposed but its modification to

reduction" or in the judgment of October 8, 2001 "there is no excess in the

exercise of jurisdiction but simply observance of the constitutional mandates

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referring to the right to judicial protection (article 24.1) and the control of the legality of the

administrative action (8 article 106.1), when the jurisdictional body, analyzing

one of the reasons for challenging the administrative act, such as the resolution of the Court for the Defense of Competition, decides what is the appropriate sanction in application of this principle of proportionality and the provisions that it has for this purpose established legal norm.

In this sense, it is also worth mentioning the Judgment of the TSJA resolving through appeal number 795/2003:

“The principle of proportionality has served in jurisprudence as an important control mechanism by the Courts of the exercise of power sanctioning of the Administration when the norm establishes for an infraction various possible sanctions or points out a quantitative margin for setting the pecuniary penalty. The principle of proportionality or the penal principle of individualization of the sanction to adapt it to the seriousness of the act and the personality of the author, make the determination of the sanction a regulated activity.

The Supreme Court has repeatedly upheld the admissibility of specifying the administrative sanctions in contemplation of the infraction committed, graduating them with the appropriate criterion of proportionality inherent in the principles computers of the sanctioning law, weighing for this purpose the circumstances concurrent in the constitutive act of the sanctioned infraction, corresponding to jurisdictional activity, as stated in the judgment of September 26, 1990, not only the power to subsume the conduct of the offender in a certain type legal, but also to adapt the sanction to the act committed, since in both cases It is about the application of legal criteria embodied in the written rule and deductible from informative principles of the sanctioning legal system, such as are those of congruence and proportionality between the infraction and the sanction.”

In short, analyzing each of the alleged infractions that are imputed to my represented, one can only interpret that there is an absolute disproportionality in

the interpretation made by the AEPD in this Start Agreement

Sanctioning Procedure, not only because it lacks motivation when it comes to

consider the alleged infraction to have been committed, but by the fact that the sanctions

Proposals escape any criteria previously assessed by the company itself.

AEPD. And for this reason, it corresponds at least to the correction by the AEPD, in

case of not considering the due annulment and filing of the proceedings, assuming

therefore a substantial reduction of each potential infraction to its minimum degree,

even reaching a warning, because there is no non-compliance, lack of

motivation and disproportionality.

C. DUPLICITY OF SANCTIONS AND COMPLIANCE WITH THE "NE BIS IN" PRINCIPLE

IDEM"

From the Agreement to Start the Sanctioning Procedure an aspect is derived that has

been pointed out at various points in these allegations to the same, and

whose relevance cannot be ignored. Thus, the infractions that are indicated are

repetitions of the same facts, whose estimation would cause a notorious

duplicity in the sanctions imposed, either because they address circumstances

previously examined by the AEPD or because it estimates the concurrence

multiple offenses on the same fact.

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In the first place, this Agency has pointed out the concurrence of a

infringement derived from the provisions of article 25 RGPD when estimating that they have not been

carried out the appropriate actions, referring to the adequacy of the

procedures that are implemented for contracting by third parties. Without prejudice to the arguments that have been stated in the corresponding First allegation, which we refer to for brevity, it is relevant to highlight that the appreciation of the Commission of infringement derives from events that, prior to it, have been previously analyzed by the AEPD. This has meant that, taking into account the casuistry concurrent in it, he was sanctioned in a proceeding that, the date, is appealed.

From the foregoing it should necessarily follow that the imposition of the infraction brings cause of the production of new facts that motivate the imposition of the proposed sanctions. Well, this is not the casuistry that concerns us either, there have been no new claims or circumstances that have led to the AEPD to this Agreement to Start the Sanctioning Procedure. Certainly the imposition of the proposed sanction would mean that, faced with an act that has been evaluated and solved or punished by the corresponding authority, be it again examined from the same perspective or, on the contrary, that, in the absence of materialization of said risk, said sanction would be imposed based on conduct that could potentially give rise to a breach, but whose production is, the date, non-existent.

Secondly, the AEPD makes use of different normative precepts to sanction the same act, for simultaneously constituting the commission of three infractions, although each of them is based on the breach of the duty of information regulated in article 13 of the RGPD

In this sense, as has already been advanced in the previous allegations, although the Agreement to Start Sanctioning Procedure part of the applicability of three differentiated infractions, corresponding to articles 6, 13 and 22 of the RGPD, All of them are based on poor information and ignorance of the

user of the object of the consent request. Thus, the argument that to substantiate your consideration regarding obtaining consent insufficient, it is stated that: "It is considered that the consent thus given is not adjusted to the provisions of the RGPD and the LOPDGDD. Consent is requested with deficient information, insofar as they do not indicate which third-party databases are going to be consult or what type of data will be collected, so that the interested party does not know absolutely that is what you are consenting to. Nor is it determined who will be the data controller, a generic reference to EDP is made, without the customer who has contracted a service only with one of the two entities (EDP COMERCIALIZADORA S.A.U. or EDP ENERGIA, S.A.U.) know if it is consenting that such treatments be carried out by both entities or only the one of which he is a client. Nor is it clear what type of services will be allowed hire or not. Such deficiencies do not allow the interested party to know the consequences of your decision and thus assess the convenience of lending or not your consent." (Page 50 of the Agreement to Start the Sanctioning Procedure).

In the same way, regarding the alleged infringement of article 22 RGPD, regarding the commission of automated decisions, the AEPD in its own written Agreement of

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Initiation of Sanctioning Procedure, after collecting the aspects related to the processing of data in which there are automated decisions, collects the following:

"From all this it can be concluded that the consent given for such purposes does not is in accordance with the provisions of article 4.7 of the RGPD insofar as it is not

duly informed in general, the requirements are not fulfilled

specific information established in article 13.2 for decisions

automated and is also not specific. The absence of such requirements determines that

the same is not valid so that the treatments based on it lack

legitimation, thus contravening the provisions of articles 6 and 22 of the RGPD.”

(Page 52 of the Agreement to Start the Sanctioning Procedure).

In light of the foregoing, each insufficiency mentioned, derives cumulatively, at the

potential breach of article 13 of the RGPD, regarding the duty of information.

For these purposes, the exposure made by the

that Agency of two infractions derived from the absence of legal basis

sufficient as it is not informed consent and, simultaneously, another infraction

due to the lack of transparency in the information provided. about that, ok

it is known by the AEPD that our jurisprudence has reiterated in many

occasions as a fundamental principle of law, that the same fact cannot be

sanctioned twice.

The application of this non bis in idem principle supposes a manifest impossibility of

impose two or more administrative sanctions for the same act, provided that

produce a de facto identity, be attributed to the same subject and impose

on the basis of a common foundation in what refers to the protected legal interest.

Therefore, there is no doubt that, if the assessment of the AEPD is applicable

of the commission of an infraction by EDP COMERCIALIZADORA of the

exposed facts referring to the indicated articles, it will require the necessary

competition of applicable laws. In this sense, it is essential to bring up the

provided in article 29.5 of the LRJSP, which states that: "When the commission of

an infraction necessarily derives from the commission of another or others, it must be imposed

only the sanction corresponding to the most serious infraction committed.”

Notwithstanding the scant jurisprudence derived from said precept, as a result of its previous regulation (Royal Decree 1398/1993, of August 4, approving the Rules of Procedure for the Sanctioning Power), our Courts have preached that, for the assessment of the aforementioned contest, the regulations “(...) requires, for the application of the media contest, a necessary derivation of some infractions with respect to the others and vice versa” (Sentence of the Supreme Court of 8 February 1999).

In application of said precept, there are favorable judgments of the Chamber of the contentious-administrative of the National High Court that, in analysis of the matter that we are dealing with, stated that: "Accordingly, this Chamber considers that in the case of there is a direct connection between the violation of article 6 (treatment of personal data without the consent of the affected party) and the violation of the articles 4.3 (treatment of inaccurate data), both of the LOPD. connection that is highlighted by the fact that the processing of the complainant's data without their consent, is carried out only in the communication by letter (of the information on the movements of the Cortefiel POS) to his old address, which is

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which gives rise to the complaint filed by him, and that by not correcting himself (precisely because said incorrect treatment had no economic or accounting reflection in said Bank), is maintained in the different communications by letter made. It is In other words, as indicated by the plaintiff in the lawsuit, it turns out that the treatment that has consisted, exclusively, in improperly including some data of the affected party in a

report of operations that do not refer to it, can only be produced without mediating its consent, so the non-consensual treatment of data of article 6.1 LOPD necessarily derives from the improper or erroneous treatment of the same (Art. 4.3). Therefore, the aforementioned article 4.4 of the Regulations for the exercise of the sanctioning power, therefore, since both infractions are equal seriousness, it is appropriate to impose a single sanction of 60,101.21 Euros, which is considered be in this case the one corresponding to the infringement of the principle of treatment not consented, in which the infraction of the principle of data quality, both from article 44.3.d) LOPD.” (Judgment of 19 November 2009, rec 338/2009)

Based on this, even though the precepts of the regulations preceding the RGPD and cover a differentiated scenario, there is no doubt that that the National Court appreciated the origin of estimating the concurrence of infringements on the basis of a medial contest between the infringements contemplated in the data protection regulations, when necessarily the commission of a requires the production of the other. In this regard, said Court states that, If there is a single action from which two infractions could derive, it can only be taken into account the most serious. As in the aforementioned case, in which the improper obtaining of a data necessarily caused a treatment of inaccurate data, in the case at hand, the consideration by this AEPD of an illegitimate acquisition for not meeting the principles defined by the RGPD for determine that the consent is informed and unequivocal, must be subsumed in the pertinent assessment of the duty to inform, not fitting in any way the double valuation indicated in the sanction proposal. It does not fit, therefore, as has been embodied by the AEPD in this procedure, apply different precepts regulations (articles 6, 22 and 13 of the RGPD) independently, to sanction

about a potential infraction directly related to the performance of duty

of information, and in any case the sanctions proposed in the

Penalty Procedure Agreement.

D. LACK OF CONFIRMABLE EVIDENCE FOR THE ALLOCATION OF THE INFRINGEMENT AND CORRESPONDING IMPOSITION OF THE PENALTY.

It is necessary to bring up the inquisitorial principle or the ruling officiality in the administrative procedure, which implies that it is the administrative authority obliged to proceed with the verification of the alleged facts through the practice ex office of the relevant evidence, thus prevailing the principle of material truth. So Therefore, in the administrative procedure it is an essential requirement that all statements made are submitted to the confrontation with the facts, falling on the competent authority the accreditation of the same, in order to guarantee the legal certainty required for the sole purpose of complying with the purposes of the Public administration.

Likewise, it is pertinent to point out the provisions of article 53 of Law 39/2015 of 1 of October, of the Common Administrative Procedure of the Public Administrations,

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regarding the presumption of innocence and the non-existence of responsibility while unless the contrary is proven.

Furthermore, reference should be made to the Judgment of the Court Constitutional Law 76/1990, of April 26, 1990, Rec/695/1985, which delimits the scope and respect for the presumption of innocence in the sanctioning procedure and that indicates

the following: "Indeed, there can be no doubt that the presumption of innocence governs without exceptions in the sanctioning system and must be respected in the imposition of any sanctions, be they criminal, be they administrative in general or taxation in particular, since the exercise of the *ius puniendi* in its various demonstrations is conditioned by art. 24.2 CE to the test game and to a contradictory procedure in which their own positions can be defended. In this sense, the right to the presumption of innocence entails: that the sanction be based on acts or means of proof of charge or incriminating the conduct reproached; that the burden of proof corresponds to the one who accuses, without anyone being forced to prove his own innocence; and that any insufficiency in the result of the tests, practiced, freely valued by the sanctioning body, must result in an acquittal statement.

Likewise, we cannot affirm that the evidentiary activity carried out by the Administration can be considered a charge, and, in the event that this body consider it so, (STS of December 18, 2000- RJ 2000/92) it has been fully distorted by the statements made by this party, as well as as well as through the documents attached to this lawsuit.

In the same way, the jurisprudential line followed by Constitutional Court in its judgment of February 20, 1989, in relation to the principles and guarantees of the criminal judicial procedure applicable to the procedure administrative sanction and, which indicates "Our doctrine and criminal jurisprudence have been arguing that, although both can be considered as manifestations of a generic *favor rei*, there is a substantial difference between the right to presumption of innocence, which develops its effectiveness when there is an absolute lack of evidence or when those practiced do not meet the procedural guarantees and the principle jurisprudence in *dubio pro reo* that belongs to the moment of the valuation or

probative appreciation, and who has to judge when, that activity concurs

indispensable evidence, there is a rational doubt about the real concurrence of

objective and subjective elements that make up the criminal type in question"

Regarding such criteria, the Spanish Agency has ruled, agreeing on the

file of actions (E/04684/2017) and indicating literally the following:

"(...) For this reason, it is necessary to review in relation to the principle of presumption of

innocence that, to the Sanctioning Administrative Law, due to its specialty, are of

application, with some qualification, but without exception, the inspiring principles of the

criminal order, being clear the full potentiality of this principle of presumption of

innocence. In this sense, the Constitutional Court, in Judgment 76/1990, considers

that the right to the presumption of innocence entails "that the sanction be based on

acts or means of proof of charge or incriminating the reproached conduct; that

the burden of proof corresponds to the person who accuses, without anyone being obliged to prove

his own innocence; and that any insufficiency in the result of the tests

practiced, freely valued by the sanctioning body, must be translated into a

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acquittal pronouncement. According to this approach, it is necessary to

account that they can only be sanctioned for acts constituting an infraction

administrative the natural and legal persons who are responsible for the

themselves by way of intent or fault" (...) In short, the application of the principle of

presumption of innocence prevents imputing an administrative infraction when it is not

has obtained and verified the existence of proof of charge accrediting the

facts giving rise to this charge. (...)

Finally, review the Judgment dated May 25, 2001, issued on appeal

administrative litigation by this National High Court, number 29/2000,

pronounces regarding the imposition of a sanction based on a presumption

carried out by the Agency, and rules that "(...) the Chamber, as we go on to

reasoning, from the assessment of the evidence contained in the administrative file, arrives at

the conclusion that this integrative fact of the

type, that is to say, it is not proven that the Bank gave Mr.... the respective extract,

raising this concrete fact serious doubts, compared to the required certainty. Y

concludes by stating that without denying that the events could have occurred as indicated by the

complainant, the possibility that the extract was not

delivered to the husband by the Bank, but rather that he obtained it by taking advantage of some

visit to the home or through the action of a family member, said in terms of

pure hypothesis.

In this same sense, the High Court of Justice of Madrid ruled in

Judgment of 02/21/2001, in which it states that "The only evidence against which the

APD infers the responsibility of the appellant, it is the fact that he was the ex-husband

of Ms... who provided the lawyer with said extract that was contributed to the incident

of modification of measures, and it must be agreed with the appellant that the possession of the

extract, in the opinion of this Chamber, is insufficient circumstantial evidence to destroy its

presumption of innocence since, certainly, said extract could reach the possession of

D... through channels other than direct delivery by the bank, by

Therefore, none of these hypotheses being proven, this reasonable doubt

about how the ex-husband obtained the account statement from the

complainant must always operate for the benefit of the sanctioned party, proceeding, in

Consequently, uphold his claim for annulment of the sanction imposed for lack of

enough proof of the participation of the appellant in the delivery of the bank statement to a person other than the owner of the account” In short, appreciating the various criteria taken into account by the competent protection body of data when carrying out the file of actions in those cases in which those in which it is considered that there is a lack of evidence and in which the lines of jurisprudence outlined, this party considers that they have not protected the legal guarantees that all procedures must respect.

E. LACK OF LEGAL BASIS

As we have stated throughout this document, the alleged infringements committed by my client, have not taken place, so it has not materialized, nor is there any possibility that EDP COMERCIALIZADORA has infringed the mentioned articles following what is alleged by the AEPD in the Agreement to Commence Penalty procedure.

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It should be noted that all sanctioning procedures and, where appropriate, the sanction resulting, must be motivated, substantiated, and even more decisive, must meet with the due principle of legality, typicity. As a result of this aspect it is brought to collation the Judgment of the Superior Court of Justice of Catalonia, number 870/2019, Rec:454/2016, from which we extract the following:

“The due effectiveness of the principle of typicity in administrative sanctioning matters whose requirement certainly derives from our administrative system sanctioning, also in tax matters, as a manifestation of the guarantees

formal and material that are contained in the constitutional principle of legality sanctioning former article 25.1 of the Constitution, and which was previously included in article 129 of the already repealed Law 30/1992, of November 26, on the legal regime of public administrations and the common administrative procedure, applicable to this case additionally for temporary reasons (and today article 27 of the Law 40/2015), as well as in this specific tax order, article 178 of the Law 58/2003, General Tax, taking into account the implicit content of the aforementioned precept constitutional (article 25.1 of the Constitution), despite its notable laconism (Judgment of the Constitutional Court number 34/1996, of March 11), in which has highlighted the so-called material guarantee of the principle of legality (among others, and Since the ruling of the Constitutional Court 42/1987, of April 7, the judgments of the Constitutional Court 3, 11, 12, 100 and 101/1988, of June 8, 161, 200 and 219/1989, of December 21, 61/1990, of March 29, 207/1990, of March 17, December, 120 and 212/1996, 133/1999, of July 14, 142/1999, of July 22, and 60 and 276/2000, of November 16), which is identified with the traditional principle of typicity of the offenses and administrative sanctions and that requires a determination prior and certain regulations of the specific conduct or conducts that by action or omission are deemed to constitute a fault or an administrative offense, with prohibition of any analogical or extensive interpretation in malam partem (Judgment of the Constitutional Court 125/2001, of June 4, citing the judgments of the Constitutional Court 81/1995, of June 5, 34/1996, of 11 March, 64/2001, of March 17, and 113/2002, of May 9), being also well-established jurisprudential doctrine which teaches that in the exercise of its sanctioning administrative power the acting sanctioning administration does not responds, properly, to the exercise of an administrative power of essence or discretionary tendency but predominantly regulated for the application to each case

of the sanctioning regulatory framework pre-established in general in the applicable sanctioning legal system, which entails, from the outset, the requirement of the necessary adequacy and rigor in the qualification of the facts imputed and in their punctual incardination and adequate subsumption in the offending type legally defined for its correction, in such a way that the contrary, certainly, would result in a violation of the fundamental subjective right before pointed out and to all recognized by the current constitutional text ex article 25.1 of the Constitution (sentences of the Constitutional Court 77/1983, of October 3, and 3/1988, of January 21), which, being susceptible to constitutional protection, would incur in an eventual sanctioning administrative action infringing the same in the vice of nullity of full right previously foreseen by article 62.1. a) of the repeated Law 30/1992, applicable to the case for temporary reasons (today article 47.1. a) of Law 39/2015)”

Furthermore, article 89 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which includes the C/ Jorge Juan, 6

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following: 1. The examining body will resolve the completion of the procedure, with filing of the proceedings, without the need to formulate the proposal for resolution, when in the instruction procedure it is made clear that any of the following circumstances concurs: a) The non-existence of the facts that could constitute the offence. b) When the facts are not proven. c)

When the proven facts do not constitute, in a manifest way, an infringement

administrative. d) When it does not exist or it has not been possible to identify the person or responsible persons or appear exempt from liability. e) When conclude, at any time, that the infraction has prescribed. In the present Of course, both a), b) and c) concur, which is why it would not fit therefore continue with the initiated sanctioning procedure, having to resolve, where appropriate, the archive of the proceedings, a request that we present to the AEPD on a reiterated, since as evidenced in this writing, neither have been committed the infringing acts, nor is the alleged offending behaviors, nor the interpretation and sanctions proposed by the AEPD are motivated.

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TWELFTH:

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Comercializadora, S.A.U. to the agreement to initiate the reference procedure, warned that in a document attached to them called "annexes 1, 2 and 4" states that "given the technical limitations of the electronic office for the presentation of the content of annexes 1, 2 and 4, these are presented by means of a link to a folder", indicating a link to a website and a password, using written, dated October 3, 2020, a period of 5 business days is granted to present the documentation that appears in said document in the Registry of this Agency through the Electronic Headquarters, for the purpose of recording registry of the documentation presented, its origin and its integrity. On October 8, 2020, they are presented through the Registry of this Agency the following documents:

Appendix 1:

- Annex.1.a) Methodology for risk analysis and implementation of Days
- Annex 1.b) RAT contracting EDP
- Annex 1.c) RAT Risk Assessment - EDP Contracting
- Annex 1.e) Impact Assessments -Risk Assessments
- Annex 1.f) Impact evaluations- Reports

Appendix 2:

- Methodology_Privacy by Design by Default of EDP
-
-
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Operating Instruction Privacy by Design & Privacy by Default

Form Privacy by Design & Privacy by Default

Flowchart Privacy By Design Procedure.

Annex 4:

- Examples of requests for the exercise of rights.

With regard to said documents:

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- A risk analysis methodology is provided, whose history of versions dates version 1.0 on 11/24/2017, indicating in the release notes revision that is an “early release-working document” and version 1.1 will be dated 05/11/2108 indicating the revision notes “revision prior to

application of the RGPD". No review has been done

later. Various annexes are provided, the date of which is not stated, specifically

these annexes are as follows: 1.b) RAT contracting EDP

- Annex 1.c) RAT Risk Assessment - EDP Contracting

- Annex 1.e) Impact Assessments -Risk Assessments

- Annex 1.f) Impact evaluations- Reports

The document contained in annex 1.b RAT, EDP contracting, whose date does not

consist, includes a processing purpose not included in the Activity Log

of treatment sent to this Agency dated June 17, 2020. Specifically

said treatment that is now included has the following content:

Responsible: EDP Comercializadora S.A.U.

Purpose of the treatment: "Performance of Scoring of clients of the previous B2C segment

to hiring",

Description: "Performance of Scoring of clients of the B2C segment prior to the

contracting according to the pending internal debt and information of files of

solvency (ASNEF)."

Category of data holders: "Customers and potential customers."

Category of personal data processed: "Identification data and economic data."

Legal basis for carrying out the treatment: "Satisfaction of legitimate interests."

Period of conservation of personal data: "5 years from the end of the

contractual relationship. The certain, due and enforceable debt derived from the execution of the

The contract will be maintained until its cancellation or the statute of limitations of the actions

relevant collection laws."

Data transfers (data recipients, other than those in charge of processing):

"ASNEF is co-responsible for treatment, as the signed agreement must include

with ASNEF."

Treatment managers categories: The box has no content.

International data transfer: No

Annex 1.c) under the name "RAT Risk Assessment - EDPC Contracting", whose date is not reflected in the document either, it contains a risk analysis, in the form matrix, equal to the one presented on June 17, 2020, although they have been added two columns under the title "treatment requires PIA", both titled "No. of EDP-W29 criteria", in the first one a number is indicated that seems to correspond to its title and the second indicates the need to carry out an evaluation of impact. In this matrix also appears a new treatment whose purpose is the "Performance of Scoring of clients of the B2C segment prior to contracting".

Various documents entitled impact assessments are provided, the date of which is not stated either, these impact assessments are as follows:

- Assessment of risks conducting Scoring of B2C clients prior to hiring,

in which, among other threats, the following are indicated:

- “the basis that legitimizes the treatment is not adequate, is illegal or has not been formulated adequately”, whose probability is set as high, with an impact qualified as

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very high and resulting the inherent risk High. Regarding the controls implemented

Faced with this threat, it is stated that "the legal basis of the treatment is to satisfy a legitimate interest (prevention of fraud)".

- “At the time of data collection, the minimum information is not provided provided to the person or no information is provided.” In this case

it is considered that neither the probability nor the impact is “not applicable”, nor is there a risk inherent, being the controls the “data protection clause included in the contract signed with the client with all the information required by the RGPD” and the “information provided to the client prior to the scoring process”

-Evaluation of channel leads to be converted by telemarketing

-Assessment of risks Telemarketing upselling and abandonment

-Assessment of CAC channel risks to clients or potential clients (inbound)

-Evaluation of OCCC channel clients and potential clients

- Risk assessment channel outside stores for sale to potential customers.

In all these impact assessments, they are considered as threats, among others.

many, those related to the fact that “the basis that legitimizes the treatment is not adequate, it is unlawful or has not been properly formulated” and “at the time of collecting the data is not provided the minimum information provided to the person or is not provides no information” In both cases the probability is assessed as high, the impact as very high and the inherent risk as high. Controls are mentioned.

adopted, referring to the legitimizing basis of the treatment in the first case

and “Data Protection clause included in the contract signed with the client with

all the information required by the RGPD” in the second. They are described among

ongoing checks for both threats on all channels except channel

OCCC, “the implementation of a new contracting procedure through

representative, incorporating the sending of an SMS/Email message through which

provides the necessary basic information regarding data protection to the holder of the contract.”

The date on which the actions in progress were incorporated into the corresponding impact assessments.

THIRTEENTH: On 03/11/2021, a resolution proposal was issued in the

following sense:

FIRST: That the Director of the Spanish Data Protection Agency

sanction the entity EDP COMERCIALIZADORA, S.A.U, for an infraction of the

article 25 of the RGPD, typified in article 83.4.a) and classified as serious for the purposes of

of prescription in article 73.d) of the LOPDGDD, with a fine amounting to

500,000 euros (five hundred thousand euros).

SECOND: That the Director of the Spanish Data Protection Agency

sanction the entity EDP COMERCIALIZADORA, S.A.U, for an infraction of the

article 13 RGPD, typified in article 83.5.b) and qualified as mild for the purposes of

prescription in article 74.a) of the LOPDGDD, with a fine amounting to

1,000,000 euros (one million euros).

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THIRD: That, due to lack of evidence, in application of the principle of presumption of

innocence, is declared not attributable to EDP COMERCIALIZADORA, S.A.U., the

violations of the provisions of articles 6 and 22 of the RGPD.

FOURTEENTH: Notified to the entity EDP COMERCIALIZADORA, S.A.U. the

aforementioned resolution proposal, said entity presented on 03/15/2021 a written

in which an extension of the term to formulate allegations was requested. Granted the

extension of the term, dated 04/07/2021, this Agency received a letter of

allegations, in which it is requested that the file of the procedure be agreed

sanctioning party or, alternatively, the substantial reduction of each proposed sanction to

its minimum amount or its substitution even, by warning, in its case. base

their requests in the considerations that are summarized below:

ACQUISITION OF THE COMPANY SUBJECT TO PENALTIES. With preliminary and for clarification purposes, EDP COMERCIALIZADORA puts in knowledge of this Agency that, on December 1, 2020, Total Gaz Electricité Holdings France ("Total Group") acquired 100% of the shares of EDP MARKETER. As a consequence of the above, the migration of the website www.edpenergia.es to a new transitory domain (www.edp-residencialbytotal.es) and the email accounts have been modified that were previously under the domain @edpenergia.es.

FIRST.- ALLEGED BREACH OF ARTICLE 25 OF THE RGPD:

(Yo)

The contracting process through a representative is in accordance with the normative:

The arguments exposed in the allegations to the proposal of resolution, related to the freedom of form of the mandate contract in accordance with the provided for in the civil code, in particular it insists that "In this case, it does not seem that such a wide freedom of form is compatible with obtaining evidence of the existence of the representation or the mandate, beyond the manifestations of the agent, protected by contractual good faith. Also, it is little

It is understandable that a separate consent is required for the treatment of your data or a confirmation of the order by the principal, since this would imply distorting the representation, since it would be absurd that whoever is appointed to enter into a contract in favor of a third party cannot provide the data of the person on whose behalf it acts, or that confirmation is necessary separate from it to authorize said communication, since the need to addressing the principal directly would make the intervention of the representative useless,

because it would be meaningless. (the underlining is from the entity that formulates the allegations)

Likewise, and in relation to the possibility that the principal may provide additional consents to the contract itself, it should be noted that this possibility may well have been authorized by the principal in a specific, but by governing the same freedom of form for the granting of this authority (which the rule does not oblige in any case to have in writing), nor is it Reliable accreditation is required at the time of contracting.

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Certainly, article 1725 of the Civil Code provides that the third party may request the agent who informs him of his powers to determine if the hiring is within the perimeter of the same or if you are assuming the risk that the principal does not subsequently ratify the agent's action. But this regulation translates into a burden for the president, not for the third party, since the interests that it is about safeguarding are those of the latter, and not those of the president nor of the principal. Therefore, it is optional for the third party to ask the agent to give knowledge of the powers with which it claims to act.

In the vision handled by the AEPD in the Resolution Proposal, this obligation would be aimed, however, not at protecting the interest of the third party regarding the object of the contract made by the agent, but to preserve the interest of the principal in relation to the legitimacy of the president to express the will of the principal regarding the processing of your personal data by the third party.

However, this consequence cannot be extracted from the regulation of the Civil Code regarding the mandate contract, in which –as we have just seen– the interest protect with the exhibition of powers of the representative is strictly that of the third party, and not that of the principal, which, in the scheme of the Civil Code, is safeguarded through the power of ratification, whose granting or not is always in the hands of of the principal.

Therefore, the risks referred to in the Motion for a Resolution (“they can be generate various risks, being able to mention, by way of example, the one consisting of a treatment of data of the represented without legitimacy, the risk of impersonation of identity or economic or other damages that may be caused to the interested party”) are not such: in the event that the agent has overstepped the exercise of the mandate, the principal will not be bound by that action, except his subsequent ratification, from which no harm can really be suffered unless who accepts – expressly or tacitly – what was done by the president a posteriori. From here, and as optional power of the third party that contracts with the agent, if and how the third party exercises that power depends on his will and the hiring circumstances. In this sense, the fact that in contracting in the channel of own commercial offices EDP COMERCIALIZADORA requires the representative an accreditation of his condition as such, does not prove absolutely anything, contrary to what the Motion for a Resolution says. Since EDP COMERCIALIZADORA, as a third party that contracts with the authorized party, enjoys the power to carry out this verification or not, the one who carries it out on some occasions and in others, or whoever does not do it in the same way in all contracting channels, is not a source of any obligation –which is not imposed neither by law nor by contract– but simply manifestation of the exercise of a permit.

At the doctrinal and jurisprudential level, the exercise of the rights of the

personality through voluntary representation, particularly when it comes to

Articulate ad hoc authorization for specific acts of interference¹. that chance

should be understood as reinforced when the mandate for the exercise of a right of

personality is linked to the power of attorney to enter into a contract, of which said

exercise is a conditioning or complementary element. Thus, the agent or

representative of an artist mandated to celebrate on behalf of his client

a contract for the lease of services to perform in a concert hall or

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record a disc, is commonly mandated to authorize the organizer of the

show or the record company for the use of the voice and image of the artist.

Similarly, those authorized to contract with EDP COMERCIALIZADORA in

name of another person, appear first as mandated subjects for the

conclusion of the supply contract, and concomitantly, because it is about

a factor inherent to the hiring itself, they are also to authorize the employment

and treatment of the personal data of its representatives. In this sense, it is

It is necessary to emphasize that there is no doubt that the treatment of the data of the

represented that is necessary for the execution of the contract of which the represented

becomes a party, it must be considered a fully lawful treatment in light of the

article 6.1.b) of the RGPD.

But in addition, insofar as it can be established that the president enjoys legitimacy to

make all relevant decisions within the framework of the recruitment process for the

that has been empowered, the consent that said representative gives on the

data processing of the represented party and that EDP COMERCIALIZADORA collects for one or several specific purposes within the framework of the contracting process, allows consider equally lawful the treatment of the data thus obtained ex article 6.1.a) of the RGPD or any other basis of legitimacy. And it is that, who hires on behalf of another –once it is assumed that he acts as such– must be able to provide the same consents regarding personal data as the interested party if it was the latter who concluded the contract, and this whether the contract is concluded on the spot in a commercial office as if it were held by telephone.

It must be concluded, contrary to what the AEPD indicates in the Resolution Proposal, that:

(Yo)

EDP COMERCIALIZADORA is not obliged to carry out with third parties

Authorized employees who contract through the telephone channel or sales forces

no external verification of the existence and scope of its

mandate, nor a fortiori does this verification have to be analogous to the one

eventually do with those who hire through offices

own commercials;

(ii) in the power to contract the service through an authorized third party

resides the power to give the consents inherent to the process of

contracting, including those relating to the processing of personal data;

and (iii) the legality of the treatment by EDP cannot be questioned.

MARKETER of the personal data of those who contract with

it through an authorized third party, either through commercial offices

own or through the telephone channel or through sales forces

external, for the simple fact of having contracted through a third party

authorized, while the legal basis for the processing of data

personal information of a person acting by proxy should

be the same as when acting on its own behalf.

(iii)

(iii)

(ii) EDP COMERCIALIZADORA has correctly assessed the real risks and

implemented the appropriate mitigating measures.

Reiterates that the risk assessments provided in this proceeding are

in accordance with the data protection regulations and the AEPD guidelines, in force in the

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when the analyzes are carried out, and identify the real risks applicable to the

different hiring processes.

The AEPD, in its Resolution Proposal, alludes to hypothetical or theoretical risks

which he cites, moreover, merely by way of example and of which he does not offer greater detail or

Explanation.

As explained in the previous point and in the Arguments to the Initiation Agreement,

these risks are non-existent or lack sufficient entity for their

consideration. Thus, it can be affirmed against the list contained in the Proposal for

Resolution—non-exhaustive since the list of the AEPD is a mere title

exemplary—, among others: (i) that there is no risk of identity theft in

so much so that there is representation and mandate, (ii) that there is no economic damage to

those interested insofar as the cost is assumed by EDP COMERCIALIZADORA in all

case; or (iii) that there is no risk of lack of legal basis as EDP

COMERCIALIZADORA can assume, in accordance with the aforementioned civil legislation and in accordance with the legal framework applicable to these contracts, the existence of authorization to the representative for data processing and (iv) that, in case of overreach, the interests of the principal are safeguarded by its right to ratify or not what has been done by the president outside the limits of the mandate.

For this reason, EDP COMERCIALIZADORA has correctly assessed the risks own real of the different contracting channels in accordance with an analysis solid legal -and backed doctrinally and jurisprudentially- of the figure of the mandate in the Spanish legal system and has implemented the mitigating measures adequate in relation to such risks. The risk analysis carried out is, therefore, coherent and was carried out in accordance with the legal institute of the civil mandate and its jurisprudence.

To the extent that the consistency of the analysis carried out has been proven, the AEPD must assess the analysis in accordance with these consolidated civil criteria or, if On the contrary, the AEPD considers that a different legal criterion should be adopted and Contrary to that of the civil regulations and its established jurisprudence, it must substantiate somehow its legal basis in order to allow EDP COMERCIALIZADORA its understanding and defense. In any case, the interpretation of the mandate by EDP MARKETING COMPANY in accordance with the regulations, jurisprudence and civil doctrine -including the one related to personality rights- must be interpreted in good faith faith and excludes any culpability on your part.

(iii) Recruitment through a representative constitutes a very high proportion minority of the total contracts made by EDP COMERCIALIZADORA.

It is essential to point out that contracting through a representative constitutes a minority part of of contracts made by EDP

MARKETER. Specifically, of the total contracts that EDP

COMERCIALIZADORA carried out in 2019, less than 13% corresponds to contracts through representatives of which in less than 1.8% the representative and the represented would not have a family relationship.

total

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Therefore, when the AEPD states that the EDP contracting procedure

COMERCIALIZADORA violates the principle of data protection from the design, which wrongly, that is to say in strict terms of defense, as if the

contracting procedure in its entirety would violate this principle. More so, at

When quantifying the sanction, the AEPD refers to the global billing volume of

EDP COMERCIALIZADORA to quantify it, when it should take into account

exclusively, and where appropriate, the billing data (volume) generated by the

eventual alleged breach -relative exclusively to contracting by

representation-.

Bear in mind, furthermore, that, in any case, the AEPD could have invoked the

article 83.2.k) of the RGPD and article 76.2.(c) of the LOPDGDD (“the benefits

obtained as a result of the commission of the infraction”) to graduate the sanction

proposal. Therefore, in the hypothetical and possible event that it is considered infringed

Article 25 of the RGPD, the maximum volume of business obtained by EDP

COMMERCIALIZER to take into account should be 2,550,000 euros

approximately, which is the amount obtained “as a consequence of the [possible]

infraction", that is, in contracting by representation, and not in the global hiring. In this sense, the annual turnover of contracting through of representative would mean 0.26% (approximately) of the business volume annual total of the entire client portfolio of EDP COMERCIALIZADORA. Likewise, the sanction that this Agency proposes to impose on EDP COMERCIALIZADORA for this infraction presupposes 20% of the turnover of the contracting through representative. Since the profit is much lower than the turnover, the penalty proposal would be disproportionate in relation to the same

In an administrative procedure of a sanctioning nature, counting how the AEPD with objective and sufficient quantifying criteria in relation to the volume (marginal) that representation entails, compliance with of the principles of proportionality of the sanction and legality and should, therefore, have been taken into account: (i) That the part that corresponds to the procedures of contracting by representation is a small and very limited part of the global contracting procedure for EDP COMERCIALIZADORA, and, therefore, it must take into account the small magnitude of the contracting that has the use of this type contracting at EDP COMERCIALIZADORA, being a type of contracting minority. In addition, as stated in the information provided in this procedure, there is only one claim before the Agency during the years 2018-2019 (with respect to a total of 33,848 contracts made through representative), which reflects the low relevance and materialization of the risks attributed by the AEPD to the contracting process implemented by EDP MARKETER.

That the proposed sanction of the AEPD of five hundred thousand (500,000) euros has been made in the Resolution Proposal erroneously due to attending to a factor not provided for in the regulations (the volume of business and the status of a large company) and

take into account the volume of contracts and the global profits of EDP

COMERCIALIZADORA -which includes both direct contracting (majority) and

contracting by representation (minority)-, which has nothing to do with "the benefits

obtained as a result of committing the offence" referred to

expressly article 83.2.k) of the RGPD and article 76.2.(c) of the LOPDGDD -the

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which would represent 0.26% of the business volume. Therefore, in the form

subsidiary and in the hypothetical case that the AEPD questions the validity of the mandate

for the contracting procedures and declare the infraction committed, the

quantification of the possible sanction should be significantly corrected to have

taking into account the real volume of business generated by contracting by representation

exclusively.

All of the foregoing makes clear the disproportionality of the sanction proposed in the

Resolution Proposal

Lastly, and without prejudice to the foregoing, despite the fact that EDP COMERCIALIZADORA

does not consider that his actions deserve any legal reproach, in view of the

suggestions made by the AEPD, EDP COMERCIALIZADORA informs the

AEPD that it has proceeded to reinforce the contracting process through

representative in line with the protocol that was already provided to the AEPD on the 16th of

July 2020. This protocol, which was submitted to the AEPD on a voluntary basis and before

of the beginning of the present sanctioning procedure, had as its purpose precisely

collaborate with this Agency to reach an agreed procedure in matters of

representation and that satisfies the proposals that the AEPD may have.

In the Allegations to the Start Agreement, EDP COMERCIALIZADORA responded in addition to the doubts raised by the AEPD regarding its content and implementation and confirmed that it is a procedure with double verification by SMS and in compliance with the best market standards. For these purposes, the AEPD must take into account: (i) that EDP COMERCIALIZADORA contacted proactively in July 2020, without success, with the AEPD to present a new protocol that proposed changes in the contracting procedure by representation. Far from being considered, as the Motion for a Resolution does, negatively and against EDP COMERCIALIZADORA, that proactivity as sign of acknowledgment of guilt - the arguments of legality have already been manifested above-, the cooperation proposal with the AEPD should be valued as a sign of good faith and of the firm commitment of EDP COMERCIALIZADORA with the compliance with data protection regulations and the improvement of its processes as well as an extenuating circumstance in the graduation of the sanction (article 83.2.f) of the GDPR);

(ii) that despite not obtaining a response other than the opening of this procedure, EDP COMERCIALIZADORA in light of the comments of the AEPD in the Initiation Agreement and the Resolution Proposal, has eliminated from its procedure contracting by representation the possibility of requesting consents to marketing and commercial purposes referred to by the AEPD on the pages 112, 113 and 114 of the Proposal. Attached as Documents No. 1 and No. 2 example of contract and speech script for the telephone channel that evidence this elimination. To the extent that EDP COMERCIALIZADORA has adopted measures to adjust its procedure to the proposals of the AEPD, this circumstance, in accordance with article 83.2.c) of the RGPD must also be considered as a mitigating circumstance

for the graduation of a possible sanction, and

(iii) that EDP COMERCIALIZADORA confirms to the AEPD that the new protocol -with the content communicated in July 2020 - is already implemented for all channels

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recruitment, since last January. Attached again to this writing

as Document No. 3, the aforementioned contracting protocol by representative.

In document number 1 under the title durable support, a company acting as trusted third party certifies that the data contained in the document are those that appear in its register of processes and electronic communications. Such data is the sending an e-mail with an associated URL, in relation to a contract, informing the recipient that a person has carried out the contracting on their behalf related to your energy supply/services. Provided as a document I attach the contract, in which the references to consents for the sending commercial communications or for profiling, and the general contracting conditions.

Document 2 has the following content:

High (representative) ML - Spanish

"[XXX] we are going to record your agreement. It is [hh:mm] on the [dd] day of [mm] of [20XX].

[name and surname] with DNI [DNI number], such as [husband/wife/son/attorney-in-law/representative] and in representation of the holder [name and surnames / company name] with DNI/CIF [DNI/CIF number] telephone [phone] and email [email] accept the offer from EDP Residencial for the address [supply address] consisting of [plan conditions -dto. in the light-] for [CUPS

LUZ: ES...] on the current EDP Residential electricity price [power price (€/kW month) and term energy price (€/kWh)] and/or [plan conditions -dto. in gas] for [CUPS GAS: ES...] and current EDP Residential gas price [term availability price (€/month) and term energy price (€/kWh)]; and/or It works [annual price of the service, plan conditions promotion works].

[If the payment date is not chosen] The payment method chosen is [direct debit in your current account/on account...] and will be charged on the date indicated on the invoice.

[If the payment date is chosen] The payment method chosen is [direct debit in your current account / in the account...] and will be charged on a specific date, the days [DD] of month. In this case, the payment period may be less or greater than the 20 days established in the normative".

On behalf of your client and after passing an analysis of the risk of the operation, we will the necessary steps to activate the access contracts, at which time it will enter the new contract is in force.

The contract(s) has/have no permanence and will have a duration of one year, extendable for the same period, unless there is a 15-day advance notice. Are you satisfied with the above information and conditions of the contract(s)? [Yes/Okay]. Thank you very much.

In a few days, your client will receive the contract (including withdrawal document) by duplicate, of which you only have to return one of the copies signed in the envelope self-stamped, you do not need a stamp, which we will enclose.

Your client has 14 calendar days to exercise their right of withdrawal. Nope

However, if you request it, we can start the process now. In that case, if later withdraw from the contract, you must pay the amount corresponding to the period of borrowed supply. Do you want your contract to be processed immediately? [OTHERWISE]

With the entry into force of the contract, your client will receive the invoice from EDP Residencial with all our advantages.

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Your personal data and those of your representative may be processed by EDP Residencial to the management of your contracts, fraud prevention, creation of profiles based on customer information and EDP Residencial, sending personalized communications about related products or services, as well as participate in sweepstakes, promotions and surveys of quality, being able to oppose at any time.

[Read only to legal persons calling on behalf of a business] In addition, so that we can advise you with the best proposals: • Do you allow us to present your represented offers related to energy after the end of the contract, or send you information about non-energy products and services, typical of Collaborating Companies? [YES/NO] • Do we allows you to complete the business profile of your client with information provided by third parties, to send you personalized proposals? [OTHERWISE]

The technicians of the Distributor will contact you shortly [remember that you must give them the Individual Gas Installation Certificate, when they go on to register].

[Altas Gas] For your safety, we remind you of the legal obligation to collaborate with your Company Distributor, facilitating access to its facilities. This application has been registered with the code [indicate the code]"

THIRD.- ALLEGED BREACH OF ARTICLE 13 OF THE RGPD

(Yo)

Regarding the information provided in the CAC Inbound Channel.

It indicates that it provides the information regarding the processing of personal data to through a system based on various layers. Thus, he reiterates that in all calls

incoming calls, a voiceover is automatically played informing of the following

“This call may be recorded. The data you provide us will be processed by

EDP Energía, S.A.U. and/or EDP Comercializadora, S.A.U. for the management of your request

or consultation. You can exercise the rights of access, rectification, deletion, opposition,

limitation and portability at any time. See the Privacy Policy at

our website edpenergia.es or press 0”

Points out that the address provided to users has been updated in the announcement,

currently indicating edp-residencialbytotal.es/privacidad, so that, if the user

type that address in the browser, access -directly and in a simple way- the

information regarding data protection.

The interested party can consult the second layer through the privacy policy of

the web page or by pressing 0. In this case, a voiceover is played whose content is

the next:

“The use of this TELEPHONE CHANNEL does not oblige the user to provide any information

about himself. However, to use certain services or access certain

contents, users must previously provide some personal data.

In the event that the user provides information of a personal nature, we inform you that the

data will be PS/00037/2020 Brief of allegations to the Proposed Resolution 15/37

processed by EDP Energía, S.A.U. and EDP Comercializadora, S.A.U., with registered office at

Oviedo, Plaza del Fresno 2, 33007 and NIF A33543547 and A95000295 respectively, in

hereinafter “EDP”, as controllers, as established by the Regulation

General Data Protection ((EU) 2016/679), hereinafter “RGPD”, and its regulations of

developing.

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Specifically, your data may be processed, when the user so requests, to manage the attention and monitoring of requests and queries directed through the website, as well as for conducting surveys and participating in sweepstakes, games and promotions.

The data requested will be mandatory and limited to those necessary to proceed with the provision and/or management of the requested service, which will be conveniently informed in the moment of collecting your personal data. In case of not facilitating them or not provide them correctly, the service cannot be provided.

In these cases, the user guarantees that the personal data provided is true and is responsible for communicating any changes to them.

In the case of procedures processed through the TELEPHONE CHANNEL and registration in the Likewise, the data processing carried out is based on the legal relationship derived from your request.

Data processing for conducting surveys is based on the legitimate interest of EDP in order to improve the quality of the services provided to customers and/or users, being able to object to said treatments at any time, without this affecting the legality of the previous treatments.

In no case may they be included in the forms contained in the TELEPHONE CHANNEL personal data corresponding to third parties, unless the applicant had previously obtained their consent in the terms required by article 7 of the RGD, responding exclusively to the breach of this obligation and any other regarding personal data.

The personal data of users registered on the website may be transferred to the Public Administrations that correspond by law, to other companies of the business group for internal administrative purposes, and to the providers of the data controller

necessary for the proper fulfillment of contractual obligations.

Personal data will be kept for the duration of your supply contract with EDP, in all other cases, for the time necessary to respond to your requests or to analyze the content of your responses to surveys. After the relationship ends contract, answered your requests or analyzed your responses, as appropriate in each case, your personal data will be deleted, keeping the rest of the information anonymized for statistical purposes only. Notwithstanding the foregoing, the data may be kept for the period established to comply with the legal obligations of maintenance of the information and, at most, during the limitation period of the corresponding legal actions, the data must be kept blocked during the mentioned limitation period. After this period, the data will be deleted.

In application of the provisions of article 32 of the RGPD, EDP undertakes to comply with the security obligations of those data provided by users, trying to establish all technical means at its disposal to prevent loss, misuse, alteration, unauthorized access authorized and theft of the data that the user provides through it, taking into account the state of the technology, the nature of the data provided and the risks to which they may be exposed. Notwithstanding the foregoing, the user must be aware that the measures security in the TELEPHONE CHANNEL are not impregnable.

EDP will treat the user's data confidentially at all times, keeping the mandatory duty of secrecy regarding them, in accordance with the provisions of the regulations of application.

The user can exercise their rights of access, rectification, deletion, opposition, limitation and portability, as well as the revocation of the consents granted

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previously, in the legally established terms, communicating it in writing to EDP, to the following address: LOPD Communication Channel, Plaza del Fresno, nº2, 33007 Oviedo.

Likewise, you can exercise these rights by sending an email with your data personal to cclopd@edpenergia.es. In both cases, a photocopy of the DNI of the holder or document that proves his identity.

Likewise, you can contact the EDP Data Protection Delegate, at following postal address: Plaza del Fresno, 2 33007 Oviedo or by email dpd.es@edpenergia.es, in the event that you understand that any of your rights has been violated related to data protection, or where appropriate, file a claim with the Spanish Data Protection Agency at Calle de Jorge Juan, 6, 28001 Madrid".

In the contracting process, the following is reported again: "Your data personal information and those of the represented party will be processed by EDP Comercializadora SAU and EDP Energía SAU for the management of its contracts, fraud prevention, implementation of profiles based on client and EDP information, as well as carrying out personalized communications about directly related products or services with their contracts, being able to oppose them at any time".

Therefore, it is not possible to criticize a lack of information to those interested in the incoming calls while the information referred to in the first information layer (i.e., the one provided at the beginning of each call) complies with the information necessary of article 11 of the LOPDGDD (that is, identity of the person in charge, purposes of treatment and possibility of exercising rights) and a direct and easy to access the rest of the information (by accessing the website or pressing 0). It is important to highlight that the locution of the first informative layer is

automatically plays at the beginning of each incoming call and, therefore,

Therefore, it is a must listen to all interested parties who make a call. By

For this reason, all the interested parties, before reaching the contract, have already been

informed about the possibility of exercising their rights and how to access the

Other information about the processing of your data. Also, before the

recruitment, EDP COMERCIALIZADORA reminds those interested -through a

second phrase- part of the basic information on data protection.

In accordance with article 13.4 of the RGPD, the obligation to inform does not apply

to the extent that the interested party already has the information; in the case that we

occupies, taking into account that the initial speech is played automatically

in each call, it is sufficiently accredited that any interested party who

gets in touch with EDP COMERCIALIZADORA through the CAC Inbound Channel

receives information regarding the protection of personal data. In this sense, the

Article 29 Group (currently known as the European Committee for the Protection of

Data) indicates in its Guidelines on Transparency under Regulation (EU)

2016/67 ("Transparency Guidelines") that it should be understood that article 13.4

of the RGPD is applicable in those cases in which the information would have

been provided, for example, in the previous six months. As far as the

CAC Inbound channel, not only would have spent a time clearly less than 6 months

but the lapse of time can be measured in minutes, so it is manifest that the

interested party knows, knows and perfectly remembers the information on data protection

data without it being necessary to reiterate this information

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(iii)

Regarding the information provided in the Telemarketing channels and leads

He points out that this Agency questions the means to access the second layer informative (i.e., the General Conditions available on the website edpenergia.es) is “simple and immediate”

It indicates that EDP COMERCIALIZADORA has accredited in the present procedure the following: • First, the information on data protection data (i) is clearly identified within the general conditions of contracting of EDP COMERCIALIZADORA (in section 16 and entitled LOPD) and (ii) occupies in length one of the four pages of the document, so its location has no loss for the interested party.

You inform this Agency that you have created a separate document containing, exclusively, the data protection information of the conditions general terms of contracting, which is easily accessible through the website and at the following address: www.edp-residencialbytotal.es/rgpd; and that likewise, the general contracting conditions continue to include the clause relating to the processing of personal data, so that the interested party has various means through which you can access the information In a simple way.

• Secondly, it alleges that the way to provide information on the second information layer can be diverse and, as such, has been recognized by data protection authorities. As indicated in the Arguments to the Start Agreement, when the hiring takes place, the conditions are sent general terms of contracting -where the specific clause is included in terms of

Data Protection-; therefore, making this information available to through the website should be understood as an alternative system and complementary.

In this sense, the Transparency Guidelines expressly indicate that

“When the first contact with an interested party is through the telephone, this information [first information layer] could be provided during the call with the interested party and he could receive the rest of the information required under the article 13 or 14 by a different additional means, for example, by sending you a copy of the privacy policy by email or a link to the online privacy statement/notice of the controller”.

In accordance with the criteria of the competent authorities, including the AEPD, EDP COMERCIALIZADORA would not have committed a violation of the duty of transparency, while complete information on data protection

(with the content required by the regulations) is contained within the conditions

General terms of contracting that are sent to the interested party after contracting. The

Transparency Guidelines also indicate that, depending on the circumstances

of the collection and processing of the data, a data controller could

be forced to additionally use other possible ways to transmit the

information to data subjects applicable to relevant settings provided that the

information from the first information layer is transmitted in the first modality

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used to communicate with the interested party. For this reason, EDP

COMERCIALIZADORA complies with its obligation of transparency by facilitating the information from the first informative layer by telephone and the second layer information in writing (either physical or electronic document). That's it

It is important to point out that the most transparent and suitable way for the interested party to receive information about the processing of your personal data is including it together with the information on the contracting of the services, insofar as this is the circumstance with which the processing of your data is related and is, in addition, a document that the interested party will keep during their contractual relationship with EDP MARKETING.

(iii)

Regarding the content of the information provided by telephone and in the general conditions:

- Specification of the data controller:

The AEPD questions the clarity with which the interested party knows which entity acts as data controller, however, as evidenced in the conditions terms of contracting of EDP COMERCIALIZADORA (provided as evidence 6) of this procedure, the client is informed about the identity of the person in charge of the treatment through the privacy policy in relation to the conditions of hiring:

Privacy policy: "the data will be processed by EDP Comercializadora SAU and EDP Energia SAU".

Specific conditions of the contract:

"The client contracts, for the indicated supply, the supply of gas with EDP Comercializadora, S.A.U. and the supply of electricity and/or services with EDP ENERGIA, S.A.U., (hereinafter joint and/or individually, as applicable, referred to as "EDP") in accordance with the Terms

Specific that are collected below and to the General Conditions in annex”.

As explained in the allegations to the Home Agreement, information is included on both entities insofar as, depending on the service that is requested by the interested party (gas and/or electricity), one or another entity will be responsible for the treatment (or both in case the interested party contracts both services). Therefore, the interested party -who has full capacity to contract and, therefore, is presupposes that you should be able to understand the terms and conditions that govern such hiring, you are aware at all times that, as you hire the gas and/or electricity supply service, your data will be processed by one or both entities.

- Purposes and bases of legitimacy

It is alleged that neither article 13 of the RGPD nor any other legal precept requires that the privacy policy list each purpose specifically indicating the basis of legitimacy that results from application. Still, when it comes to treatment Subject to consent, it is expressly indicated what they are. In any case, as was already indicated in the Arguments to the Initiation Agreement, in the case of the bases of legitimacy of "contractual execution" and "legitimate interest", it is evident for any person who contracts the supply services of EDP

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MARKETER that the treatments closely linked to the execution of the contract such as "manage, maintain, develop, fulfill and control the contracting of electricity and/or gas supply and/or complementary services of and/or

gas and/or complementary review services and/or technical assistance and/or program of points, and/or improvement of the service” find their basis of legitimacy in the execution of the contract, being the other treatments assignable to the legitimate interest (eg the carrying out fraud prevention actions or sending communications commercial). Legitimate interests are clearly exposed and put into relation to the purposes pursued (that is, fraud prevention and marketing, in relation to sending commercial communications personalized) and given that there is an identification between the informed purpose and the own interest pursued, making a separate allusion would be redundant.

- Profiling

It is stated in the allegations that in the Resolution Proposal, the AEPD considers that, in relation to "profiling", it is not clear what its purpose is or the legitimate interest underlying the treatment. In this sense, the AEPD states in the Motion for a Resolution the following: “In this case, in the opinion of this Agency, the information requirements described above. EDP MARKETING, S.A.U., is limited to reporting on "profiling", but does not offer a information on the type of profiles that are going to be carried out, the specific uses to which these profiles are going to be used or the possibility that the interested party can exercise the right of opposition in application of article 21 of the RGPD.” However, the profiling is associated with sending commercial communications personalized: "they will be treated (...) with the purpose of (...) profiling, personalized commercial communications based on information provided by the Customer and/or derived from the provision of the service by the Marketer(s) and relating to products and services related to the supply and consumption of energy, maintenance of facilities and equipment.

Although the wording could have included “for the shipment of” (that is, the text

outside “as well as creating profiles for sending commercial communications based on information provided by the Client (...)”, this absence does not should be understood as EDP COMERCIALIZADORA violating article 13 of the GDPR.

- Exercise of rights:

It is alleged that in the opinion of the AEPD, it should be expressly indicated which are the treatments to which the right of opposition applies. However, as already stated in the Allegations to the Initiation Agreement, the obligation to detail the specific treatments to which the interested party has the right to oppose not only it is not an obligation contained in the RGPD, the LOPDGDD or any other regulation of application, but also the AEPD in its guides and tools (among others, the Guide for compliance with the duty to inform² or the Facilita tool³) does not indicate that the informative clauses on the right of opposition must specify the treatments on which the right of opposition applies, not even as an example of Good practice. In any case, EDP COMERCIALIZADORA expressly indicates that The interested party may oppose some voluntary treatments, such as the

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promotion, profiling, automated decision-making and making commercial offers.

He points out that the proposed resolution indicated that: “It is imprecise to point out that the interested party can oppose the adoption of automated decisions of their personal information. These can only be carried out by the person in charge in the

assumptions provided for in article 22 of the RGD, based in the present case on the consent of the interested party, so he must be able to know that he can revoke the consent given for the adoption of such decisions in any time, notwithstanding that you are also informed of the rights conferred by the article 22 to the interested parties.” It is alleged that the semantic and technical nuance associated with the terms "opposition" and "revocation" in the context of the exercise of rights can have an impact on the interested party, because with both terms the user achieves a same objective, which is that treatment specifically identified in the policy cease to occur.

Furthermore, the term used by EDP COMERCIALIZADORA (opposition) in the context of this type of treatment is understood in the regulations and by the market in a broader way -and therefore more guaranteed- since it allows the user delete a treatment is based on consent, is based on interest legitimate.

- Processing based on consent:

The AEPD considers that information on processing subject to consent it is not completely clear. However, this part cannot agree with this interpretation for the following reasons:

In the first place, the AEPD questions that in point (IV) it is not clear as to what data refers to the phrase “the results obtained from the aggregation of the data indicated” and argues the existence of confusion as to whether the aggregated data are those referred to in point (II) and/or in point (III). However, as stated in the Allegations to the Initiation Agreement, from reading it is clear that “the results obtained from the aggregation of the data indicated” refers to the data indicated above, that is, the data referred to in point (II) and (III), since it is evident that the use of the anaphoric term “indicated” refers to the data referred to in the points

previous.

Secondly, the AEPD states that the difference in data processing advertising of this point with the previous points is not obvious. However, the difference is clear:

the advertising treatment derived from point (I) refers to offers of "services financial, payment protection services, automotive or related and electronics, own or third parties, offered by EDP and/or participation in contests promotions, as well as for the presentation of commercial proposals linked to the energy sector after the end of the contract", that is, services offered by EDP COMERCIALIZADORA not related to the contracted services but to the energy sector or other sectors such as finance or the automotive industry, and in addition to generic type - not custom;

- point (II) refers to "personalized products and services", that is, offers adapted to the commercial profile of the client; Y
- point (IV) refers to "making personalized offers, specifically aimed at to achieve the contracting of certain products and/or services of EDP or third parties

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entities", that is, to the realization of personalized offers with a specifically to achieve the sale of certain products or services, being the customization not only with respect to the client but also with respect to the concrete service or product offered.

The AEPD's criticism of the granularity offered by EDP COMERCIALIZADORA does not

can be understood in the light of its own recommendations and those of the European Committee of Data Protection, which ask for precisely such detail and granularity.

QUARTER.-

MARKETER.

COOPERATION AND PROACTIVE ATTITUDE OF EDP

EDP COMERCIALIZADORA is studying and analyzing the implementation of the timely measures for the adoption and adaptation to the recommendations, best practices and the criteria established by the AEPD both in the present procedure as in its guides and publications (in addition to the improvements already implanted to which reference has been made above), in order to improve all its data protection policies, clauses and general conditions through the which is informed about the treatment of the personal data of its clients and Potential customers

FIFTH.- BREACH OF THE PRINCIPLE OF INTERDICTION OF THE ARBITRARINESS.

It is pointed out that certain recommended practices (and even applied by the AEPD in their own privacy policies) have served in this case to argue and motivate the alleged infractions committed by EDP COMERCIALIZADORA (for For example, the presentation of information related to the exercise of rights of stakeholders collected in the Second Allegation). These aspects that, a priori, the AEPD recommends and puts into practice, considering them examples that fit the applicable regulations, are used as infringing elements to justify the supposed

EDP

MARKETER.

non-compliance with various precepts

legal by

SIXTH.- LACK OF LIABILITY IN EDP'S ACTION

MARKETER-

By virtue of all of the foregoing, EDP's actions

MARKETING COMPANY cannot be considered guilty in the eventual commission of

the administrative offenses in terms of data protection that are imputed to it. In the

sanctioning administrative sphere it is not enough that the conduct is typical and

unlawful (which in this case, it is not), but it is also a requirement

inescapable that he is guilty, that is, the consequence of an action or omission attributable

responsible for intent or inexcusable fault, without any luck being admissible

of strict liability that exempts the Administration from accrediting

fully the requirement of guilt or intentionality in the commission of the

infringement. (Judgments of the Supreme Court of July 9, 1994, May 16,

1995, December 12, 1995, January 12 and 19, 1996, April 15, 1996, between

many others.)

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It is also worth mentioning that the appreciation of the subjective element of the

infraction is determined by the degree of foreseeability that it had for the subject

affected that their behavior could be considered typical and unlawful and, therefore,

likely to be penalized. The subjective element of guilt can only

attend when, in view of the situation existing at the time of the

conduct, the subject could reasonably anticipate that he was committing a

infraction Judgments of the Excma. Third Chamber of the Supreme Court of May 8 from 2003 — ref. Aranzadi RJ 4209—, of July 7, 2003—ref. Aranzadi RJ 5832—, and of January 28 and 27, 2010 — ref. Aranzadi RJ 1362 and 1357.

Likewise, the doctrine of the contentious-administrative courts has excluded the concurrence of the essential culpabilistic element when the subject who has objectively committed the offense acted on the basis of a reasonable interpretation of the legal system.

A reasonable interpretation of the applicable regulations, even when it is not ultimately considered correct by the courts, excludes guilt, especially in those cases in which the applicable legal regulations are not clear or unequivocal.

SEVENTH.- SUBSIDIARILY,

THE PROPOSED SANCTIONS ARE
MANIFESTLY DISPROPORTIONATE AND SHOULD BE ENFORCED
EXTENUATING CIRCUMSTANCES.

In short, analyzing each of the alleged infractions that are imputed to EDP COMERCIALIZADORA, one can only interpret that there is an absolute disproportionality in the interpretation made by the AEPD in the Proposal for Resolution, not only because it lacks motivation when it comes to considering the alleged violation, but by the fact that the proposed sanctions are beyond any criteria assessed in advance by the AEPD itself. In this sense,

It should be added that the amounts of previous sanctions imposed in cases of Similar facts are not comparable to the proposals in this case.

Mitigating circumstances must apply: Indeed, any sanction imposed imposed on EDP COMERCIALIZADORA would have to be set in accordance with the articles 83.2 of the RGPD and 76.2 of the LOPDGDD, which contemplate instruments relevant for the Administration to adapt the proportionality of the sanctions. In

this case, as stated in the Arguments to the Initiation Agreement,

the following mitigating circumstances that are hereby amply concur:

abstract:

- The nature, seriousness and duration of the infringement: according to article 83.2.a) of the RGPD, the assessment of this circumstance must take into account "the nature, scope or purpose of treatment" (...) and "the level of damages that have suffered". In this sense, what is imputed to EDP COMERCIALIZADORA is the need to improve some aspects of its data protection policies, without that in no case can the texts used up to now be understood as have generated a high level of damages. Also, the treatments foreseen in these policies -which are known by the interested parties- are not particularly sensitive, neither because of the type of data processed nor because of the characteristics of treatment activities. Therefore, not only is it inappropriate to consider

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aggravating circumstance the nature of this infraction but, the foregoing must

be considered as a mitigating circumstance applicable to this proceeding.

- The intention or negligence in the infringement: EDP COMERCIALIZADORA has not showed any intent or negligence. The AEPD, in its Proposal for Resolution, indicates that "the defects indicated in the information provided show the lack of diligence by EDP COMERCIALIZADORA in complying with the transparency obligations. Therefore, what this Agency seems to be referring to is the absence of all the diligence that, according to said Authority, would be expected of EDP

MARKETER. However, it does not seem that this statement can be understood as "intention or negligence" in its action insofar as, as has been stated in the Allegations to the Initiation Agreement and in these allegations, EDP COMERCIALIZADORA has carefully observed the guidelines, guidelines and tools made available by the AEPD itself and the Committee European Data Protection for the fulfillment of its obligations of Data Protection. For this reason, the diligence of EDP COMERCIALIZADORA should be taken into account as an extenuating circumstance.

- The high link between the activity of the offender and the performance of treatment of personal data: EDP COMERCIALIZADORA is dedicated, as stated by the AEPD in the Motion for a Resolution, to the supply of gas, an activity that is not intensive in the processing of personal data and that although it is true that the development of activity of EDP COMERCIALIZADORA involves the processing of personal data, this is instrumental without its activity being based on the exploitation of data personal. In this sense, the low link between EDP's activity COMERCIALIZADORA in the processing of personal data should be considered a extenuating circumstance.

- Any measure taken to alleviate the damages: as stated to the knowledge of the AEPD, EDP COMERCIALIZADORA is immersed in the review and improvement of its procedures and clauses in order to adapt and implement the recommendations made by this Agency, preventing it from any type of damage or harm to the interested parties. Proof of this is that some of the recommendations of this Agency are already implemented, such as improving access to information on data protection, which is already available at the address edp-residencialbytotal.es/rgpd as well as the new protocol contracting through a representative, which was already provided to the procedure on

last July 16, 2020 and has already been implemented last January.

- Degree of cooperation with the authority: EDP COMERCIALIZADORA has shown

from the beginning of this procedure a completely collaborative attitude with the

AEPD, as has been accredited in this writing. In the allegations to

Home Agreement provides more complete information regarding the

cooperation shown by EDP COMERCIALIZADORA.

- Categories of data and impact on the rights of minors: the data subject

treatment are not special categories of data and have not been affected

rights of minors (the clients of EDP COMERCIALIZADORA are always

of legal age with the capacity to contract).

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- Continuous nature of the infraction: as has been proven, EDP

MARKETER, from the moment it has become aware of the

improvements that, in the opinion of the AEPD, could be adopted in its policies, has proceeded to

analyze their texts and procedures. Therefore, it cannot be understood that it is

an infraction of a continuous nature, although this Agency must understand that in

complex corporate groups the processes of change and adaptation of

Procedures cannot be done immediately. However, this does not

alleged infraction that is imputed must be understood as “continued”.

- Status as a large company and its volume of business: the fact that EDP

COMERCIALIZADORA is considered a large company and cannot be used

as an aggravating circumstance as it is not a circumstance foreseen or in the RGPD

nor in the LOPDGDD. In addition, in this sense, the Supreme Court (sentence of 4 of November 2015, appeal 100/2014) has stated in recent case law but consolidated that "it is not feasible, in any case, to presume malicious conduct by the mere fact of the special circumstances surrounding the passive subject of the imposition (economic importance, type of advice received, etc.) (...). [It that the public power cannot do, without violating the principle of culpability that derives from art. 25 CE [see, for all, the Judgment of this Section of June 6, 2008 (cas. rec. for the unification of doctrine no. 146/2004), FD 4], is to impose a penalty to a taxpayer (or confirm it in the administrative or judicial phase of appeal) due to its subjective circumstances -although it is a legal person, has great economic means, receives or can receive the most competent of the advice and is habitually or exclusively dedicated to the activity taxed by the breached rule". For this reason, it is not legal or constitutional to assess the status of a large company as an aggravating circumstance. Likewise, the AEPD also refers to "its volume of business" (a fact that is not considered as aggravating circumstance neither in the RGPD nor in the LOPDGDD). When quantifying the sanction, the AEPD refers to the global turnover of EDP MARKETER to quantify it, when it should take into account exclusively, and where appropriate, the billing data generated by the eventual alleged breach -in the case of article 25 of the RGPD, relating exclusively to hiring by representation. In this sense, the AEPD, in its investigation in within the framework of the procedure, requested and obtained specific data on the volume of recruitment by representation and the tiny part that corresponds to the overall activity of EDP COMERCIALIZADORA, and should in any case have taken it into account in the Motion for a Resolution, which has not happened. Also, as has been indicated in the First Allegation, the volume of business derived from the

contracting with a representative represents approximately 0.26% of the volume of overall business. For its part, with regard to the sanction associated with the alleged infringement of article 13 of the RGPD, the AEPD should not have taken into consideration the global billing of your activity

Benefits obtained as a result of the infringement: the alleged commission of the imputed infringement has not generated any type of economic benefit, direct or indirect, to EDP COMERCIALIZADORA. In any case, if this Agency considers the Otherwise, the benefit should be calculated according to the criteria that have been indicated in the First Allegation, taking into account that the volume of business derived from contracting through a representative, represent only 0.26% of the global turnover and that the proposed penalty (500,000 euros) represents a disproportionate amount in relation to the benefits obtained

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. • High volume of data and processing: contrary to what this Agency indicates in its Resolution Proposal, the presumed infractions attributed to EDP COMERCIALIZADORA does not affect “all the data processing carried out by the entity EDP COMERCIALIZADORA S.A.U.”, but only to the treatments related to customers. In fact, the AEPD itself acknowledges in the section on "High number of interested parties" that “[t]he infraction affects all clients who are natural persons of the entity”, but does not indicate any other group of interested parties. Also, in what that refers to contracting by third parties on behalf of its owner, is relevant point out that said contracting only affects 0.26% of the turnover

of EDP COMERCIALIZADORA so it is evident that the volume of data and affected treatments is minimal. For this reason, the small number of treatments affected, and especially, in relation to contracting through representative, must be taken into account as a mitigating circumstance.

- Recent acquisition of EDP COMERCIALIZADORA: as we have indicated in the Preliminary allegation of this writing, EDP COMERCIALIZADORA has been recently acquired by the Total Group. By virtue of article 76.2.e) of the LOPDGDD, in conjunction with article 83.2.k) of the RGPD, this part understands that This circumstance must be taken into consideration when, where appropriate, modulating and mitigate the potential sanction - a sanction that in any case this party understands that proceeds-. Although the aforementioned precept includes the cases in which the structural modification is a merger by absorption, in application of the principle of teleological interpretation, its regulation should be extended to other modifications structural carried out after the commission of the infraction and that have As a consequence, the imposition of disproportionate and burdensome sanctions on the new entity that did not commit the initial violation.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

1. The file shows that EDP COMERCIALIZADORA uses the following channels to formalize the contracting of their services:

A. Telephone Channel, with partial or definitive closure of the contracting process through a phone call. Includes the following subchannels:

- CAC Inbound: Reception of calls, from clients to EDP. In

In general, they are already EDP clients who identify themselves from the beginning of the call through a security protocol, although they can also be received

calls from potential clients.

- Telemarketing: Issuance of calls, from EDP to databases

owned by already customers for upselling or abandonment recovery. Used

to make the call the telephone number that appears on the file

of the client, and that has been provided by said person previously.

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- LEADS: Emission or reception of calls, about users who have

expressed an interest in any platform or web page (sweepstakes,

promotions, offer comparators, blogs, advertising agencies, etc.)

leaving their basic data to be contacted or contacting themselves at

the phone number shown to them. Normally such users still

they do not have active contracts with EDP.

B. Web channel, with closure through a digital form. The user accesses through

a website and initiates a totally online contracting process, without interaction with

agents.

C. Distributors, with face-to-face or digital closure of the contracting process,

including:

- EDP's own Commercial Offices. Normally, EDP clients who

proactively come to the office, although they can also be clients

potentials.

- External stores (eg ***STORE.1). In general new clients who come to

make their purchases and are interested in EDP's offer.

D. External Sales Forces, with face-to-face closing of the contracting process,

including:

- Stands at Fairs, Shopping Centers, etc. Generally new customers who

they attend these events or places and are interested in EDP's offer.

- Home visits with prior request. Clients or potential clients who have

provided your data and consent to receive proposals from an agent of

EDP at home.

2. The contracting procedures implemented in those cases in which the

contracting is carried out by a third party on behalf of the owner are the following:

A) Telephone channels:

A.1 – CAC INBOUND 1) When the user indicates that he wishes to make a contract

as a representative, you are asked about your relationship with the owner and if you have

authorization of said person. 2) Once the previous point has been confirmed,

identification data of the representative, and all the data of the owner necessary to

formalize the contract. 3) Finally, the Consent is read and recorded in audio

representative express. 4) The holder of the contract, for information purposes, is sent

in duplicate, with stamped envelope, the contractual documentation in compliance

of the provisions of the regulations for the protection of consumers and users.

A.2 – TELEMARKETING 1) When the user indicates that he wishes to make a

contracting as a representative, you are asked about your relationship with the owner. 2) One

Once the previous point has been confirmed, identification data of the representative is requested, and

all the data of the owner necessary to formalize the contract. 3) Then

the Express Consent of the representative is read and recorded in audio. 4) Finally

durable support is sent to the phone/sms provided by the representative, and is expected

to your confirmation. 5) The holder of the contract, for information purposes, is sent by

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duplicate, with stamped envelope, the contractual documentation in compliance with the provided in the regulations for the protection of consumers and users.

A.3 – LEADS 1) When the user indicates that he wishes to carry out a contract as representative is asked about his relationship with the owner. 2) Once confirmed the previous point, identification data of the representative is requested, and all the data of the owner necessary to formalize the contract. 3) It is then read and recorded in audio Express Consent of representative. 4) Support is then sent to the phone/sms provided by the representative, and await confirmation. 5) To the holder of the contract, for informative purposes, it is sent in duplicate, with an envelope stamped, the contractual documentation in compliance with the provisions of the regulations for the protection of consumers and users. 6) In this channel, by mode contracting and the characteristics of the clients that use it, it is underway, as a pilot test, communication via SMS or e-mail to the principal (in cases of not related to the representative to study its effectiveness and receptivity.)

B. Distributors:

In the case of contracts made at EDP's own Commercial Offices (in outside stores there is no possibility of contracting in the name and representation of a third party) the procedure is as follows:

1) In those cases in which the user indicates that he wishes to make a contract As a representative of a third party, you are asked about your relationship with the owner. 2) Once the information is obtained, the identification data of the representative is requested, and all the data of the owner necessary to formalize the contract. Likewise, it

requires a photocopy of the NIF, both of the representative and the represented. 3)

The presentation of an authorization document is also required.

completed and signed by both interested parties (representative and owner).

C. External Sales Forces:

In the case of contracts made by external sales forces (fair stands, shopping centers and home visits, provided there is a prior request by the of the interested party), the contract will collect the identification data of the representative, also requesting the holder's data necessary to formalize the contract.

In the contract, it is expressly specified that the representative declares to have of sufficient powers to sign the contract on behalf of the client to whom responsible for informing of all the conditions of the same. It is required, on the other part, of a photocopy of the NIF of the representative.

Next, a verification of the hiring is recorded in audio where you are twice indicates to the representative the fact that he is acting on behalf of the owner of the supply and the relationship-kinship that links them is confirmed.

To accredit the representation, the hiring stub is formalized where the representative declares to have sufficient powers to sign the contract in name of the client who is responsible for informing of all the conditions of East. Likewise, a copy of the NIF of the representative is provided.

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3. The file shows that the documentation used by EDP

COMERCIALIZADORA, S.A.U. to accredit the representation of the owner when signing

a contract is as follows:

A. Telephone Channel:

In the three subchannels of the telephone channel (evidence 2, 3 and 4, CAC Inbound channels,

Telemarketing and Leads respectively) the representative is requested, during the

recording of the contracting procedure, confirmation of the following aspects:

of their identity and DNI, of their performance on behalf of the owner, of the relationship with

the represented (such as husband, wife, child, proxy, representative); of identity

(name, surnames, DNI) of the represented, and telephone and email. The

supporting documentation of the representation of the holder of the contract consists of the

recordings in which the representative makes the aforementioned confirmations. In

In the case of telemarketing and LEADS channels, the representative is also sent a

sms/email with the following text "EDP Offer: Please, answer with a YES to this

SMS to accept and activate discounts." (exhibits 10 and 12).

B. Distributors: In the case of commercial offices owned by EDP Comercializadora

DP, it is requested completed and signed by both interested parties (representative

and holder) an express authorization document containing the details of both

people and copies of their NIF.

In the channel own commercial offices (evidence 5) the representation is accredited

through a document called "representative management authorization template",

in it the owner (identified with his name and DNI or CIF), in his own name or

representation of the company authorizes the representative equally identified with his

name and DNI to carry out different procedures (registration/deregistration, change of ownership,

change of direct debit and/or other procedures) and must be indicated in the box

adjoining each one of them which are the authorized procedures. Saying

The document requires the signature of the authorizing and the authorized. Also, this document

contains the following warning "TO BE VALID, THIS AUTHORIZATION

IT MUST BE SUBMITTED ACCOMPANIED BY A PHOTOCOPY OF THE DNI OF THE HOLDER AND OF THE AUTHORIZED. IN THE CASE OF AUTHORIZATION GRANTED BY A REPRESENTATIVE OF THE TYPE S.A., S.L., A.I.E, U.T.E, CB, COMMUNITY OF PROPRIETORS, FOUNDATIONS, SCHOOLS, IN ADDITION, IT WILL BE REQUIRED PHOTOCOPY OF THE TIMELY POWER OF ATTORNEY.

C. External Sales Forces: In the case of external sales forces (market stands, fairs, shopping centers and home visits, provided there is a prior request by part of the interested party), a document is used to accredit the representation called sales stub (exhibit 6). In said checkbook, there are spaces to fill in the details of the contract holder (name, surnames, telephone and email) and data of the representative (name, NIF and address) and include several boxes to mark that the representative is in quality of spouse/registered partner, ascendant/ descendant or proxy) under such boxes, a text states that "it declares that it has sufficient powers to sign this contract on behalf of the client who is responsible for informing

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all its conditions." A verification recording is made where confirms with the representative the data of the principal, as well as the relationship or kinship that unites them (evidence 16)

4. It is clear from the evidence presented that in the contracting subchannels

By telephone, the representatives are informed that "On behalf of their client, and after passing an analysis of the risk of the operation, we will take the necessary steps

to activate the access contracts, at which time the

new contract, the previous one being terminated.”

5. It is stated that during the contracting process, in the contracting channels

consent is requested from the representative on behalf of the principal

to carry out other treatments such as sending offers related to the

energy adapted to your profile after the end of the contract or send you at any

moment information on non-energy products or services of companies or

EDP collaborators. (exhibits 2, 3 and 4).

During this process, the consent of the representative is also requested in

name of the represented to complete the commercial profile with base information

data from third parties, in order to send you personalized proposals and the

possibility of contracting or not certain services.

In the channel of external forces, the possibility of rendering such

consents. As evidence 6 shows under the heading

CUSTOMER/REPRESENTATIVE, after noting that the information regarding data protection

data can be read on the back, allows marking the following consents,

checking the box together with each of them:

☐ I consent to the processing of my personal data once the relationship has ended contractual, for the realization of commercial communications adapted to my profile of products and services related to the supply and consumption of energy. Likewise, I consent to the aforementioned treatments during the term and after the end of the contract, on non-energy products and services, both of the companies of the Group EDP as third parties.

☐ I consent to the processing of my personal data for the preparation of my profile commercial with information from third-party databases, for the adoption, by EDP, of automated decisions in order to send

personalized commercial proposals, as well as to allow, or not, the contracting of certain services.

6. Evidences 2, 3 and 4 show that during the telephone contracting process

The following information is provided to the representative: "Your personal data and those of your represented will be processed by EDP Comercializadora SAU and EDP Energía SAU to the management of your contracts, fraud prevention, creation of profiles based on customer and EDP information, as well as communications personalized information about products or services directly related to their contracts, being able to oppose them at any time".

In the telemarketing channel and evidence leads 3 and 4, the following is added "Les We remind you that you can exercise your access rights at any time,

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rectification, opposition, deletion, limitation and portability, through any of the ways indicated in the General Conditions that can be consulted on our website www.edpenergia.es."

Said information does not appear in evidence 2 corresponding to the CAC inbound channel.

In the own offices channel, the information provided is as follows (evidence 5)

"The interested parties are informed that the personal data provided in

this form will be treated as data controller by EDP ENERGÍA,

S.A.U. and EDP COMERCIALIZADORA, S.A.U. so that they can be used

for the processing of the authorized management.

The personal data that you provide us will be used, in the manner and with the

limitations and rights recognized by the General Data Protection Regulation (EU) 2016/679.

Interested parties whose data is processed may exercise the rights of access, rectification, deletion, portability, limitation and opposition to the treatment of these data, proving their identity, by email addressed to cclopd@edpenergia.es or by writing to the data controller at address Plaza del Fresno, 2 – 33007 Oviedo (Asturias). Also, you can put in contact with the EDP Data Protection Delegate, at the same address postal or email dpd.es@edpenergia.es, if you understand violated any of your rights related to data protection, or in your case, file a claim with the Spanish Agency for Data Protection "

In the External Forces Channel, the sales stub provides the following information. On the back of the first page there is a section entitled "Basic information on Data Protection": which includes the following:

"Personal data will be processed by EDP COMERCIALIZADORA, S.A.U. and EDP ENERGÍA, S.A.U. (hereinafter, jointly, EDP) as Data Controllers, for the maintenance, development, compliance and contractual relationship management, fraud prevention, profiling based on information provided by the Client and/or derived from the provision of the service by EDP, as well as sending commercial communications, related to products and services related to the supply and consumption of energy, maintenance of facilities and equipment, and that may be customized in based on your Client profile, as reported in the General Conditions, being able to object at any time to the sending of commercial communications.

Additionally, the Client gives his explicit consent for the processing of personal data collected on the front. Without prejudice to the consents

provided, the client may exercise, at any time, their rights of access, rectification, opposition, deletion, limitation and portability, through any of the routes indicated in the General Conditions.”

In the part of general conditions, the following information regarding personal data protection:

“LOPD Purposes of the processing of personal data. According to provided in the current regulations, the client is informed that all the data provided in this contract are necessary for the purposes of its formalization.

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These data, in addition to those obtained as a result of the execution of the contract, will be processed by EDP COMERCIALIZADORA, S.A.U, with address at c/General Concha, 20, 48001, Bilbao and by EDP ENERGIA, S.A.U with address at Plaza del Fresno, 2 -33007, Oviedo in their capacity as Data Controllers, in order to manage, maintain, develop, complete and control the contracting of electricity and/or gas supply and/or complementary services of and/or gas and/or complementary review services and/or technical assistance and/or program of points, and/or improvement of the service, to carry out actions to prevent fraud, as well as profiling, personalized commercial communications based on information provided by the Client and/or derived from the provision of the service by EDP and relating to products and services related to the supply and consumption of energy, maintenance of facilities and equipment.

These treatments will be carried out in strict compliance with the legislation

in force and to the extent that they are necessary for the execution of the contract and/or the satisfaction of the legitimate interests of EDP, provided that the latter are not other rights of the client prevail.

Provided that the client has explicitly accepted it, their personal data will be treated, even once the contractual relationship has ended and provided that no produces the opposition to said treatment, to:

(I) The promotion of financial services, payment protection services, automotive or similar and electronic, own or third parties, offered by EDP and/or participation in promotional contests, as well as for the presentation of commercial proposals linked to the energy sector after the end of the contract, (II) The preparation of commercial profiles of the Client through the aggregation of the databases of third parties, in order to offer the Customer personalized products and services, thereby improving the customer experience, (III) Decision-making automated, such as allowing the contracting, or not, of certain products and/or services based on the Client's profile and particularly, on data such as the non-payment history, hiring history, permanence, locations, data of consumption, types of devices connected to the energy network, and similar data that allow knowing in greater detail the risks associated with contracting. (IV)

Based on the results obtained from the aggregation of the indicated data, EDP may make personalized offers, specifically aimed at achieving the contracting certain products and/or services of EDP or third parties depending on whether the client has consented or not, being in any case treated data whose age will not exceed one year. In the event that this process is carried out carried out in an automated way, the client will always have the right to obtain intervention by EDP, admitting the challenge and, where appropriate, assessment of the resulting decision.

Categories of processed data

By virtue of the contractual relationship, EDP may process the following types of data

Personal: (I) Identification data (name, surnames, DNI, postal address, address of electronic mail, point of supply, etc.), (II) Codes or identification keys of user and/or Client, (III) Data of personal characteristics (date of birth, gender, nationality, etc.), (IV) Data on social circumstances (hobbies, style of life, marital status, etc.), (V) Energy consumption data and derived lifestyle habits of these, (VI) Economic, financial, solvency and/or insurance data.

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Personal data will be kept for the duration of the contractual relationship.

and at most, during the statute of limitations for legal actions

corresponding, unless the Client authorizes its treatment for a longer period,

Organizational and security measures are applied from the beginning of the treatment

to ensure data integrity, confidentiality, availability and resiliency

personal

Communications and recipients of personal data.

All personal data derived from the provision of the service and those obtained in

under this contract may be communicated to the following entities:

Yo)

The corresponding distribution company, producing with it a

permanent exchange of information for the adequate provision of the

service, including the request for access to your network, the readings (which in the case

remotely managed meter will be hourly) and/or estimation of consumption, control of supply quality, request for supply cuts, modifications in the power etc.

The Organisms and Public Administrations that by Law correspond.

Banks and financial entities for the collection of services provided.

Other companies of the business group, solely for administrative purposes and the management of contracted products and services.

National capital solvency and credit services (Asnef-Equifax, ...) to which in the event of non-payment, without just cause by the Client, may communicate the debt, as well as fraud prevention services, for the sole purpose of identifying erroneous or fraudulent information provided during the hiring process.

EDP suppliers necessary for the adequate fulfillment of the contractual obligations, including those that may be located outside of the European Economic Area, being in such a case duly adequate international data transfer.

ii)

iii)

i)

i)

saw)

Rights of the data owner

The client will have at all times the possibility of exercising freely and completely free the following rights:

Yo)

ii)

iii)

i)

i)

saw)

vii)

Access your personal data that is processed by

EDP.

Rectify your personal data that is processed by EDP

that are inaccurate or incomplete.

Delete your personal data that is processed by EDP

Limit the processing by EDP of all or part of your

personal information.

Object to certain treatments and decision-making

automated processing of your personal data, requiring the intervention

in the process, as well as to challenge the decisions that

are finally adopted by virtue of the processing of your data.

Port your personal data in an interoperable format and

self sufficient.

Withdraw at any time, the consents granted

previously.

In accordance with current regulations, the user can exercise their rights

requesting it in writing, and together with a copy of a reliable document of accreditation

of identity, at the following postal address: Plaza del Fresno, 2, 33007 Oviedo or

in the email cclopd@edpenergía.es

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Likewise, you can contact the data protection delegate of

EDP at the following postal address Plaza del Fresno, 2, 33007 Oviedo or by mail

email dpd, es@edpenergía.es, in the event that any of the

your rights related to data protection, or where appropriate, file a

claim before the Spanish Agency for Data Protection, at the address Calle de

Jorge Juan, 6, 28001. Madrid “

7. It is stated that the number of contracts signed in 2018 and 2019 by third parties

on behalf of natural persons is as follows:

A. Telephone Channel:

A.1 – CAC INBOUND

Year Channel

2018 CAC

2018 CAC

2019 CAC

2019 CAC

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

1,346

394

983

278

Number of Contracts

2,865

82

1,201

42

Representation

Relationship

no relation

Relationship

no relation

A.2 – TELEMARKETING

Year Channel

2018 TELEMARKETING

2018 TELEMARKETING

2019 TELEMARKETING

2019 TELEMARKETING

A.3 – LEADS

Year Channel

2018 LEADS

2018 LEADS

2019 LEADS

2019 LEADS

B. Web: Contracting with a representative is not contemplated.

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

5,518

849

6,127

1,160

Representation

C. Distributors (own commercial offices):

Year Channel

2018 OCCC Kinship

2018 OCCC No relation

2019 OCCC Kinship

2019 OCCC Unrelated

D. External Sales Forces: (fair stands, shopping centers - home visits)

Number of Contracts

194

67

174

78

Year Channel

2018 FVE

2018 FVE

2019 FVE

2019 FVE

Representation

Relationship

no relation

Relationship

no relation

Number of Contracts

10,758

118

1,556

58

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8. It is recorded that on July 16, a letter from EDP was entered in the AEPD

Comercializadora S.A.U. in which he states that "he has reviewed the procedure to be followed

in contracting by third parties on behalf of the owner, in order to strengthen said

procedure and reduce the risks of possible identity theft carried out

in bad faith by the contracting party in this type of process, taking into account,

additionally, the particular needs identified due to the state of

alarm decreed last March and that has necessarily required that

All hiring is carried out remotely.

That in order to inform the AEPD of the specific actions that are

being carried out in relation to this matter by EDP, in compliance

of your duty of proactive compliance (accountability), we enclose the "Procedure of contracting by third parties on behalf of the owner", so that they have visibility on the modifications that are being implemented in said processes in order to meet your request in this regard, as well as to highlight the EDP's proactivity regarding its suggestion to adapt said process." This procedure is detailed below.

9. EDP COMERCIALIZADORA S.A.U, contributes in response to the request made by this Agency within the framework of research activities extract from the Register of Treatment Activities that includes the records related to the activities that are carried out in the field of contracting products and/or services and the analysis of risks realized relative to the treatments that are carried out in the context of the contracting of products and/or services.

7.

Scoring/profiling activities.

The risk analysis is contained in an Excel document, it does not contain a date no signature. 15 risk factors are listed; 1. Information commercially sensitive, 2. Commercial Communications, 3. Data Origin (external source or internal), 4. Data Transfers. 5, Treatment Managers. 6. Transfers international.

8. Decisions

automated. 9. Systematic headline monitoring. 10. Categories data specials. 11. Large-scale data processing. 12.

Data interconnections/ Big Data. 13. Minor Data / Vulnerable Owners.

14. Application or use of innovative technologies.15. unavoidable treatment/ Restriction exercise rights or service access. Regarding the valuation inherent risk potential, the risk scale has 4 levels: low, with a

rating from 0 to 12; medium rating from 13 to 25; tall from 26 to 38 and very tall

from 39 to 51. The assessment or weight given to each of the factors of

risk is from 1 to 4. In the risk analysis it is marked for each of the

sales channels a yes or no on each of the 15 risk factors before

listed. The sum of the weight attributed to each of the factors for

each channel determines the inherent risk. The result of inherent risk is

average in all the contracting channels, except in the web channels and

external forces through home visits in which the outcome of the

inherent risk is low. No risk correction measures are indicated.

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10. It is stated that to access the General Conditions, which are referred to in the

telephone processes to obtain the rest of the information regarding the treatment of

personal data, on the page www.energía.es the following process must be followed:

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-Access through the

<https://www.edpenergia.es/es/>

browser

of

Internet

a

the direction

- Introduction in the search engine of the text page itself: "General Conditions"

Internet

site of

-The

<https://www.edpenergia.es/es/buscadorGeneral.do?tiposBusqueda=C%7CM>

%7CD&idMenuSegmento=18&textoSearch=General+Conditions, 2 tabs

one called Related Information and the other Documents.

the following address:

sample,

bass

-The "Documents" tab of the Search Results is selected. Is

offers a total of 78 results, the third of them corresponding to the

"General contracting conditions".

-The "General contracting conditions" are selected and automatically

Open a new browser window pointing to the following internet address:

[https://www.edpenergia.es/resources/doc/comercial/2019/09/10/condicionesgenerales-](https://www.edpenergia.es/resources/doc/comercial/2019/09/10/condicionesgenerales-de-contratacion.pdf)

de-contratacion.pdf, where the document can be downloaded.

11. The following documents are provided in support of the allegations made:

Annex.1.a) Risk analysis methodology and implementation of Days

- Annex 1.b) RAT contracting EDP

- Annex 1.c) RAT Risk Assessment - EDP Contracting

- Annex 1.e) Impact Assessments -Risk Assessments

- Annex 1.f) Impact evaluations- Reports

Appendix 2 :

- Methodology_Privacy by Design by Default of EDP

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-
Operating Instruction Privacy by Design & Privacy by Default

Form Privacy by Design & Privacy by Default

Flowchart Privacy By Design Procedure.

Annex 4:

- Examples of requests for the exercise of rights.

The Methodology of risk analysis and performance of DPIAS (DATA PRIVACY ASSESSMENTS) contains on its first page a history of versions, being the date of the initial version 11/24/2017 and the last one on 05/11/2018 revision date prior to the applicability of the GDPR. It is accompanied by various annexes whose date not included or provided.

The document contained in annex 1.b RAT, EDPC, whose date is not stated, includes a processing purpose not included in the Record of processing activities sent to this Agency dated June 17, 2020. Specifically, said treatment which is now included has the following content:

Responsible: EDP Comercializadora S.A.U.

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Purpose of the treatment: "Performance of Scoring of clients of the previous B2C segment to hiring",

Description: "Performance of Scoring of clients of the B2C segment prior to the contracting according to the pending internal debt and information of files of solvency (ASNEF)."

Category of data holders: "Customers and potential customers."

Category of personal data processed: "Identification data and economic data."

Legal basis for carrying out the treatment: "Satisfaction of legitimate interests."

Period of conservation of personal data: "5 years from the end of the

contractual relationship. The certain, due and enforceable debt derived from the execution of the

The contract will be maintained until its cancellation or the statute of limitations of the actions

relevant collection laws."

Data transfers (data recipients, other than those in charge of processing):

"ASNEF is co-responsible for treatment, as the signed agreement must include

with ASNEF."

Treatment managers categories: The box has no content.

International data transfer: No

Annex 1.c) under the name "RAT Risk Assessment - EDPC Contracting", whose

date is not reflected in the document either, it contains the risk analysis, in the form of

matrix, equal to the one presented on June 17, 2020, with the same content, if

either two columns have been added under the heading "treatment requires PIA", both

entitled "EDP-W29 Criteria Number", the first indicates a number that seems

correspond to its title and the second indicates the need to carry out a

Impact evaluation. In this matrix also appears a new treatment whose

purpose is the "Carrying out of Scoring of clients of the B2C segment prior to the

hiring".

Various documents entitled impact assessments are provided, the date of which

is not stated either, these impact assessments are as follows:

-Assessment of risks conducting Scoring of B2C clients prior to contracting,

in which, among other threats, the following are indicated:

-“the basis that legitimizes the treatment is not adequate, is illegal or has not been formulated

adequately”, whose probability is set as high, with an impact qualified as

very high and resulting the inherent risk High. Regarding the controls implemented

Faced with this threat, it is stated that “the legal basis of the treatment is to satisfy a legitimate interest (prevention of fraud)”.

–“At the time of data collection, the minimum information is not provided

provided to the person or no information is provided.” In this case

it is considered that neither the probability nor the impact is “not applicable”, nor is there a risk

inherent, being the controls the “data protection clause included in the

contract signed with the client with all the information required by the RGPD” and the

“information provided to the client prior to the scoring process”

-Evaluation of channel leads to be converted by telemarketing

-Assessment of risks Telemarketing upselling and abandonment

-Assessment of CAC channel risks to clients or potential clients (inbound)

-Evaluation CanalOOCC customers and potential customers

- Risk assessment channel outside stores for sale to potential customers.

In all these impact assessments, they are considered as threats, among others.

many, those related to the fact that “the basis that legitimizes the treatment is not adequate, it is

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unlawful or has not been properly formulated” and “at the time of collecting the

data is not provided the minimum information provided to the person or is not

provides no information” In both cases the probability is assessed as high,

the impact as very high and the inherent risk as high. Controls are mentioned.

adopted, referring to the legitimizing basis of the treatment in the first case and "Data Protection clause included in the contract signed with the client with all the information required by the RGPD" in the second. They are described among ongoing checks for both threats on all channels except channel OCCC, "the implementation of a new contracting procedure through representative, incorporating the sending of an SMS/Email message through which provides the necessary basic information regarding data protection to the holder of the contract."

The date on which the actions in progress were incorporated into the corresponding impact assessments.

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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 04/27/2016, regarding the Protection of Natural Persons 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, 48, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve 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 in 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 relation to regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric “Definitions”, provides the following:

“2) «processing»: any operation or set of operations carried out on personal data or sets of personal data, whether by procedures

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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”.

7) “responsible for the treatment” or “responsible”: the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of treatment; whether the law of the Union or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the Specific criteria for their appointment may be established by Union Law.
or of the member states.

Article 24.1 of the RGPD provides regarding the responsibility of the person responsible for the treatment that “Taking into account the nature, scope, context and purposes of the

treatment, as well as the risks of varying probability and severity for the rights and freedoms of natural persons, the data controller will apply measures appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the processing is in accordance with this Regulation. These measures will be reviewed and They will update when necessary.”

In this case, it is stated that EDP COMERCIALIZADORA, S.A.U is the responsible for data processing, referred to in the factual background of the this agreement to initiate the sanctioning procedure, since, in accordance with the definition of article 4.7 of the RGPD, is the one who determines the purpose and means of the treatments carried out for the purposes indicated in the documentation provided regarding the contracting of their services, so that in their capacity as responsible for the treatment is obliged to comply with the provisions of the transcribed article 24 of the RGPD and in with regard to the effective and continuous control of "technical and organizational measures appropriate in order to guarantee and be able to demonstrate that the treatment is in accordance with the this Regulation”

Likewise, article 25.1 of the RGPD establishes that “Taking into account the state of the technique, the cost of the application and the nature, scope, context and purposes of the treatment, as well as the risks of varying probability and severity that the treatment entails. treatment for the rights and freedoms of natural persons, the person responsible for the treatment will apply, both at the time of determining the means of treatment as at the time of the treatment itself, technical and organizational measures appropriate, such as pseudonymization, designed to effectively enforce the data protection principles, such as data minimization, and integrate the necessary guarantees in the treatment, in order to meet the requirements of this Regulation and protect the rights of the interested parties.”

For these purposes, what is stated in the following recitals of the

GDPR:

74. "The responsibility of the data controller for data processing must be established.

any processing of personal data carried out by himself or on his behalf. In

In particular, the person responsible must be obliged to apply timely and effective measures and

must be able to demonstrate compliance of the processing activities with the

this Regulation, including the effectiveness of the measures. These measures must have

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taking into account the nature, scope, context and purposes of the treatment as well as the

risk to the rights and freedoms of natural persons."

75. "The risks to the rights and freedoms of natural persons, serious and

variable probability, may be due to the processing of data that could cause

physical, material or non-material damages, particularly in cases where

that the treatment may give rise to problems of discrimination, usurpation of

identity or fraud, financial loss, reputational damage, loss of

confidentiality of data subject to professional secrecy, unauthorized reversal of the

pseudonymization or any other significant economic or social damage; in the

cases in which the interested parties are deprived of their rights and freedoms or are

prevent exercising control over your personal data; In cases where the data

treated personalities reveal ethnic or racial origin, political opinions, religion

or philosophical beliefs, militancy in trade unions and the processing of genetic data,

data relating to health or data on sex life, or convictions and offenses

criminal or related security measures; In cases where they are evaluated

personal aspects, in particular the analysis or prediction of aspects related to the performance at work, economic situation, health, preferences or interests personal, reliability or behavior, situation or movements, in order to create or use personal profiles; in the cases in which personal data of vulnerable people, in particular children; or in cases where the treatment involves a large amount of personal data and affects a large number of interested.”

76. “The likelihood and severity of the risk to the rights and freedoms of the concerned must be determined with reference to the nature, scope, context and the purposes of data processing. The risk must be weighted on the basis of a objective evaluation by means of which it is determined if the treatment operations of data poses a risk or if the risk is high.”

Therefore, the data controller must carry out an analysis of the risks that the data processing carried out may have for the rights and freedoms of natural persons, implementing the technical and organizational measures appropriate to apply the principles of data protection and integrate the guarantees necessary in the treatment in order to comply with the requirements of the RGPD, and must be able to demonstrate that the treatment is in accordance with the provisions of the aforementioned standard.

The principles of data protection are contained in article 5 of the RGPD, the first of them related to the legality of the treatment. In accordance with article 5.1.a of the RGPD “Personal data will be: a) processed in a lawful, loyal and transparent manner in relation to the interested party (“lawfulness, loyalty and transparency”). The second number of article 5 provides that “The responsible for the treatment will be responsible for compliance with the provisions of the paragraph 1 and able to demonstrate it (“proactive responsibility”).”

The legality of the treatment implies that the personal data can only be

processed by the data controller when any of the bases

legitimizing listed in article 6 of the RGPD.

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Taking into account the documentation provided by the data controller,

It should be noted that the contracting of gas services by EDP,

COMERCIALIZADORA, S.A.U. can be carried out through different channels being

these the following:

A- Telephone, which includes the following subchannels: CAC Inbound, Telemarketing and leads.

B. Web channel.

C. Distributors, which includes EDP's own Commercial Offices and external Stores.

D. External Sales Forces, which can be: Stands at Fairs, Centers

Commercial, etc., or home visits with prior request.

In accordance with said documentation, the contracting of the service can be carried out

with a customer representative, except when it comes to the web channel and subchannel

outside stores where it is not allowed. The review of the procedures

contracting the service described by the person in charge and the documentation provided

show that when the contracting of the service is carried out through

representative is not required to prove the representation that he claims to hold.

This absence of accreditation has a single exception when the contracting of the

The service is carried out in the own commercial offices subchannel in which a

document accrediting the authorization granted for contracting by the

represented together with the presentation of the DNI of the latter (exhibit 5).

In this way, to the extent that a procedure has not been implemented that allows accredit the representation of the person who contracts on behalf of a

Third, various risks can be generated, which can be mentioned, by way of example, that consisting of data processing of the represented party without legitimacy, the risk of identity theft or economic or other damages that may be may cause the interested party as a result of the change of company supplier of the service with the consequent cancellation of the contract of origin or the change of ownership of the contract or the type of contract with the company supplier, without the interested party having consented to such changes.

Secondly, the documentation provided shows that in the channel of Telephone contracting (inbound CAC subchannels, Telemarketing and leads) together with the contracting the service, consent is requested to carry out other treatments, such as sending offers related to energy adapted to the customer profile after the end of the contract or the referral at any time of information on non-energy products or services from collaborating companies or EDP. This request is made to the representative as follows from the literalness of the text of evidences 2, 3 and 4 submitted, according to which they ask this one: "Would you allow us to present your client with offers related to energy adapted to your profile after the end of the contract, or send you at any time information on non-energy products and services, Collaborating Companies or EDP?" (exhibit 2) "Do you allow us to present your client with offers related to with the energy after the end of the contract, or send you at any time information on products and services of the financial, insurance and automotive industry, Collaborating Companies or EDP?" (evidence 3). "Allows us present you with energy-related offers tailored to your profile after the

termination of the contract, or send you at any time information about products and non-energy services, Collaborating Companies or EDP? (evidence 4).

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In none of the three cases, as can be deduced from the analysis of the procedures followed by the person in charge in the contracting processes, requests proof that the representative has been authorized to provide such consent on behalf of the principal.

Nor is it proven that the representative has been authorized by his client.

to consent to the processing of data for advertising purposes that has been done above reference, in the event that it does so, when the contracting process is carried out carried out through the channel of EDP's own commercial offices

COMERCIALIZADORA, S.A.U. since such a possibility is not contemplated in the document presented as evidence 5, which contains the authorizations for various treatments by the representative, taking into account that it must, in his case, be a specific mandate without it being possible to deduce from a general authorization for other treatments.

In the case of contracting through the external forces channel, evidence 6, to the which the person in charge calls sales receipt, contains, in the box entitled "client/representative", a box to consent to the processing of personal data, in the following terms: "I consent to the processing of my personal data once once the contractual relationship has ended, to carry out commercial communications adapted to my profile of products and services related to the supply and consumption of

Energy. Likewise, I consent to the aforementioned treatments during the term and after the end of the contract, on non-energy products and services, both of the EDP Group companies as well as third parties.” In said contract or sales stub, as it has been called by the person in charge, it also appears, after the spaces intended for the data of the representative who "declares to have legal powers sufficient to sign this contract on behalf of the client to whom responsible for informing of all the conditions of the same.” Neither in this The contracting procedure requires an accreditation of the representation that is claims to hold to contract or give consent for other treatments in name of the represented, being the representation merely declared by the representative.

Nor in these cases has a procedure been implemented to prove that the representative had the authorization of the principal to consent to such treatments, producing the risk of data treatment of the represented without legitimation, leaving it exposed to receiving publicity even after termination of the contractual relationship. In the case of the external sales force channel, increases the risk, since the contract is not even sent to the principal, but that the copy is given to the representative who is responsible for informing the represented.

Thirdly, it is observed in the documentation in the present proceeding that, at the time of contracting through the telephone channel, in all subchannels, the representative is asked for permission to “complete the commercial profile of the represented with information from third-party databases, in order to send you commercial proposals and the possibility of contracting or not certain services” (evidence 2, 3 and 4). As in the previous case, it is not proven that the representative is authorized by the principal to consent to such treatment.

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The same can be said when the consent for this treatment is given by the representative in the channel own commercial offices, since there is no record either in the document that reflects the authorizations granted to the representative (Exhibit 5), specific authorizations for the representative to lend his or her consent to such processing.

In the case of the external forces channel, in the so-called sales receipt, it appears a box to provide consent, which is formulated as follows:

“I consent to the processing of my personal data for the preparation of my profile commercial with information from third-party databases, for the adoption, by EDP, of automated decisions in order to send personalized commercial proposals, as well as to allow, or not, the contracting of certain services. Likewise, accreditation of the authorization of the represented to give their consent to these treatments, considering that Your statement to that effect is sufficient. On the other hand, as revealed above, the risk for the principal is increased since the checkbook of sales (exhibit 6) it follows that a copy of the document is delivered to the representative who is responsible for informing the principal.

Nor in these cases has a procedure been implemented to prove that the representative had the authorization of the principal to consent to such treatments, leaving the interested party exposed to profiling with information from third-party databases or decisions are made

automated regarding him without his consent.

In the pleadings to the agreement to initiate this proceeding, it was stated that freedom of form in the manner established in the Civil Code for the contract of mandate is incompatible with obtaining evidence of the existence of the representation or mandate, beyond the statements of the president, protected in contractual good faith. However, as this Agency has pointed out in the proposed resolution, nothing prevents one of the parties to a contract from requiring who acts as agent of the other party the accreditation of the representation that claims to boast, proof of this is that EDP COMERCIALIZADORA, S.A.U. So it is required in its contracting procedure in the own commercial office channel, requiring the representative a document accrediting the authorization granted for the contracting by the represented party signed by both to which he must The DNI of both the representative and the represented must be accompanied. It is claimed now by said entity that it is not obliged to carry out with authorized third parties that hire through the telephone channel or external sales forces none verification of the existence and scope of its mandate, on the basis that the possibility of verifying the powers of the principal constitute a burden for the president, not for the third party, since the interests in question safeguard, within the framework of civil law, are those of the latter, and not those of the president or Neither are those of the principal. It is also alleged that in the power to hire the service through an authorized third party resides the power to provide the consents inherent to the contracting process, including those related to data processing personal.

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This Agency cannot share such arguments, the regulations for the protection of personal data focuses on the protection of this right of the interested parties, so that your data can only be processed when there is legitimacy, without which no data processing can be carried out. In the case that we occupies the legitimization can derive from the existence of a contract or the provision of a consent for certain treatments, so that if the contract is carried out by a third party on behalf of the interested party or such consents are provided by a third party on behalf of the data subject, the data controller must act diligently to verify that indeed whoever claims to be authorized to act on behalf of another, indeed it is and that that authorization reaches not only the performance of a contract, but also the provision of consents for other different data treatments that are requested during the hiring process. In the latter case, all the more reason doubt the existence of such authorization by the interested party to consent treatments on your behalf, taking into account that requests for consent for the sending of commercial communications and the realization of profiles made during the telephone contracting process, unexpectedly, so that it is difficult to think that the principal has previously authorized the representative to give such consents. Similarly, it is doubtful that in a contracting process in the external forces channel, it must be remembered refers to the contracting in stands of fairs or shopping centers, there is a prior authorization to consent to treatments on behalf of the represented party, since such request is also made during the contracting process, aggravating the risk for the interested party insofar as the contract is not even sent to him, but rather

gives a copy to the representative who is responsible for informing the principal.

In this way, the first of the risks to assess is precisely the legitimacy for each treatment, and in particular, and in the event that it is acted through a representative the risks that the processing of their data has for the interested party without due legitimacy, in the event that the representative lacks power to allow such treatments.

The risk analysis initially presented does not contemplate the risks mentioned above, limiting itself to mentioning commercial communications as risks and scoring/profiling, risks that are not even considered for the force channel. external sale. The risk analysis presented with the allegations to the agreement of beginning does not contemplate such risks either, being substantially the same as the previous including only two columns that under the same title "No. criteria EIPD-WP29" point out in one of them the supposed number of criteria and the need to carry out an DPIA.

Several impact assessments are provided with the allegations to the initiation agreement, one for each of the sales channels, in which they are considered as threats, among others, the following two: "the basis that legitimizes the treatment is not adequate, is illicit or has not been adequately formulated" and "at the time of the data collection is not provided the minimum information provided to the person or no information is provided" In both cases, the probability as high, impact as very high, and inherent risk as high. They are mentioned controls adopted, which with respect to the first threat are constituted by the reference to the legitimizing basis of the treatment and in the case of the second

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indicates the following as control adopted: "Data Protection clause included

in the contract signed with the client with all the information required by the RGPD".

They are described between the controls in progress for both threats in all channels,

except in the OCCC channel to customers or potential customers, "the implementation of a

new contracting procedure through a representative, incorporating the sending

of an SMS/Email message through which the necessary basic information is provided

in terms of data protection to the owner of the contract." There is no date on which

incorporated this action in progress into the impact assessments.

EDP COMERCIALIZADORA, S.A.U alleges that the AEPD intends to justify the start of

this sanctioning file in the supposed non-existence of a documentation that

has never been requested. And he points out that it has an identification methodology,

risk analysis and management, both to identify inherent risks and

specifically to assess the need to carry out the Evaluations of

Impact, including as an annex the supporting documentation that accredits

amply that fully and fully complies with these obligations.

In this regard, it must be taken into account that the obligations established in the

Articles 24 and 25 of the RGPD do not constitute mere formal obligations, but rather

as stated in article 24 "the person in charge will apply technical and organizational measures

appropriate in order to guarantee and be able to demonstrate that the treatment is in accordance with the

this Regulation." And article 25 also reiterates that "the person responsible for

treatment will apply, both at the time of determining the means of treatment

as at the time of the treatment itself, technical and organizational measures

appropriate, such as pseudonymization, designed to effectively enforce the

data protection principles, such as data minimization, and integrate the

necessary guarantees in the treatment, in order to meet the requirements of this Regulation and protect the rights of the interested parties.” It is also a dynamic obligation, each modification of the technical and organizational measures must also be subject to a risk analysis to determine if said modification is capable of effectively applying data protection principles and integrating the necessary guarantees in the treatment.

In this case, regardless of when it was included in each Impact assessment between the controls in progress the implementation of this new contracting procedure through a representative, since said date does not It is recorded, it is not until July 16, 2020 that a document is filed with this Agency. written in which it is stated that “it has reviewed the procedure to be followed in the contracting by third parties on behalf of the owner, in order to strengthen said procedure and reduce the risks of possible identity theft carried out in bad faith by the contracting party in this type of process, taking into account, additionally, the particular needs identified due to the state of alarm decreed last March and that has necessarily required that All hiring is carried out remotely.

That in order to inform the AEPD of the specific actions that are being carried out in relation to this matter by EDP, in compliance of your duty of proactive compliance (accountability), we enclose the "Procedure of contracting by third parties on behalf of the owner", so that they have visibility on the modifications that are being implemented in said processes

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in order to meet your request in this regard, as well as to highlight the EDP's proactivity regarding its suggestion to adapt said process." Said document did not indicate the date of implementation of such measures.

In the allegations to the start-up agreement of EDP COMERCIALIZADORA S.A.U., states that "the proposed contracting protocol has been made known to of the AEPD on July 16, 2020, presented in any case before receiving the written Agreement to Start the Sanctioning Procedure, being a Requirement of information with common number for EPD ENERGÍA and EDP COMERCIALIZADORA without the AEPD to date having ruled on it with the corresponding legal valuation report, as requested, in order to implement a system that was fully compliant with the criteria and interpretations of the AEPD, limited so far to include in the Agreement of Home sent to EDP COMERCIALIZADORA certain considerations in relation to himself." It also states that "Regarding the implementation date, it depends precisely on the opinion that on this procedure manifest the AEPD, since it would not make sense to start it if the authority of control considers that it does not fit their criteria to consider it a appropriate procedure, taking into account the economic costs associated with this implementation, in addition to the resources of time and dedication necessary for the deployment of these measures.

In the allegations to the proposed resolution it is indicated that the procedure has been implemented in January 2021. It also adds that it has been removed from its recruitment procedure by representation the possibility of requesting consents for marketing and commercial purposes referred to in the AEPD, attached some documents to evidence this elimination. Without prejudice to

that this Agency values positively that the possibility of requesting such consents, it is surprising the procedure followed in the channels telephone numbers, in which the deletion consists of indicating "[Read only legal entities who are calling on behalf of a business] In addition, so that we can advise you with the best proposals: • Do you allow us to present your client with offers related to energy after the end of the contract, or send you information about non-energy products and services, typical of Collaborating Companies? [OTHERWISE] • Do you allow us to complete the commercial profile of your client with information provided by third parties, to send you personalized proposals? [OTHERWISE]." The Data protection regulations do not cover legal persons, so that it is alien to it that a consent is requested to carry out a profiling of these with information provided by third parties to send you proposals personalized. In any case, it is not indicated what treatment will be given to the authorizations provided by a representative of natural persons for the sending of commercial communications and profiling requested prior to the adoption of said measure. On the other hand, the analysis of risk arising from the modification of the contracting procedure or the justification of the suitability of the measures adopted to minimize them. Reiterating the breach of the principle of proactive responsibility required by the Regulation.

All this goes to show that no measures had been adopted to verify the existence of authorization to contract or to provide on behalf of the principal the

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consent for other treatments until January of this year when it was implanted as they expose a new procedure, to verify the reality of the representation and has been eliminated, without indicating from what date, the possibility of request authorization from the representative to carry out data processing other than the contract, such as sending commercial communications and carrying out commercial profiles, thus breaching the obligations established in article 25 that are not limited to formal aspects, but to the effective implementation of appropriate technical and organizational measures, measures that in turn must be subject to of the corresponding risk analysis to determine its aptitude to achieve the intended result.

On the other hand, in relation to what is stated in the allegations to the initial agreement, in indicating that such measures had not been implemented while this Agency had not issued a legal report to evaluate them, as it turns out provided for in the RGPD is responsible, in compliance with its obligations of proactive responsibility, who must implement the technical and organizational measures necessary, as expressed in articles 24 and 25 of the RGPD, or as indicated in the terms of recital 73 of the same regulation: "In particular, the person responsible must be obliged to apply timely and effective measures and must be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures" and it is the person in charge who corresponds to assess whether such measures are appropriate. Second, this Agency is not required to issue any legal report on such actions, which also in the event that could be issued voluntarily, it is not binding, so there is no justify in the absence of a legal report from the AEPD the breach of the obligations of the person in charge.

Likewise, in the allegations to the initial agreement it was indicated by EDP

MARKETING COMPANY the application of the non bis in idem principle, considering that

The present facts were sanctioned in a procedure that, to date,

find appeal. In this regard, it should be recalled that the judgment of the Court

Constitutional 77/2010, of October 19, comes to point out regarding said principle

that "just as we have affirmed the aforementioned triple identity of subject, fact and foundation

"constitutes the presupposition for the application of the constitutional ban on incurring in

bis in idem, whether substantive or procedural, and defines the content of the rights

fundamental recognized in art. 25.1 CE, since these do not prevent the

concurrence of any sanctions and sanctioning procedures, not even if

these have the same facts as their object, but these fundamental rights

consist precisely in not suffering a double sanction and in not being subjected to a

double punitive procedure, for the same facts and with the same foundation" No

Such an allegation can be admitted, since it cannot be appreciated here that it is the

same facts and basis as in the procedure referred to by EDP

COMERCIALIZADORA, S.A.U., since it was charged with an infraction of the

article 6.1 of the RGPD, for processing the personal data of the claimant without legitimacy.

Consequently, in accordance with the above findings, the aforementioned

facts suppose a violation of article 25 of the RGPD, which gives rise to the

application of the corrective powers that article 58 of the RGPD grants to the Agency

Spanish Data Protection.

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III

Number 11 of article 4 of the RGPD defines consent as “Any

manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you”

For their part, articles 6 and 7 of the RGPD refer, respectively, to the “Legality

of treatment” and the “Conditions for consent”:

Article 6 of the RGPD. “1. The treatment will only be lawful if at least one of the

the following conditions:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with regard to the treatment in compliance with section 1, letters c) and e), setting more specifies specific treatment requirements and other measures that guarantee a lawful and equitable treatment, including other specific situations of treatment under Chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, in what regarding the treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of powers data conferred on the data controller. Said legal basis may contain specific provisions to adapt the application of rules of this

Regulation, among others: the general conditions that govern the legality of the treatment by the controller; the types of data object of treatment; the interested affected; the entities to which personal data can be communicated and the purposes

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of such communication; purpose limitation; the retention periods of the data, as well as the operations and procedures of the treatment, including the measures to ensure lawful and fair treatment, such as those relating to other

specific treatment situations under chapter IX. Union Law

or of the Member States will fulfill a public interest objective and will be proportional to the legitimate end pursued.

4. When the treatment for another purpose other than that for which the data was collected personal data is not based on the consent of the interested party or on the Law of the Union or of the Member States which constitutes a necessary and proportionate in a democratic society to safeguard the stated objectives in article 23, paragraph 1, the data controller, in order to determine if processing for another purpose is compatible with the purpose for which they were collected initially the personal data, will take into account, among other things:

- a) any relationship between the purposes for which the data was collected data and the purposes of the intended further processing;
- b) the context in which the personal data have been collected, in particular by what regarding the relationship between the interested parties and the data controller;
- c) the nature of the personal data, specifically when categories are processed special personal data, in accordance with article 9, or personal data relating to criminal convictions and offences, in accordance with article 10;
- d) the possible consequences for data subjects of the envisaged further processing;
- e) the existence of adequate safeguards, which may include encryption or pseudonymization”.

Article 7 of the RGPD.

"1. When the treatment is based on the consent of the interested party, the person in charge You must be able to demonstrate that you consented to the processing of your data personal.

2. If the data subject's consent is given in the context of a written statement that also refers to other matters, the request for consent will be presented in

in such a way that it is clearly distinguishable from other matters, in an intelligible and easy access and using clear and simple language. No part will be binding of the statement that constitutes an infringement of this Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The Withdrawal of consent will not affect the legality of the treatment based on the consent prior to withdrawal. Before giving their consent, the interested party will be informed of it. It will be as easy to withdraw consent as it is to give it.

4. When assessing whether the consent has been freely given, it will be taken into account in the greatest extent possible whether, among other things, the performance of a contract, including the provision of a service, is subject to consent to the processing of personal data that is not necessary for the execution of said contract”.

It takes into account what is expressed in recitals 32, 40 to 44 and 47 of the RGPD in relation to the provisions of articles 6 and 7 above. From what is stated in

These considerations include the following:

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(32) Consent must be given through a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the interested party's accept the processing of personal data that concerns you, such as a written statement, including by electronic means, or an oral statement.

This could include checking a box on an internet website, choosing parameters technicians for the use of services of the information society, or any other statement or conduct that clearly indicates in this context that the data subject

accepts the proposal for the processing of your personal data. Therefore, the silence

pre-ticked boxes or inaction should not constitute consent. The

Consent must be given for all processing activities carried out with the

same or the same ends. When the treatment has several purposes, the

consent for all of them. If the data subject's consent is to be given to

As a result of a request by electronic means, the request must be clear, concise and not

unnecessarily disrupt the use of the service for which it is provided.

(42) When the treatment is carried out with the consent of the interested party, the

The data controller must be able to demonstrate that the data controller has given

consent to the treatment operation. In particular in the context of a

written statement made on another matter, there must be guarantees that the

interested party is aware of the fact that he gives his consent and the extent to which

that makes. In accordance with Council Directive 93/13/CEE (LCEur 1993, 1071),

a model declaration of consent drawn up must be provided

previously by the person in charge of the treatment with an intelligible formulation and of

easy access that uses clear and simple language, and that does not contain clauses

abusive In order for the consent to be informed, the interested party must know how

minimum the identity of the person in charge of the treatment and the purposes of the treatment to which

which personal data is intended. Consent should not be considered

freely provided when the interested party does not enjoy a true or free choice or does not

You can withhold or withdraw your consent without prejudice.

(43) (...) It is presumed that consent has not been given freely when it is not

allows separate authorization of the different data processing operations

despite being appropriate in the specific case, or when the fulfillment of a

contract, including the provision of a service, is dependent on the consent,

even when this is not necessary for such compliance.

It is also appropriate to take into account the provisions of article 6 of the LOPDGDD:

“Article 6. Treatment based on the consent of the affected party

1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679,

consent of the affected party is understood as any manifestation of free will,

specific, informed and unequivocal by which it accepts, either through a

declaration or a clear affirmative action, the treatment of personal data that

concern.

2. When it is intended to base the processing of the data on the consent of the

affected for a plurality of purposes, it will be necessary to state

specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the

processing of personal data for purposes unrelated to the

maintenance, development or control of the contractual relationship”.

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In accordance with what has been expressed, data processing requires the existence of a

legal basis that legitimizes it, such as the consent of the interested party

validly.

From the analysis of the gas service contracting procedures established by

EDP COMERCIALIZADORA, S.A.U, it follows that in the contracting made to

through the telephone subchannels (CAC Inbound, Telemarketing and Leads) it is requested

to the representative permission to “complete the commercial profile of the represented with

information from third-party databases, in order to send you commercial proposals

and the possibility of contracting certain services or not" (evidence 2, 3 and 4).

Evidences 2, 3 and 4 show that the following information is provided to the contracting party

"Your personal data and those of your representative will be processed by EDP Comercializa-
dora SAU and EDP Energía SAU for the management of their contracts, fraud prevention,
profiling based on customer and EDP information, as well as the realization
creation of personalized communications about products or services directly
related to their contracts, being able at any time to oppose them.

more". Next, your consent is requested in the following terms:

"Additionally, so that at EDP we can advise you with the best proposals
you:

Do you allow us to complete the commercial profile of your client with basic information?
data from third parties, in order to send you personalized proposals and the
possibility of contracting certain services or not? [OTHERWISE]"

With regard to the sales channel by external sales forces, in the Checkbook of
sales (Exhibit 6), the following request for consent appears along with a
box to mark the same:

"I consent to the processing of my personal data for the preparation of my profile
commercial with information from third-party databases, for the
adoption, by EDP, of automated decisions in order to send
personalized commercial proposals, as well as to allow, or not, the contracting
of certain services.

It is considered that the consent thus given is not adjusted to the provisions of the
RGPD and in the LOPDGDD. Consent is requested with poor information,
while neither what third-party databases are going to be consulted nor what type of data are indicated
are going to be collected, so that the interested party is absolutely unaware of what
is consenting. Nor is it determined who will be responsible for the

treatment, a generic reference to EDP is made, without the client who has contracted a service with only one of the two entities (EDP COMERCIALIZADORA S.A.U. or EDP ENERGIA, S.A.U.) know if you are consenting that such treatments are carried out by both entities or only that of which is client. Nor is it clear what type of services will be allowed to contract or not.

Such deficiencies do not allow the interested party to know the consequences of their decision and thus assess the convenience of giving or not giving their consent.

Likewise, a single consent is requested for two different purposes, although both are automated, one of them is the sending of personalized advertising and, the other, to give permission so that the person in charge determines whether or not to allow him to contract

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certain services, so it cannot be considered that such consent is specific in the terms of articles 4.11 and 6.1.a) of the RGPD and 6.1 of the LOPDGDD.

Regarding the automated decision regarding "allow or not the hiring of a service" must also take into account the provisions of article 22 of the RGPD according to which:

"1. Every interested party shall have the right not to be the subject of a decision based on solely in automated processing, including profiling, which produce legal effects on him or significantly affect him in a similar way.

2. Paragraph 1 shall not apply if the decision:

a) is necessary for the conclusion or execution of a contract between the interested party and

a data controller;

b) is authorized by the law of the Union or of the Member States that are
applies to the data controller and that also establishes appropriate measures
to safeguard the rights and freedoms and legitimate interests of the data subject, or
c) is based on the explicit consent of the interested party.

3. In the cases referred to in section 2, letters a) and c), the person responsible for the
treatment will adopt the appropriate measures to safeguard the rights and
freedoms and legitimate interests of the interested party, at least the right to obtain
human intervention by the controller, to express their point of view and to
challenge the decision.

4. The decisions referred to in section 2 shall not be based on the categories
personal data referred to in article 9, paragraph 1, unless
Article 9(2)(a) or (g) applies and measures have been taken
adequate to safeguard the rights and freedoms and the legitimate interests of the
interested."

In accordance with the provisions of said precept, to the extent that the decisions
automated will produce legal effects on the interested party or will affect him in a
significant way, the consent must be explicit, so that its obtaining does not
can be done in the same way as to obtain a general consent,
must be obtained in a reinforced way. To this must be added that article 13 of the
RGPD in its letter f) requires that the interested party be provided with significant information
on the applied logic, as well as the importance and foreseen consequences of
said treatment for the interested party. This information is not provided which, furthermore,
may hinder the exercise by interested parties of their rights and especially
of those expressly included in art. 22 of the RGPD: right to obtain intervention
on the part of the person in charge, to express their point of view and to contest the

decision.

Alleges EDP COMERCIALIZADORA, S.AU. that consent is provided on the basis of the good practices enunciated by the AEPD and ratified by the LOPDGDD, of way that the interested parties are transferred through the double-layer system, alleges also that with respect to the absence of identification of third-party sources or categories of data, such information may be derived from the information provided to the client in the first layer (by clearly identifying that the treatment will be made with third-party sources) as in the second layer, whose content appears in the section called "general conditions of the contract", whose content states: "(II) The elaboration of commercial profiles of the Client through the

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aggregation of EDP databases with data from databases of third parties, in order to offer the Client personalized products and services, thus improving the customer experience. (III) Decision-making automated, such as allowing the contracting, or not, of certain products and/or services based on the Client's profile and particularly, on data such as the non-payment history, hiring history, permanence, locations, data of consumption, types of devices connected to the energy network, and similar data that allow knowing in greater detail the risks associated with contracting. (iii) Based on the results obtained from the aggregation of the indicated data, EDP may make personalized offers specifically aimed at achieving the contracting certain products and/or services of EDP."

It points out that, as reflected in the cited text, EDP COMERCIALIZADORA has identified in great detail the types of data that are processed for the purposes detailed, being the sources consulted for it an evident derivation of what previous. Finally, it alleges that being the origin of the data the interested party,

It is only up to the Entity to report in accordance with the provisions of article 13 RGPD, a provision that does not establish, in any of its precepts, the obligation to identify neither the source nor the type of data. only in the In the event that said treatment had been carried out, the Entity must have informed of such extremes, since only at that time would it be applicable the provisions of article 14 RGPD.

These claims cannot be shared, the double layer system is not foreseen in the LOPDGDD as a mechanism that may lead to a breach of the provided for in article 4.11 of the RGPD, according to which consent must be free, specific, informed and unequivocal. It is worth recalling here what was pointed out by the Committee European Data Protection in the document "Guidelines 05/2020 on the consent in accordance with Regulation 2016/679" approved on May 4, 2020, which updates the Guidelines on consent under the Regulation 2016/679, adopted by the Article 29 Working Group and approved by the European Data Protection Committee at its first plenary meeting. points out said document in point 3.3.1. Minimum content requirements for the consent is "informed":

"In order for the consent to be informed, it is necessary to communicate to the interested party certain elements that are crucial to be able to choose. Therefore, the EDPB is of the opinion that At least the following information is required to obtain valid consent:

Yo. the identity of the data controller,

ii. the purpose of each of the treatment operations for which the consent is requested.

consent,

iii. what (type of) data will be collected and used,

IV. the existence of the right to withdraw consent,

v. information about the use of the data for automated decisions of

in accordance with article 22, paragraph 2, letter c), when relevant, and

saw. information about the possible risks of data transfer due to the

absence of an adequacy decision and adequate guarantees, as

described in article 46.”

In this case, the identity of the person responsible for the

treatment, since it is collected on behalf of EDP, it is a

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ambiguous information, since the client of EDP COMERCIALIZADORA S.A.U.

You do not know if you are consenting to data processing being carried out by

EDP COMERCIALIZADORA S.A.U and EDP ENERGIA, S.A.U or only by the former

entity with which you are contracting. On the other hand, at no time is he informed

what are the third-party databases from which data will be obtained, nor

even in the second layer, being inadmissible that it should be deduced by the

client of the categories of data that it treats. Nor can it be admitted that only

the assumption that the treatment had been carried out should be reported to the

interested in what data will be processed, since only in such a case would it result in

application of article 14 of the RGPD. On the contrary, it is essential that the interested party

know what types of data are going to be collected and used, so that such information,

this is the data from third-party databases that are going to be used and, obviously, which databases are those, it is an essential element for the interested party to know what they are consenting to.

Claims that consent is specific cannot be shared

because there is a single purpose, such as the generation of a commercial profile, whose use is limited to two contexts linked to each other: (i) the first, to carry out carry out the assessment of the possibility of contracting and, (ii) the second, to issue the corresponding commercial offers to the user in question. Requests for consent to allow completion of the commercial profile mention two purposes differentiated, one the sending of personalized commercial proposals, described with this generic character which may include any unrelated commercial proposal to its services and another, the possibility of contracting or not certain services, entering the latter, where appropriate, in the field of automated decisions.

Nor can it be admitted, as EDP COMERCIALIZADORA, S.A.U. alleges, that the information related to profiling and automated decisions, complies with what is required by article 13 of the RGPD, since it informs about the existence of automated decisions, including profiling and provides information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

In this regard, it is important to take into account what is stated in the Guidelines on decisions automated individuals and profiling for the purposes of the Regulation 2016/679 adopted by the Working Group on Data Protection of article 29 on October 3, 2017, last revised and adopted on February 6, 2018 and approved by the European Data Protection Committee at its first meeting plenary, which refers to significant information about the logic applied in the following terms:

“Significant information about “applied logic”

The growth and complexity of machine learning can make it difficult understand how an automated decision-making or profiling process works.

The data controller must find simple ways to inform the data subject about the underlying logic or criteria used to arrive at the decision. The GDPR requires that the responsible for the treatment offers significant information about the logic applied, not necessarily a complex explanation of the algorithms used or the disclosure of all the algorithm.

However, the information provided must be sufficiently exhaustive for the interested party understands the reasons for the decision.

Example

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A data controller uses the credit score to assess and reject a a person's loan application. The rating may have been provided by a credit reference agency, or have been calculated directly from information held by the data controller.

Regardless of the source (information on the source must be provided to the interested party in under article 14, paragraph 2, letter f), when the personal data have not been obtained from the interested party), if the data controller relies on this qualification,

It must be able to explain said qualification to the interested party, as well as the reasons for it.

The data controller should explain that this process helps them make decisions fair and responsible loans. It must also provide details about the main characteristics considered when making the decision, the source of this

information and relevance. This may include, for example: • information provided by the interested in the application form;

- information about the behavior of the accounts, including arrears in payments; and •

information from official public records, such as information about fraud or records of insolvency. Likewise, the data controller must include information to warn the concerned that the credit scoring methods used are regularly checked to ensure they remain fair, effective and impartial. The person in charge of treatment must offer contact information so that the interested party requests the reconsideration of rejected decisions, in accordance with the provisions of the article 22.”

This document also points to the "Importance" and "consequences planned" that “This term suggests that information should be provided on the planned or future treatment, and how the automated decision may affect the interested. In order for this information to be meaningful and understandable, it must be offer real and tangible examples of the kind of possible effects.”

In the present case, in the opinion of this Agency, such requirements are not met: no it is reported what type of products or services will be allowed to contract, the logic to be applied to make said decision, limiting itself to indicating that a set of data that “allows to know in greater detail the risks associated with the hiring”, therefore not knowing what type of products or services can be allow contracting or the logic to be applied to make said decision is not cannot know its importance or the foreseen consequences.

On the other hand, this Agency does not share the allegation that there is a contest medial between these infringements and the infringement of article 13 of the RGPD. fits this In this regard, cite the judgment of July 16, 2019 of the National High Court, in which it is pointed out that “Thus, regarding the existence of a medial contest between the two

infractions, which would determine the imposition of a single sanction, this Court has declared repeatedly (judgments of January 29 and June 24, 2014 (appeal 562/12 and 141/2013), among others, that both offenses are independent and there is no medial relationship that is intended between the two, but that: «[...] they can be carried out with absolute independence, since they present their own substantivity and are autonomous from each other, since they protect data protection principles different, in one case the unequivocal consent that requires all treatment of personal data (article 6.1 LOPD), and, in another, the quality of said personal data (article 4.3 LOPD), in order to safeguard the power of disposition of the holder of the themselves, which integrates the fundamental right to data protection (...) Of the

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In the same way, it should be considered that the three violations of articles 6, 13 and 22 of the RGD are independent infringements, in this sense it must be taken into account that information constitutes an essential element of consent, in accordance with the provisions of article 4.11 of the RGD, being determinant of its existence, of so that its absence will result in the consent not being valid, thus being able to violate both article 6 and, where appropriate, article 22 when the treatment is based on the explicit consent of the interested party. On the other hand, there is a principle of general transparency regarding all the treatments carried out the interested party and that is reflected in the provisions of articles 12 to 14. In this way It may be the case that assumptions occur, in which, in addition to the non-existence of informed consent, the principle of transparency is breached

in general for all the treatments carried out by the interested party, thereby infringing the provisions of articles 12 to 14, without this implying a medial infringement contest.

EPD COMERCIALIZADORA, S.A.U alleges that the treatment related to the creation of a commercial profile based on the information of third parties for the referral of advertising information is not, in practice, being carried out, nor at the date of issuance of these allegations, nor prior to them. alleges also that, despite the fact that EDP COMERCIALIZADORA includes the possibility of carry out profiling and adopt automated decisions, the only profiling carried out is the one related to the qualification of clients in terms of fraud prevention, treatment for which there is legal authorization and is based on the interest legitimate interest of EDP COMERCIALIZADORA, in order to safeguard the good future of contracts made by EDP COMERCIALIZADORA, as well as prevent customers, whose sole purpose is to consume the energy service without paying invoices become part of the customer portfolio. Without prejudice of the previous, The holders of the data are informed that said profiling is reviewed and processed finally by EDP COMERCIALIZADORA personnel, which is why it cannot considered as an automated decision in itself, taking into account in this literal sense of the concept established by the authorities. In other words, there is no data processing based on automated decisions, nor is there any statement about such treatments, since outside of those strictly necessary to continue with the service and those provided by law, are not carried out, which is why, not only can it not be considered that there breach of article 22 of the RGPD, since the requirements are met collected by the regulations, but that there are not, nor can there be data owners who may have been affected by such treatments.

The purpose of this procedure is at this point the examination of the consent for the enrichment of profiles with third-party databases effects of sending advertising communications and possible decisions automated that produce legal effects or significantly affect the interested party and that are also based on the consent of the same. By Therefore, the profiling will not be subject to a pronouncement in this proceeding. carried out for the prevention of fraud, which EDP COMERCIALIZADORA S.A.U. based on legitimate interest, neither in regard to its legitimacy nor in what regarding whether automated decisions are made based on such profiling.

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The investigation of the procedure has not revealed that EDP COMERCIALIZADORA, S.A.U. has carried out profiling incorporating data from third-party databases or data processing based on decisions automated that produce legal effects or significantly affect the interested party who had consented to such treatments, as requested during the hiring process.

This Agency considers that in the event that they intend to carry out the treatments mentioned in the previous paragraph, these should be adjusted to the expressed demands and the requirements that make it possible to consider that the Consent has been given in a valid manner and compliance with all the requirements required under article 22 of the RGPD.

Consequently, it is considered appropriate that due to lack of evidence, taking into account the

principle of presumption of innocence expressly collected for the procedures

administrative sanctions in article 53.2.b) of Law 39/2015, of 1

October, Common Administrative Procedure of Public Administrations,

that recognizes the interested party the right "To the presumption of non-existence of

administrative responsibility until the contrary is proven", it is not considered

attributable to EDP COMERCIALIZADORA, S.A.U. the violation of the provisions of the

articles 6 and 22, considered as possible infractions in the agreement to start the

present sanctioning procedure.

IV

Article 12.1 of the RGPD provides that "The data controller will take the

appropriate measures to provide the interested party with all the information indicated in the

articles 13 and 14, as well as any communication under articles 15 to 22

and 34 related to the treatment, in a concise, transparent, intelligible and easily

access, in clear and plain language, in particular any information directed

specifically a child. The information will be provided in writing or by other

means, including, if applicable, by electronic means. When requested by

interested, the information may be provided verbally as long as the

identity of the interested party by other means.

Articles 13 and 14 list the categories of information to be provided

when the personal data is obtained from the interested party and when the data

data have not been obtained from the interested party, respectively.

When the personal data is collected directly from the interested party, the information

must be provided at the very moment in which the data collection takes place.

Provides article 13 of the RGPD

"Information that must be provided when personal data is obtained from the

interested

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;

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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 about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing 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.”

Article 14

“Information that must be provided when the personal data has not been obtained

Of the interested

1. When the personal data has not been obtained from the interested party, the person in charge

of the treatment will provide you with the following information:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

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b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined, as well as the basis legal treatment;

d) the categories of personal data in question;

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 consignee in a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of them or the fact that they have been lent.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party with the following information necessary to guarantee

Fair and transparent data processing with respect to the interested party:

- a) the period during which the personal data will be kept or, when that is not possible, the criteria used to determine this period;
- b) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the data controller or of a third party;
- c) 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, and to oppose the treatment, as well as the right to portability of the data;
- d) 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 before its withdrawal;
- e) the right to file a claim with a supervisory authority;
- f) the source from which the personal data comes and, where appropriate, if they come from public access fountains;
- g) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 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. The data controller shall provide the information indicated in sections 1 and two:

- a) within a reasonable period of time, once the personal data has been obtained, and no later than within a month, taking into account the specific circumstances in which said data is processed;
- b) if the personal data is to be used for communication with the interested party,

at the latest at the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time that the personal data is communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the data personal data for a purpose other than that for which they were obtained, will provide the data subject, prior to such further processing, information about that other purpose and any other relevant information indicated in section 2.

5. The provisions of paragraphs 1 to 4 shall not apply when and to the extent in what:

a) the interested party already has the information;

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b) the communication of said information is impossible or supposes an effort disproportionate, in particular for processing for archival purposes in the interest public, scientific or historical research purposes or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation mentioned in paragraph 1 of this article may

disable or seriously impede the achievement of the objectives of such treatment. In

In such cases, the person in charge will adopt adequate measures to protect the rights, liberties and legitimate interests of the interested party, including making public the information;

c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the data controller and that

establish adequate measures to protect the legitimate interests of the interested party, or

d) when the personal data must remain confidential on the basis of the

basis of an obligation of professional secrecy governed by Union law or

of the Member States, including a statutory secrecy obligation.

For its part, article 11, numbers 1 and 2 of the LOPDGDD provides the following:

“Article 11. Transparency and information to the affected party 1. When the personal data

are obtained from the affected party, the data controller may comply with the

duty of information established in article 13 of Regulation (EU) 2016/679

providing the affected party with the basic information referred to in the following section and

indicating an electronic address or other means that allows access in a

simple and immediate to the rest of the information.

2. The basic information referred to in the previous section must contain, at

least: a) The identity of the data controller and his representative, in his

case. b) The purpose of the treatment. c) The possibility of exercising the rights

established in articles 15 to 22 of Regulation (EU) 2016/679. If the data

obtained from the affected person were to be treated for the elaboration of profiles, the

basic information will also include this circumstance. In this case, the

concerned shall be informed of their right to oppose the adoption of decisions

automated individuals that produce legal effects on him or affect him

significantly in a similar way, when this right concurs in accordance with the

provided for in article 22 of Regulation (EU) 2016/679”.

In relation to this principle of transparency, it is also taken into account

expressed in Recitals 39, 58, 60 and 61 of the RGPD.

(39) “All processing of personal data must be lawful and fair. For the people

physical data must be made absolutely clear that they are being collected, used, consulted

or treating in another way personal data that concerns them, as well as the extent

in which said data is or will be processed. The principle of transparency requires that all information and communication regarding the processing of said data is easily accessible and easy to understand, and that simple and clear language is used. Saying principle refers in particular to the information of the interested parties on the identity of the person in charge of the treatment and the purposes of the same and to the information added to ensure fair and transparent treatment with respect to natural persons affected and their right to obtain confirmation and communication of the data personal data that concern them that are subject to treatment. natural persons must be aware of the risks, standards, safeguards and rights regarding the processing of personal data as well as the way to assert their

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rights in relation to treatment. In particular, the specific purposes of the processing of personal data must be explicit and legitimate, and must be determined at the time of collection. Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treated. This requires, in particular, ensuring that their use is limited to a strict minimum. conservation period. Personal data should only be processed if the purpose of the processing treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the person responsible for the treatment must establish deadlines for its suppression or periodic review. must take all reasonable steps to ensure that they are rectified or deleted personal data that is inaccurate. Personal data must be treated in a

way that guarantees adequate security and confidentiality of the data

including to prevent unauthorized access or use of such data and

of the equipment used in the treatment.

(58) “The principle of transparency requires that all information addressed to the public or to the

interested party is concise, easily accessible and easy to understand, and that a

clear and simple language, and, in addition, where appropriate, it is displayed. This information could

be provided in electronic form, for example, when addressed to the public, through

a website. This is particularly relevant in situations where proliferation

of agents and the technological complexity of the practice make it difficult for the

interested in knowing and understanding if they are being collected, by whom and for what purpose,

personal data concerning you, such as in the case of online advertising.

Since children deserve specific protection, any information and

communication whose treatment affects them must be provided in clear language and

simple that is easy to understand.”

(60) “The principles of fair and transparent treatment require that the

interested party of the existence of the treatment operation and its purposes. The responsible

of the treatment must provide the interested party with as much complementary information as is

necessary to ensure fair and transparent processing, taking into account the

specific circumstances and context in which the personal data is processed. I know

must also inform the interested party of the existence of profiling and

the consequences of such elaboration. If personal data is obtained from

interested parties, they must also be informed of whether they are obliged to provide them and of the

consequences if they don't. This information may be transmitted in

combination with standardized icons that offer, in an easily visible way,

intelligible and clearly legible, an adequate overview of the treatment

provided. Icons presented in electronic format must be legible

mechanically."

(61) "Interested parties must be provided with information on the treatment of their personal data at the time it is obtained from them or, if obtained from another source, within a reasonable time, depending on the circumstances of the case. If the personal data can be legitimately communicated to another recipient, it must be inform the interested party at the time they are communicated to the recipient for the first time time. The data controller who plans to process the data for a purpose that is not is the one for which they were collected must provide the interested party, before said further processing, information about that other purpose and other necessary information.

When the origin of the personal data cannot be provided to the interested party by

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multiple sources have been used, general information should be provided."

After examining the information offered by EDP COMERCIALIZADORA, S.A.U.,

notes that it does not meet the requirements of article 13 of the RGPD.

1. First of all, when the contracting is carried out through the sub-channels

CAC Inbound, Telemarketing and Leads, the information is provided by telephone from the

as follows, as can be deduced from the evidence provided:

In the CAC Inbound channel, it is indicated to the person who contracts by phone what

following: "Your personal data and those of your representative will be processed by EDP

Comercializadora SAU and EDP Energía SAU for the management of their contracts,

fraud prevention, profiling based on customer information and

EDP, as well as the realization of personalized communications about products or

services directly related to their contracts, being able in any time to oppose them". (Evidence 2, CAC Inbound channel contracting.)

In the Telemarketing and Leads contracting subchannels, in addition to the information contained in the previous paragraph, the following information is added: "We remind you that they may exercise at any time their rights of access, rectification, opposition, removal, deletion, limitation and portability, through any of the indicated channels in the General Conditions that can be consulted on our website www.edpenergia.es." (exhibits 3 and 4)

Said information is not in accordance with the provisions of article 13 of the RGPD in relation to the provisions of article 11 of the LOPDGDD, thus in the first of the cases the information is incomplete since during the contracting process in the CAC Inbound channel is not informed of the possibility of exercising the rights established in articles 15 to 22 of the RGPD, nor is it indicated to the person who contracts an address electronically or by any other means that allows easy and immediate access to the rest of the user information.

It is alleged that at the beginning of the call the following locution is heard "This call can be recorded. The data you provide us will be processed by EDP Energía, S.A.U. and/or EDP Comercializadora, S.A.U. for the management of your request or query. You can exercise the rights of access, rectification, deletion, opposition, limitation and portability at any time. See the Privacy Policy on our website edpenergia.es or press 0" It also considers that in accordance with article 13.4 of the RGPD, the obligation to inform does not apply to the extent that the interested party already has the information and that in the case at hand, taking into account that the opening announcement is played automatically on each call, there is enough left to be accredited that any interested party who contacts EDP COMERCIALIZADORA, through the CAC Inbound Channel, receives information regarding

personal data protection

Such allegations cannot be shared, in the opinion of this Agency an information is provided training in a fragmented and dispersed manner that does not comply with the provisions of Articles 13 of the RGPD and 11 of the LOPDGDD, as well as in the initial speech that according to alleges is heard in any case at the start of the call the interested party is informed of the processing of your data with the generic purposes of “managing the request or consultation ta” you are informed of the possibility of exercising the rights recognized by the RGPD and

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you are directed to the privacy policy on the web page or instructed to dial 0. In

this second locution, the purposes are extended to those of carrying out surveys and the participation in raffles, games and promotions, without, on the other hand, being informed of the legal basis for participation in sweepstakes, games and promotions, but does not contain re-any reference to purposes other than those mentioned in this paragraph.

In the information provided in the framework of telephone contracting in the channel CAC Inbound, according to evidence 2, other different purposes are listed, especially reference is made to the possibility of opposing personal communications conducted on products or services directly related to the contracts, and

The interested party is not directed to the General Contracting Conditions, which contain would, apart from the deficiencies that this Agency has observed in them, the specific information related to such purposes.

He is not satisfied with the possibility of reporting by layers, that the interested party must go to different locutions to know the basic information referred to in the

article 11 of the LOPDGDD, so that the interested party must deduct from a first location that can exercise rights other than opposition to communications with commercial, the only one that is informed at the time of contracting. By another pair- However, none of the phrases mentioned refer the interested party to the general conditions contract documents where the required information is found in accordance with article 13 related to the purposes mentioned during the contracting in the channel CAC In-bound, but refer generically to the privacy policy of the website, that does not include that specific information.

On the other hand, the electronic address indicated in evidences 3 and 4, in the mar- telephone contracting in the Telemarketing and Leads channels, does not allow ac- simply and immediately yield to the rest of the information, thus violating the pre- seen in article 11.1 of the LOPDGDD. From the examination of the search process of the General Conditions (as documented in the ninth number of the facts) it follows that the given address does not lead directly to the information information required in accordance with article 13 of the RGPD, but to the website of the interested party, where you must 'proceed to a search that, in addition, yields various results si- and requires looking at the general conditions (which include numerous aspects) relating to contracting) the information relating to data protection, therefore that it cannot be considered that such an electronic address allows access in an in- access to such information is not easy for any person.

It is alleged by EDP marketer that to meet the aforementioned general conditions a simple search is enough to access them directly, using for this the search engine available on the website. Performing the search for "conditions" contracting conditions" or "general contracting conditions", are published as first results the documents related to the general contracting conditions tion.

Such an allegation cannot be shared, even using the page's own search engine.

page the information is not directly accessible, as demonstrated in the search process documented by this Agency. In this sense, it is worth remembering that the "Guidelines on transparency under Regulation 2016/679", adopted on 11/29/2017 and reviewed on 04/11/2018." approved by the European Committee for Data Protection in its first plenary meeting indicate that "Both article 13 such as 14 refer to the obligation for which the data controller

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"will provide all the information indicated below" to the interested party. The key word in this expression is "will facilitate". This means that the data controller must take active steps to provide the information in question to the data subject. do or actively direct the data subject to the location of the data subject (e.g. via a link direct, the use of a QR code, etc.). The interested party should not have to actively seek mind the information covered by such articles between information of another type, such as for example the conditions of use of a website or an application." On the other hand, if Although this Agency positively values the creation of direct access to information training required by article 13 of the RGPD, this does not invalidate the fact that until its creation, subsequent to the motion for a resolution, access to information ca- It relied on that element of immediacy and simplicity required by article 11 LOPDGDD. It is also alleged that there was no breach of the duty of transparency. reference, while the complete information on data protection (with the content required by the regulations) is contained within the general conditions of con-

treatment that are sent to the interested party after contracting. This cannot be shared argument, the information must be provided to the interested party at the time it is obtained. have the data, without this moment being able to be deferred from the reception of the contract. Article 13 of the RGPD determines in its first section when the information must be provided. information by providing that "When personal data is obtained from an interested party relating to him, the data controller, at the time these are obtained. gan, will provide you with all the information indicated below: (...)", (the underlining is the AEPD). The LOPDGDD allows said information to be provided in layers, providing the interested party with basic information during the collection of the data, whose content determines, and allowing to indicate an electronic address or other means that allows easy and immediate access to the rest of the information. The element of immediacy is essential to comply with article 13 of the RGPD, of so that providing the information days later when a contract is received, not complies with the requirement to provide the information that according to said precept The data of the interested party must be communicated "at the moment in which they are obtained". In this same sense, the aforementioned "Guidelines on transparency under the Regulation 2016/679" point out that "Regardless of the formats used, cen in this tiered approach, WG29 recommends that the first 'tier' (i.e., the main way in which the person in charge interacts for the first time with the interested party) regularly transmit the most important information (mentioned in the section 36), namely the details of the purposes of the treatment, the identity of the person in charge and the existence of the data subject's rights, along with information on the greatest repercussions discussion of the treatment or the treatment that could surprise the interested party. For example- For example, when the first contact with an interested party is by telephone, this information information could be facilitated during the call with the interested party and the interested party could receive the rest of the information required under article 13 or 14 by another additional means

different, for example, by sending you a copy of the privacy policy by email.

or a link to the online privacy statement/notice of the controller.” It is-

these means email or link to the privacy statement, have the same effect-

mind in that element of immediacy, which allows compliance with the provisions of

article 13.

In this regard, the considerations contained in the dicta-

Council of State to the preliminary draft of the Organic Law on Data Protection

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of a personal nature, in which the following was indicated regarding the information by

layers:

“(…) if the information is provided in another format, or through different “layers”, it will not be

will be violating the principle of transparency, but the person in charge must assess whether

the principle has been adequately complied with or if some type of additional measure is required.

protection of rights, (…)”. And it added “(…) Notwithstanding the foregoing,

It should be remembered that article 13 requires that all the information to be

provided to the interested party is provided at the time the data is obtained

personal object of treatment. Despite the direct applicability of this provision

of the Regulations, it would be appropriate for article 12 of the preliminary draft to specify that

this method of information "by layers" cannot in any case imply a delay

in the provision of information considered as “non-basic.

2. On the other hand, with regard to the information provided both by telephone

(evidence 2,3, and 4) as in the general conditions (evidence 6 and document of

general conditions of the website) the following is observed:

A. Regarding the data controller, it is indicated in evidences 2, 3, 4 and 5

that the data will be "processed by EDP Comercializadora SAU and EDP Energía SAU"

that does not necessarily correspond to the entity with which you are contracting,

since when only the energy service is contracted or only the

gas, the person responsible will be one or the other, without being properly informed in such cases

to the interested party about who is responsible for the treatment. the same reproach

It should be done to the information provided in the general conditions in which it is

indicates "These data, in addition to those obtained as a result of the execution of the

contract, will be processed by EDP COMERCIALIZADORA, S.A.U, with address at

c/General Concha, 20, 48001, Bilbao and by EDP ENERGIA, S.A.U with address at

Plaza del Fresno, 2 -33007, Oviedo in their capacity as Data Controllers"

It is also imprecise information, since they will be responsible

one or another entity depending on the contracted service or, where appropriate, each of the

entities for the respective treatments derived from the contract and the possible

consents granted, without this information being clear to the client. A

this inaccuracy in the determination of the person responsible is added to that of referring

generically to EDP in the rest of the information provided, so that the

In the case of other treatments, the interested party does not know which entity is responsible.

In this regard, EDP COMERCIALIZADORA, S.A.U alleges that the customer is informed

about the identity of the data controller through the privacy policy

in relation to the contracting conditions: Privacy policy: "the data is

They will be processed by EDP Comercializadora SAU and EDP Energía SAU". Special Conditions

specifications of the contract: "The client contracts, for the supply indicated, the supply

of gas with EDP Comercializadora, S.A.U. and the supply of electricity and/or utilities

complementary services with EDP ENERGIA, S.A.U., (hereinafter joint and/or individual)

duly, as appropriate, referred to as “EDP”) in accordance with the S-Conditions specific ones that are collected below and to the General Conditions in annex”. By Therefore, the interested party -who has full capacity to contract and, therefore, presupposes that he should be able to understand the terms and conditions governing govern such hiring, you are aware at all times that, depending on whether you hire the

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gas and/or electricity supply service, your data will be processed by one or more bas entities.

This allegation cannot be shared by this Agency, as stated by EDP

COMERCIALIZADORA, S.A.U. it can only be admitted that what the client knows is the entity with whom you have contracted the services, but not the person responsible for the different Processing of data that may be carried out, since, as stated above,

In other evidence and in the contracting conditions, it is indicated that both entities are responsible for data processing (evidence 2.3 and 4 and 5) and it is used the generic EDP formula that includes both.

Regarding other explanations of EDP COMERCIALIZADORA, S.A.U. like the activity of one of the entities and the possible sale to third parties, already carried out as stated, they do not justify the inaccuracy of the information, since it is contracted on behalf of name of two different entities, regardless of whether one is active or not, aspect that lacks relevance from the point of view of data protection, since that said entity continues to act as data controller.

B. Regarding the purposes and legitimizing bases of data processing, it is

The general conditions indicate the following “manage, maintain, develop, complete and control the contracting of electricity and/or gas supply and/or complementary services of and/or gas and/or complementary services of review and/or technical assistance and/or points program, and/or improvement of the service, for the realization of fraud prevention actions, as well as profiling, personalized commercial communications based on information provided by the Client and/or derived from the provision of the service by EDP and related to products and services related to the supply and consumption of energy, maintenance of facilities and equipment. These treatments will be carried out strictly complying with current legislation and to the extent that they are necessary for the execution of the contract and/or the satisfaction of legitimate interests of EDP, provided that other rights of the client do not prevail over the latter.”

This Agency considers that it is not easy for any person, without knowledge of the matter of data protection, differentiate what treatments derived from the contract and which are based on the legitimate interest of the person in charge. Nor is it indicated what is the legitimate interest that the person in charge attributes. Result essential for the exercise of the rights of the interested parties to know the legal basis on which the treatment is based, in particular to be able to exercise your right of opposition to treatment when it is based on the legitimate interest of the responsible in accordance with the provisions of article 21 of the RGPD.

In this sense, they point out the Guidelines on Transparency under the Regulation (EU) 2016/679, adopted on November 29, 2017 by the Group of Article 29 work that “The specific interest in question must be identified in benefit of the interested party. As a matter of good practice, the data controller can also provide the interested party with the information resulting from the “examination of deduction” that must be carried out in order to benefit from the provisions of article

6, section 1, letter f), as a lawful basis for processing, prior to any collection of the personal data of the interested parties. To avoid information fatigue, this can be included within a privacy statement/notice structured in nissails (see section 35). In any case, the position of the GT29 is that the information Information addressed to the interested party must make it clear that they can obtain information about

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Open weighting test on request. This is essential for the transparency is effective when the interested parties doubt whether the weighting tion has been carried out fairly or they wish to make a claim.”

This Agency does not share the argument that neither Article 13 nor any other provision

This legal concept requires that the privacy policy list each purpose, indicating specifically cifically the basis of legitimacy that results from application, the very wording of the

Article 13 requires that the interested party be informed of “the purposes of the treatment to which the personal data and the legal basis of the treatment are intended”, that is, the use of the singular makes it clear that the legal basis of each treatment must be indicated. The

Transparency is closely linked to the legality of the treatment, article 5.1.a) of the

RGPD indicates as one of the principles related to the treatment the principle of legality,

loyalty and transparency. The legal basis determines the legality of the treatment, so

the person in charge must inform the interested party in each case that there is a legal basis

ca appropriate to carry out said treatment in accordance with article 6 of the RGPD, without

that it is admissible that the interested party has to interpret the privacy policy to

determine what may be the legitimizing basis of each treatment.

This Agency also does not agree with the allegation that “for any person na may be self-evident that treatments such as “manage, maintain, develop, Implement and control the contracting of electricity and/or gas supply and/or services supplementary and/or gas and/or supplementary review and/or assistance services technique and/or points program, and/or service improvement” are closely related nate to the execution of the contract, being the others assignable to the legitimate interest.

In this sense, it is worth remembering what was stated in the previously mentioned "Guidelines ces on transparency under Regulation 2016/679". They analyze the scope that should be attributed to the elements of transparency established in article Article 12 of the RGPD, according to which the controller will take the necessary measures appropriate to "provide the interested party with all the information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language", which must be related to what is expressed in the Consideration rank 39 of the aforementioned Regulation. From what is stated in these Guidelines, it should be noted at this time the following: “The requirement that the information be “intelligible” means re say that it must be understandable to the average member of the target audience.

Intelligibility is closely linked to the requirement to use plain language And simple. A data controller that acts with proactive co-responsibility you will know the people about whom you collect information and you can use this knowledge ment to determine what said audience is capable of understanding...”. In the In this case, the services provided by EDP COMERCIALIZADORA, S.A.U. he went- gen to all citizens, so it cannot be presumed that any person can understand when it comes to one legal basis or another. In this sense the pro- pious allegations indicate that their clients do not distinguish between opposition and revocation of consent, which shows that, in general, they lack knowledge

technical knowledge on the matter and cannot distinguish between different legal bases different, which entail an exercise of rights in a different way.

Regarding the information on the legitimate interest that the person in charge attributes, EDP COMERCIALIZADORA alleges that they are clearly exposed and placed in relation to the purposes pursued, that is: prevention of fraud

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of and marketing, in relation to the sending of personal commercial communications

lysed. In these cases, he considers it obvious that there is an identification between the purpose informed and the interest pursued, so making a separate allusion to this

The latter would be redundant.

This allegation cannot be admitted, within the treatments indicated by EDP

whose basis, as indicated in his allegations, is his legitimate interest, mention is made of

"profiling" in respect of which neither the legitimate interest nor the purpose is indicated.

dad.

In this sense, the Guidelines of the Working Group of Article

29 on automated individual decisions and profiling for the purposes of

Regulation 2016/679, adopted on 10/03/2017 and revised on 02/06/2018, indicate the

Next:

“Transparency of processing is a fundamental requirement of the GDPR.

The profiling process is often invisible to the data subject. Works

creating derived or inferred data about individuals ("new" personal data

that have not been directly provided by the interested parties themselves). People

have different levels of understanding and may find it difficult to understand the complexities technical characteristics of the profiling processes and automated decisions”.

“Taking into account the basic principle of transparency that underpins the GDPR,

Data controllers must ensure that they explain to individuals in a way that

clear and simple operation of profiling or self-decisions

nuanced.

In particular, when the treatment involves decision-making based on the ele-

profiling (regardless of whether they fall within the scope of the provisions

Article 22), the user must be made clear that the processing is for the

both a) profiling and b) making a decision on the

base of the generated profile

Recital 60 establishes that providing information about the preparation of

files is part of the transparency obligations of the data controller

according to article 5, paragraph 1, letter a). The interested party has the right to be informed

by the data controller, in certain circumstances, about their right to

of opposition to «profiling» regardless of whether they have been pro-

duced individual decisions based solely on automated processing

on the basis of profiling”.

“The person responsible for the treatment must explicitly mention to the interested party details

on the right of opposition according to article 21, paragraphs 1 and 2, and present them clearly

freely and apart from any other information (Article 21, paragraph 4).

According to article 21, paragraph 1, the interested party can oppose the treatment (including

profiling) for reasons related to your particular situation. The

data controllers are specifically required to offer this right

in all cases in which the treatment is based on article 6, paragraph 1, letters

e) or f).

In this case, in the opinion of this Agency, the information requirements previously described. EDP COMERCIALIZADORA, S.A.U., limits itself to reporting on the www.aepd.es

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"profiling", but does not offer information on the type of profiles that are they are going to perform, the specific uses to which these profiles are going to be put, or the possibility that the interested party may exercise the right of opposition in application of article 21 of the RGPD.

The allegation that profiling is associated with sending personalized commercial communications. As has been pointed out when determining the purposes in the first paragraph of the general conditions it is stated the following: "manage, maintain, develop, complete and control the contracting of electricity and/or gas supply and/or complementary services of and/or gas and/or complementary review services and/or technical assistance and/or program of points, and/or improvement of the service, to carry out actions to prevent fraud, as well as profiling, personalized commercial communications based on information provided by the Client and/or derived from the provision of the service by EDP and relating to products and services related to the supply and consumption of energy, maintenance of facilities and equipment" clearly separating the purpose of profiling from that of sending commercial communications.

In the same way, as evidenced in exhibits 2, 3 and 4 during telephone contracting process through a representative, the latter is informed of

that: "Your personal data and those of your representative will be processed by EDP Comercializadora SAU and EDP Energía SAU for the management of their contracts, prevention of fraud, profiling based on customer and EDP information, as well as the realization of personalized communications about products or services directly mind related to their contracts, being able at any time to oppose the same". Likewise, information is provided regarding the realization of profiles as a treatment treatment or treatment different and separate from the sending of personalized communications on products or services directly related to the contracts, such as try the use of the conjunctive phrase "as well as".

In any case, even when it could be taken for granted that the intention of EDP COMERCIALIZADORA, S.A.U. was to link both purposes, the way in which the information is given information violates the principle of transparency, as indicated in recital 60

"The principles of fair and transparent treatment require that the interested party be informed of the existence of the treatment operation and its purposes. The person responsible for the treatment The procedure must provide the interested party with as much additional information as necessary to ensure fair and transparent treatment, taking into account the circumstances and the specific context in which the personal data is processed. It must also in-educate the interested party about the existence of profiling and the consequences tions of said elaboration."

C. The following information is also provided in the general conditions regarding of the treatments based on the consent of the interested party:

"As long as the client has explicitly accepted it, their personal data will be treated, even once the contractual relationship has ended and provided that no produces the opposition to said treatment, to:

(I) The promotion of financial services, payment protection services, automotive or similar and electronic, own or third parties, offered by EDP and/or participation in

promotional contests, as well as for the presentation of commercial proposals

linked to the energy sector after the end of the contract, (II) The preparation of

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commercial profiles of the Client through the aggregation of the databases of

third parties, in order to offer the Customer personalized products and services,

thereby improving the customer experience, (III) Decision-making

automated, such as allowing the contracting, or not, of certain products

and/or services based on the Client's profile and particularly, on data such as the

non-payment history, hiring history, permanence, locations, data

of consumption, types of devices connected to the energy network, and similar data

that allow knowing in greater detail the risks associated with contracting. (IV)

Based on the results obtained from the aggregation of the indicated data,

EDP may make personalized offers, specifically aimed at achieving the

contracting certain products and/or services of EDP or third parties

depending on whether the client has consented or not, being in any case treated

data whose age will not exceed one year. In the event that this process is carried out

carried out in an automated way, the client will always have the right to obtain intervention

by EDP, admitting the challenge and, where appropriate, assessment of the

resulting decision.

It is also not easy for anyone without specialized knowledge in-

understand what kind of treatments are going to be carried out on the basis of consent

this, in particular the wording of point IV is not clear at all: it is unknown to

what data do you mean by “the results obtained from the aggregation of the data included in dicados” that could be both those contained in number III above and those obtained nests of third-party bases or all of them. The purpose of the treatment seems to indicate that these are advertising treatments different from those indicated in the first two ros numbers, without the difference between them being evident. On the other hand, do not The last paragraph of this point IV is understandable, when mentioning the rights that the Article 22 of the RGPD recognizes the interested parties when self-decisions are adopted. nuanced that produce legal effects on them or significantly affect them in any way like manner.

The pleadings provide an explanation of the purposes of the different treatments and the data to be treated that seek to clarify said aspects, however, it is not in them where such points should be clarified but rather it is the information provided mentioned to the interested party, which must be clear and understandable for him, failing to with the information provided, in the opinion of this Agency, the provisions of article 12 of the GDPR.

D. The general conditions inform as follows regarding the rights

Of the interested:

"Rights of the owner of the data

The client will have at all times the possibility of exercising freely and completely free of charge the following rights:

Yo)

ii)

iii)

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Access your personal data that is processed by EDP.

Rectify your personal data that is processed by EDP that are inaccurate or incomplete.

Delete your personal data that is processed by EDP.

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i)

i)

saw)

vii)

Limit the processing by EDP of all or part of your data personal.

Object to certain treatments and self-decision making

nuanced personal data, requiring human intervention

in the process, as well as to challenge the decisions that are finally adopted by virtue of the processing of your data.

Port your personal data in an interoperable and self-sufficient format tea.

Withdraw at any time, the consents previously granted mind."

Said information, although it includes all the rights that the RGPD grants to the interested party-

do, it must be adapted to the specific treatments carried out by the person in charge. So and

as indicated in the aforementioned Guidelines on Transparency under the Regulation

(EU) 2016/579: "This information must be specific to the treatment scenario and

include a summary of what the right implies and how the interested party can act.

tuar to exercise it, as well as any limitation to the right."

The allegation that the obligation to detail the specific treatments to which the interested party has the right to object is not only not a legal obligation taken in the RGPD, the LOPDGDD or any other applicable regulations, but In addition, the AEPD in its guides and tools (among others, the Guide for compliance the duty to inform² or the Facilita³ tool) does not indicate that the informative clauses regulations on the right of opposition must specify the treatment of the which applies the right of opposition. It should be reiterated here what is stated in the Guidelines of the Article 29 Working Group on automated individual decisions and profiling for the purposes of Regulation 2016/679, adopted on 10/03/2017 and revised on 02/06/2018, which indicate the following:

“The person responsible for the treatment must explicitly mention to the interested party details on the right of opposition according to article 21, paragraphs 1 and 2, and present them clearly freely and apart from any other information (article 21, paragraph 4).”

Therefore, it is not enough to mention the right to oppose “certain transactions” treatments”, but should be informed that these treatments, in the present position, are those that the person in charge bases on article 6.1.f), that is, in the existence of a legitimate interest prevailing over the interests, rights and freedoms of the interested party, and it must be clear to the interested party what these treatments are against which you can exercise your right of opposition.

Nor can it be shared that with this interpretation the principle of inhibition on alleged arbitrariness when EDP COMERCIALIZADORA considers that the presentation of the information related to the exercise of rights, as presented in its information constitutes a recommended practice and even applied by the Spanish Agency for Data Protection in its privacy policy. In this respect this, it must be taken into account that this Agency does not carry out treatments based on what provided for in article 6.1.f, in particular those related to direct marketing.

It is imprecise to point out that the interested party may oppose the adoption of decisions

automated processing of your personal data. These can only be done

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by the person in charge in the cases provided for in article 22 of the RGPD, based on

in the present case in the consent of the interested party, so the latter must be able to

Know that you can revoke the consent given for the adoption of such decisions.

sessions at any time, without prejudice to also being informed of the rights

rights conferred by article 22 to the interested parties.

It cannot be shared, regarding this vagueness regarding the exercise of rights,

the allegation that the semantic and technical nuance associated with the terms “opposition” and

“revocation” in the context of the exercise of rights cannot have an impact on the

interested, because with both terms the user achieves the same objective, which is that

treatment specifically identified in the policy ceases to occur and that the

term used by EDP COMERCIALIZADORA (opposition) in the context of this

type of treatment is understood in the regulations and by the market itself in a more

broad -and therefore more guarantee- since it allows the user to eliminate a treat-

treatment is based on consent, is based on legitimate interest. The normative

is clear in defining both rights and when they can be exercised in articles 7 and

21.1.2 of the RGPD, which correlatively requires that the interested party have knowledge

of the legal basis of the treatment. Thus, it is not possible to justify in an alleged greater guarantee

that for those concerned the incorrect information provided about the exercise of

rights of the interested party.

Consequently, in accordance with the exposed evidence, the facts described in this Law Ground suppose a violation of the principle of transparency regulated in article 13 of the RGPD, which gives rise to the application of the corrective powers that article 58 of the aforementioned Regulation grants to the Agency Spanish Data Protection.

v

In the event that there is an infringement of the provisions of the RGPD, between the corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, article 58.2 of said Regulation contemplates the following:

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

(...)

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way 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;”.

According to the provisions of article 83.2 of the RGPD, the measure provided for in the letter d) above is compatible with the sanction consisting of an administrative fine.

SAW

In the present case, the breach of the principle of

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privacy from the design established in article 25 of the RGPD, as well as the principle of transparency regulated in article 13 of the RGPD with the scope expressed in the previous Fundamentals of Law, which supposes the commission of individual infractions typified in articles 83.4 and 83.5 of the same regulation that under the heading “General conditions for the imposition of administrative fines” provides the following:

4. “Infractions of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43;”

a)

5. “Infractions of the following provisions 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:

b) the rights of the interested parties pursuant to articles 12 to 22;(…)”.

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

For the purposes of the limitation period, articles 73 and 74 of the LOPDGDD

indicate:

Article 73. Infractions considered serious.

“1 Based on the provisions of article 83.4 of Regulation (EU) 2016/679,

considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

(...)

d) The lack of adoption of those technical and organizational measures that result

appropriate to effectively apply the principles of data protection from

the design, as well as the non-integration of the necessary guarantees in the treatment, in

the terms required by article 25 of Regulation (EU) 2016/679.”

Article 74. Infractions considered minor.

“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

principle of information transparency or the data subject's right to information

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for not providing all the information required by articles 13 and 14 of the Regulation

(EU) 2016/679”.

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

whether the person in charge or the person in charge notified the infringement and, if so, to what extent.

gives;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or to certification mechanisms

fication approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

mind, through infraction.”

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD

has:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

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b) The link between the activity of the offender and the performance of treatment of

personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party.”

In this case, considering the seriousness of the infractions found, it is appropriate

the imposition of a fine.

The request made by EDP COMERCIALIZADORA, S.A.U.

so that other corrective powers are imposed, specifically, the warning,

which is intended for natural persons and when the sanction constitutes a burden

disproportionate (considering 148 of the RGPD).

For the same reasons, and considering the graduation criteria of the

sanctions indicated below, the request for

imposition of a sanction in its minimum degree.

In accordance with the precepts transcribed, in order to set the amount of the

penalties of a fine to be imposed in this case on EDP COMERCIALIZADORA,

S.A.U., as responsible for infractions typified in article 83.4.a) and 83.5.b) of the

RGPD, it is appropriate to graduate the fine that should be imposed for each of the

offenses charged as follows:

1. Infraction due to non-compliance with the provisions of article 25 of the RGPD, typified

in article 83.4.a) and classified as serious for prescription purposes in article

73.1.d) of the LOPDGDD:

It is estimated that the following factors concur as aggravating factors:

reveal greater unlawfulness and/or culpability in the conduct of the EDP entity

COMERCIALIZADORA, S.A.U.:

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The nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operations to be carried out

Trafficking: The infringement results from the absence of an effective implementation of

technical and organizational measures to eliminate the risks generated by the con-

treatment of services and obtaining consent for other purposes

des when acting through a representative.

The intentionality or negligence appreciated in the commission of the infraction.

Deficiencies in such hiring procedures and obtaining

consent for other purposes should have been advised by a

entity with the characteristics of EDP COMERCIALIZADORA, S.A.U. Y

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avoided when designing their processes.

- The continuing nature of the offence. The offense originates from a

incorrect design of contracting procedures through

representative, which have been used since at least 2018, without

these have been modified or corrective measures implemented up to the

month of January of the current year in which a protocol of

contracting through representative.

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The high link between the activity of the offender and the performance of personal data processing. The operations that make up the business activity carried out by EDP COMERCIALIZADORA, S.A.U.

As a marketer of gas services to individuals, they imply personal data processing operations.

It cannot be considered as a mitigating factor, as alleged by the person in charge, that the data processing is carried out instrumentally without your activity is based on the exploitation of personal data, in this regard it is taken into account that authorizations have been obtained from the representative in name of the represented to carry out advertising treatments of non-energy products or services of EDP companies or collaborators MARKETER.

The condition of large company of the responsible entity and its volume of business. The business volume of the entity according to the information obtained It has been 989,491,000 euros in 2019.

It is alleged that being considered a large company or the volume of billing are not circumstances foreseen as aggravating or in the RGPD nor in the LOPDGDD.

Such an allegation cannot be shared, article 83.1 of the RGPD provides that "Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of the this Regulation indicated in paragraphs 4, 5 and 6 are in each case individual effective, proportionate and dissuasive." The number 2 of said Article establishes that when deciding to impose an administrative fine and its amount in each individual case will be duly taken into account: (...) k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided,
directly or indirectly, through the infringement.”

For these purposes, as an aggravating factor, it is worth taking into account the
consideration of the entity as a large company which is
linked, among other aspects, to its turnover, to the extent that
that it has greater means to comply with the obligations
imposed by the GDPR.

- High volume of data and processing that constitutes the object of the

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proceedings. The volume of contracts signed by third parties on behalf
of natural persons rose during the year 2019 amounted to 11,657.

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Any previous infraction committed by the person in charge or the person in charge of the
treatment; EDP COMERCIALIZADORA has been sanctioned in
file PS/00025/2019 for the violation of article 6.1.b of the RGPD,
for having contracted their services through a supposed
representative whose status as such was not accredited.

It is alleged by the person in charge that the AEPD refers to the volume of global invoicing
of EDP COMERCIALIZADORA to quantify the infraction when it should take into account
account exclusively, and where appropriate, the billing data generated by the
eventual alleged breach -in the case of article 25 of the RGPD, relative
exclusively to hiring by representation, being the amount obtained by the

contracting for representation of approximately 2,550,000 euros.

In this regard, it should be noted that article 83.4 provides that "The Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the total annual global turnover of the previous financial year", for

Consequently, this Agency understands that the total volume of annual business is that which operates as a limit on the amount of the infringement, and not the benefit obtained, which constitutes a further aggravating element. In this regard, it should be noted that the 2% of the turnover of said entity during 2019 represents a figure of 19,789,820 euros, so the amount in which the amount of the fine is valued, very far from such maximum amount is weighted.

On the other hand, said entity requests that the fact of that special categories of data, or data of minors, are not processed in this regard

It should be considered that the processing of such data may constitute, in its case, a aggravating circumstance, but the fact that such data is not processed in itself does not constitute an extenuating one, without, on the other hand, by the data controller justifying in in any way because such a circumstance must be taken into account in this sense.

Nor should the fact that the entity has been object of sale to another company, article 76.2.e) of the LOPDGDD states that it may take into account "the existence of a merger process by absorption subsequent to the commission of the infraction, which cannot be attributed to the absorbing entity"

seeks here an analogical interpretation of this precept so that it extends this circumstance to other "structural modifications" made after to the commission of the offence, an interpretation that cannot be admitted, when the LOPDGDD wants to refer to structural modifications in general, so it does,

while in the aforementioned precept it makes exclusive reference to the merger by absorption.

It alleges that the measures taken

to alleviate the damage, such as the implementation of a new protocol of

hiring and the degree of cooperation with the administration and the degree of

collaboration with the AEPD. These elements are taken into account so that they are not

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has made use of another of the corrective powers that this Agency can use as

is the imposition of measures in the terms provided in article 58.2 of the RGPD.

Considering the exposed factors, the valuation reached by the fine for the

imputed infraction is 500,000.00 euros.

2. Infraction due to non-compliance with the provisions of article 13 of the RGPD, typified

in article 83.5.b) and qualified as minor for prescription purposes in article

74.a) of the LOPDGDD:

The following graduation criteria are considered concurrent:

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The nature, seriousness and duration of the infraction: The deficiencies

appreciated in the information provided to the interested parties affect

substantive aspects of the principle of transparency.

It is alleged that the imputed is the need to improve some aspects of its

data protection policies without in any case the texts used can be understood to have generated a high level of damage and damages, which should be considered as a mitigating factor. This allegation cannot be accepted, these are not simple information defects offered without great importance, said information violates aspects principles of the principle of transparency as has been highlighted manifest in this proceeding.

The intentionality or negligence appreciated in the commission of the infraction.

The defects pointed out in the information provided show the lack of diligence of EDP COMERCIALIZADORA, S.A.U. in complying with the transparency obligations imposed by the GDPR.

The allegation that in his actions he has followed the guides and directives of the AEPD and the European Committee for Data Protection which shows his diligence, on the contrary, in the fundamentals of law contains the numerous aspects in which the guidelines of the European Data Protection Committee have not been taken into account in its performance.

The high link between the activity of the offender and the performance of personal data processing. The operations that make up the business activity carried out by EDP COMERCIALIZADORA, S.A.U. as a marketer of energy services involve operations of treatment of personal data.

It cannot be considered as a mitigating factor, as alleged by the person in charge, that the data processing is carried out instrumentally without your activity is based on the exploitation of personal data. As it is follows from the facts set forth in this proceeding and from the

general contracting conditions, consents are obtained for

carry out third-party advertising treatments in various sectors

(financial, automotive and related payment protection, electronics...)

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- The continuing nature of the infringement, interpreted by the National High Court

as a permanent offense.

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The condition of large company of the responsible entity and its volume of

business. The business volume of the entity according to the information obtained

It has been 989,491,000 euros in 2019.

Regarding the allegation that being considered a large company or the

billing volume are not foreseen circumstances as aggravating or

in the RGPD or in the LOPDGDD, this Agency reiterates what is indicated

previously in the determination of the aggravating circumstances of the infraction of the

article 25 before the same allegation.

- High volume of data and processing that constitutes the object of the

proceedings. The infringement affects all data processing carried out

by the entity EDP Comercializadora S.A.U.

- High number of interested parties. Violation affects all customers

natural persons of the entity. According to the supervision report of the

changes of marketer, corresponding to the first quarter of 2019, from

the National Commission of Markets and Competition the number of points

supply of the entity in the domestic sphere amounted to 893,736

constituting 11.4% of the total gas sector in that area

domestic.

The allegation that it is not a high volume cannot be accepted

treatment because other groups other than their users are not identified.

customers. The high number of individual clients of the entity

responsible is sufficient element to consider this circumstance as

an aggravating

As for other factors that the data controller considers should be

taken into account as mitigating factors, such as the fact that they are not treated

special categories of data or data of minors or the sale of all the

shares to another company, we can only refer to what was expressed by this Agency before

the same allegations in relation to the violation of article 25 of the RGPD.

It alleges that the measures taken

to alleviate the damage, such as improving access to information on

data protection, which is already available at edp-

residentialbytotal.es/rgpd and the degree of cooperation with the authority. The alleged

improvement affects only one of the defects indicated in relation to the

transparency of the procedure, whose positive evaluation by this Agency cannot

suppose a mitigation of the sanction taking into account that such measure has been

taken once the present sanctioning procedure has begun.

Considering the exposed factors, the valuation reached by the fine for the

infringement charged is 1,000,000.00 euros

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of graduation of the sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity EDP COMERCIALIZADORA, S.A.U, with NIF A95000295, for an infringement of article 25 of the RGPD, typified in article 83.4.a) and classified as serious for prescription purposes in article 73.d) of the LOPDGDD, a fine amounting to 500,000 euros (five hundred thousand euros).

SECOND: TO IMPOSE the entity EDP COMERCIALIZADORA, S.A.U, for a infringement of article 13 RGPD, typified in article 83.5.b) and classified as minor for prescription purposes in article 74.a) of the LOPDGDD, a fine for an amount of 1,000,000 euros (one million euros).

THIRD: DECLARE, due to lack of evidence in application of the principle of presumption of innocence, not attributable to EDP COMERCIALIZADORA, S.A.U., the violations of the provisions of articles 6 and 22 of the RGPD.

FOURTH: NOTIFY this resolution to EDP COMERCIALIZADORA S.A.U.

FIFTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

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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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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