

☐ Procedure No.: PS/00220/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### PRECEDENTS

FIRST: A.A.A. (hereinafter, the claimant) filed a claim with the Agency  
Spanish Data Protection on January 12, 2018.

The claim is directed against IBERDROLA CLIENTES, SAU (hereinafter, the  
reclaimed).

The reasons on which the claim is based are that the claimed entities have  
denied your right to cancel your personal data.

That according to the complainant took place on the date of:

And, among other things, attach the following documentation:

☐ Copy of the request for information on the processing of your data  
and cancellation of these sent to IBERDROLA dated 11

November 2016 and acknowledgment of receipt. In this application, you also inform the  
company of the new domicile for the purposes of notifications as they do not reside from the  
May 31, 2016 at the supply installation address.

☐

Report from EQUIFAX IBERICA on the reported data of the claimant  
dated August 16, 2016 to the ASNEF file.

SECOND: Dated January 26, 2018, after analyzing the documentation that  
was in the file, a resolution was issued by the Director of the Spanish Agency  
Data Protection, in response to the protection of law TD / 00157/2018,  
agreeing to dismiss the claim. The resolution was notified to the affected party with

date of January 30, 2018.

THIRD: On February 28, 2018, it is received in this Agency, with registration number 070251/2018, reversal appeal -RR/00135/2018- filed by the defendant against the inadmissibility of his claim, substantiating it, basically, on the same facts and arguments set forth in your claim.

FOURTH: On April 24, 2018, the Director of the Spanish Agency for Data Protection resolves to dismiss the reversal appeal filed by the claimed against the Resolution of this Agency issued on January 26, 2018, agreeing to file the claim.

FIFTH: On July 23, 2018, this Agency received, with the number of registration 186710/2018, official letter sent by the National High Court, Contentious Chamber Administrative, Section 001, reporting the filing before that court for the [www.aepd.es](http://www.aepd.es)

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claimant of contentious-administrative appeal No. \*\*\*RECURSO.1 against the resolution of this Agency, requesting a copy of the file and a copy of the supporting documents of the sites of the interested parties.

SIXTH: Dated October 21, 2019, it is received in this Agency, with number of registration 049866/2019, partial judgment to open proceedings preliminary investigations regarding IBERDROLA CLIENTES S.A.U. with the object of determine the reasons for not paying attention to the claimant's right and determine whether the mandatory prior payment requirement was produced as required by article 38.c of the RLOPD.

SEVENTH: Dated November 11, 2019, the present investigative actions, assigning file number E/10786/2019, in relation to the claim presented by the claimant in order to determine the aspects indicated in the sentence sent to this Agency by the National High Court, Administrative Litigation Chamber, dated October 21, 2019.

## BACKGROUND

FIRST: In view of the facts denounced in the claim and the procedures and sentence to which they have given rise, the Subdirectorate of Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

In addition, the following extremes are noted:

Information required from IBERDROLA on the aspects indicated in the judgment sent to the Spanish Agency for Data Protection dated October 21, 2019, dated July 2, 2020, is received at this Agency, with the number of registration 022916/2020, brief of allegations stating the following facts:

☐ That an attempt was made to notify the prior payment requirement in up to three occasions on the dates July 22, 2016, August 10, 2016 and November 2016 in which it was specified:

“If this prior payment requirement is neglected, we will proceed to

communicate the data related to the non-payment to the delinquency registers corresponding".

☐ That on November 21, 2016, a response was given to the request of the claimant indicating that he had 2 invoices pending payment, reason why which their data had been communicated to the ASNEF file. Also, on the 22nd December 2016, communication is sent again to the claimant

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informing him that the debt he had amounted to the amount of XXX.-€.

Debt that still remains today.

☐ That notwithstanding the foregoing, the claimant has been discharged from the file of non-compliance with monetary obligations ASNEF-EQUIFAX, with date June 4, 2020.

And attach the following documents:

- Communications dated November 21, 2016 and December 22, 2016 informing the claimant of the debt.
- Certificates of return of the previous request for payment dated 22 of July 2016, August 10, 2016 and November 23, 2016.

SECOND: Examined all this documentation, it is verified that it exists discrepancy between the claimant's domicile and the one recorded in the IBERDROLA. The claimant informed the company of the new address for the purpose of communications on November 11, 2016, having left the address registered at IBERDROLA on May 31, 2016.

The notifications sent to the claimant made between July 22 and December 23 November 2016 by IBERDROLA requesting the debt were sent to the address of installation of the supply, where the claimant no longer resided, and therefore they were returned twice for “absent” and the third time for “unknown”. Not yet having been able to make the notification, your data was informed to the file of capital solvency and ASNEF credit.

Regarding the request to cancel your data on November 11, 2016, IBERDROLA ignored the change of address reported by the claimant to this company in that same request, and resubmitted the answers with dates November 21 and December 22, 2016 to the installation address of the supply.

THIRD: On September 1, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5.1.d) of the RGPD, article 17 of the RGPD, typified in the article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent requested a copy of the file and extension of the deadline for allegations, both requests being granted, sending a copy of the file which is recorded as received on 28 September 2020.

FIFTH: The respondent filed a pleadings brief in which, in summary, stated that the claimant contracted on July 16, 2010 the electronic supply of a house located in Benidorm, which proves with telephone recording.

Secondly, it states that on March 15, 2016, the new conditions of the electricity supply contract, in which clause 12.3 indicates that:

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“The Client is informed that, in the event that payment is not made in the terms provided for in condition 8 of this Contract and if all the requirements required by Royal Decree 1720/2007, the data relating to non-payment may be communicated to the files related to the breach of monetary obligations.”

Third, the respondent points out that, during the term of the contract, the Claimant did not satisfy the payment of the invoices issued on June 16, 2016, for an amount of 32.74 euros and July 19, 2016, for an amount of 20.32 euros, reason for which the claimant was sent three requests for payment, on dates July 22, 2016, August 10, 2016 and November 23, 2016, at the address of the claimant incorporated into the contract and mentioning its inclusion in files of solvency in accordance with clause 12.3 of the contract.

On November 21, 2016, the claimant requested the cancellation of her employment contract electricity supply as a result of the termination of your contract lease referred to the dwelling with respect to which said supply was contracted, including in its header a new address for notification purposes.

In said letter, the cancellation of the contract is requested with effect from May 31, 2016, it is that is, six months prior to the date on which the aforementioned communication.

At the same time, the claimant requests the cancellation of her personal data from the systems of the entity claimed.

In response to its request for cancellation, the respondent entity addresses the claimant on November 22 and December 22, 2016, indicating the impossibility to proceed to the cancellation of the data included in the ASNEF file as

consequence of the non-payment of the service.

Fourth, the respondent states that he was not aware of the change of claimant's address as of November 21, 2016.

SEX

TO: On October 20, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/10786/2019, as well as the documents provided by the claimant.

SEVENTH: On October 28, 2020, a resolution proposal was formulated, proposing that the defendant be punished for the alleged violations of article 5.1 d) and 17 of the RGPD, infractions typified in article 83.5 a) and 83.5 b) of the RGPD and classified as very serious in articles 72.1 a) and 72.1 k) of the LOPDPGDD respectively for prescription purposes, with a fine of 50,000 euros (fifty thousand euros) for the sanction of article 83.5 a) corresponding to the infraction of article 5.1 d) of the RGPD and a fine of 50,000 euros (fifty thousand euros) for the sanction of the article 83.5 b) for the infringement of article 17 of the RGPD.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

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PROVEN FACTS

FIRST: On \*\*\*DATE.1, the claimant contracted by telephone, the supply email of a home located in \*\*\* LOCATION.1.

SECOND: The claimant did not pay the invoices issued on dates 16 June 2016, for an amount of XXX euros and July 19, 2016, for an amount of XXX euros, which is why the respondent entity sent the claimant three payment requirements, on July 22, 2016, August 10, 2016 and December 23, November 2016, sent to the supply installation address, where they no longer the claimant resided, and therefore they were returned on two occasions for "absent" and the third for "unknown",

THIRD: Despite not having been able to make the notification, the data of the claimant were informed to the financial solvency and credit file ASNEF.

FOURTH: On November 21, 2016, the claimant requests the cancellation of your data and the cancellation of your electricity supply contract as a result of the termination of your rental contract referring to the dwelling with respect to which said supply was contracted, including in its heading a new address to notification effects.

FIFTH: The respondent entity ignored the change of address reported by the claimant to this company, and resubmitted new communications dated 21 November and December 22, 2016 at the address of installation of the supply, in instead of to the new address indicated by the claimant.

## FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure. Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and in the art. 47 and 48.1 of LOPDGDD.

II

Article 6.1 of the RGPD, establishes that "in accordance with the provisions of the Article 4.11 of Regulation (EU) 2016/679, means consent of the



affected any manifestation of free will, specific, informed and unequivocal by

the one that he accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you”.

For its part, article 5 of the RGD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party (“lawfulness, loyalty and transparency”);

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89,

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paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes (“purpose limitation”);

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”);

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed (“accuracy”);

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provisions of

section 1 and able to demonstrate it ("proactive responsibility")."

### III

In the case analyzed here, it has been proven that the claimant exercised her

right of cancellation before the claimed party on November 11, 2016, and his request

did not receive a response, despite the right recognized in article 16 of the LOPD, in force

at the time of the events, a right currently recognized in article 17

of the RGPD, called the right of suppression ("the right to be forgotten") in which

This provision governs the claimant's right to delete, stating that he will have

right to obtain without undue delay from the data controller the deletion

of personal data concerning you.

In addition to the evidence available in this

time, the notifications sent to the claimant made between July 22 and

November 23, 2016 by IBERDROLA requesting the debt were sent to

address of installation of the supply, where the claimant no longer resided, despite

having communicated the new address in May 2016.

Therefore, these communications were returned on two occasions for "absent"

and the third for "unknown".

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On the other hand, the respondent entity states that it had no knowledge of the change of address of the claimant until November 21, 2016, although the Respondent states that he communicated it on November 11, 2016.

Despite this, to indicate to the claimant the impossibility of proceeding with the cancellation of the data included in the ASNEF file as a result of the non-payment of the service, the respondent entity continued to contact the claimant at the address of the supply contract, instead of the new one indicated by the claimant, in its communications dated November 22 and December 22, 2016, that is, with after the date on which he states that he knows the new address for the purposes of communications.

Article 26 of Law 40/2015 on the Legal Regime of the Public Sector, establishes that The sanctioning provisions in force at the time of events that constitute an administrative infraction occur.

Thus, it is considered that the claimant was improperly included in the asset solvency files, since the notifications of the prior requirement of payment, were all returned as absent or unknown addressee, for being addressed to an incorrect address, as the claimant ceased to reside at that address since May 2016 and despite having been notified of the change of address to which the communications should be directed, they continue to address the address of the supply contract, so you did not receive any of the prior payment requirements, which implies the violation of articles 38.1 a), and 43 of the RLOPD that state that "Personal data will be accurate and

updated in such a way that they respond truthfully to the current situation of the affected", regulations in force at the time of the infraction.

The application of the RGPD is determined because the maintenance of the address incorrect constitutes a continuous infraction that lasts over time while

This data quality problem, which caused the infringement at hand, is not corrective.

Therefore, in the present case there is a violation of article 5.1 d) of the RGPD because the due payment requirement was not made due to a quality problem of the data.

#### IV

Article 72.1.a) of the LOPDGDD states that "according to what is established in the article 83.5 of Regulation (EU) 2016/679 are 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:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679
- k) The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679.

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Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person 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 case

particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum 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

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established by article 83.2 of the RGPD:

As aggravating the following:

In the present case we are dealing with unintentional but significant negligent action

(article 83.2 b)

Basic personal identifiers are affected (name, surname,

address, telephone), according to article 83.2 g)

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO IMPOSE IBERDROLA CLIENTES, SAU, with NIF A95758389, a

fine of 50,000 euros (fifty thousand euros), for the infraction of article 5.1 d) and a

second fine of 50,000 euros (fifty thousand euros) for the infringement of article 17

of the RGPD, typified each in articles 83.5 a) and 83.5 b) of the RGPD

respectively, and classified as very serious in articles 72.1 a) and 72.1 k) of the

LOPDGDD for prescription purposes.

SECOND: NOTIFY this resolution to IBERDROLA CLIENTES, SAU.

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THIRD: 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

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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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