

□ File No.: PS/00292/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated 12/10/2020  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against ENDESA ENERGÍA, S.A.U. with NIF A81948077 (in  
hereafter, the party claimed). The reasons on which the claim is based are: that  
produced an identity theft to request the portability of the contract of  
one electric company to another, using false documentation through the  
distributor E-REDES Distribución Eléctrica (hereinafter E-REDES), which gave  
lowers the contract he had with the electric company EDP in which he had to return  
to register with said company.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD), said claim was transferred to the claimed party for  
to proceed with its analysis and inform this Agency within a month of the  
actions carried out to adapt to the requirements set forth in the regulations of  
Data Protection.

On 05/24/2021, this Agency received a written response from the claimant  
noting that in relation to the CUPS that appears indicated in the claim,  
was associated with two contracts carried out by a third party.

The first of 10/07/2020 in which he requested that a  
electricity supply contract for the home located at \*\*\*ADDRESS.1, Oviedo

(Asturias), confirming that the CUPS associated with said address was \*\*\*CUPS.1. And that, although the teleoperator that attends to him asks him if the address of the point of supply is \*\*\*DIRECCION.2, 33012 de Oviedo (Asturias), and Mr. B.B.B. notes that is \*\*\*ADDRESS.1, 33012 of Oviedo (Asturias), the truth is that it confirms that the CUPS is \*\*\*CUPS.1, digitally signing the contract in your name where the previous CUPS, being in force a period of twenty-one days.

The second, and as can be deduced from the recording held by the entity, with date 02/09/2021, that same third party shows that he wants to give again the electricity supply is discharged, since he does not know the reason for which he was discharged October contract. For that reason, that same day he again requested that the register, in your name, the supply of the house located at \*\*\*ADDRESS.1, 33012 of Oviedo (Asturias), once again associated with CUPS \*\*\*CUPS.1. Contract digitally signed, where the CUPS \*\*\*CUPS.1 is also linked to the address located at \*\*\*DIRECTORY.1, 33012 of Oviedo (Asturias), was in force eleven days.

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2/18

The invoices that were issued for the time that the contracts were in force were paid.

referred contracts

There was no impersonation of the claimant's identity, nor was there any register a contract in your name. Therefore, there is no documentation linking him to an electricity supply contract, nor has any invoice been issued where it appears as a contract holder. Although, as a result of the described facts resulting from the

contracts made by a third party, whose CUPS refers, precisely, to the number \*\*\*CUPS.1, the electricity supply was registered in his name.

THIRD: On 06/10/2021 the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 10/04/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infringement of article 5.1.d) of the RGPD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD.

FIFTH: Notification of the start agreement on 10/06/2021, the claim in writing

of the same date requested an extension of the term to formulate allegations and propose the relevant evidence; term that was granted by means of a letter from the instructor of 08/10/2021.

On 10/28/2021, the respondent filed a brief with allegations reiterating the arguments

exposed and, in addition, manifested the absence of illegality in their conduct, the

lack of guilt in his actions and, subsidiarily, in the event that he does not

the arguments put forward were taken into account, the penalty was lessened or reduced initially proposed.

SIXTH: On 12/21/2021, the instructor of the procedure agreed to open

a period of practical tests, agreeing on the following:

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection services that are part of the file.
- Consider reproduced for evidentiary purposes, the allegations to the agreement of home submitted by the claimed party and the accompanying documentation.
- Request the requested copy of the Action Protocol established by the company for the contracting of electricity supply: due to registration, change of

company, etc., by telephone or by other means.

On 12/22/2021, the respondent requested an extension of the term to facilitate the requested documentation, term that was granted by the instructor of the mediate written procedure of 01/03/2022.

On 01/05/2022 the respondent provided the documentation whose content is in the proceedings.

SEVENTH: On 04/19/2022, a Resolution Proposal was issued in the sense of that the Director of the Spanish Agency for Data Protection sanctioned the claimed for violation of the article for a violation of article 5.1.d) of the RGPD, typified in article 83.5.a) of the aforementioned Regulation a fine of €50,000 (fifty thousand euros). An Annex is attached with the documents that make up the Administrative file.

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3/18

The respondent requested on 04/25/2022 an extension of the term granted to present allegations and a copy of the file, which were attended by the instructor of the process.

The respondent filed a brief on 05/11/2022 in which he reiterated the allegations discharged during the procedure and also that in the transferred Proposal no makes any reference to the fact that the third contracting party signed through a mechanism digital the particular contracting conditions; that the Agency in its report on the "Ex officio Inspection Plan on Distance Contracting in Operators of Telecommunications and Energy Marketers", recognizes this procedure

to prove the identity of the contracting party and guarantee of the contracts made by telematic means, considering that we are facing a case of inconsistency on the part of the Agency when assessing the facts; the absence of liability in the events that occurred and, subsidiarily, the reduction of the amount to impose.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following:

#### PROVEN FACTS

FIRST. On 12/10/2020 there is a written entry in the AEPD of the claimant; the

The reasons on which the claim is based are that it has been the subject of an impersonation of identity to request the portability of the electricity supply contract from a electricity company to another, using false documentation through the distributor E-REDES, terminating the contract it had with the company EDP, having to re-register with said company later.

SECOND. A copy of the claimant's DNI has been provided.

THIRD. The claimant has provided an electricity supply contract signed with the company EDP, dated 05/27/2013, for the address belonging to the claimant located at \*\*\*ADDRESS.2, 33012-Oviedo (Asturias), CUPS \*\*\*CUPS.1.

FOURTH. On 11/05/2020, the claimant sent an e-mail to the distributor E-REDES indicating that: "The portability of the contract I had with EDP for my address by an unknown third party who is neither the holder of the contract nor the owner of the house, I request the name, documentation provided to carry out the management and company to which the portability has been requested, as indicated in EDP, said company will invoice the contract days that it has had, I do not know if the current account charge will be the same as the one in my contract or another one will have been provided.

(...)"

E-REDES responded on 11/25/2020:

“In response to your request with N° \*\*\*REQUEST.1, we inform you that, for data protection regulations to be able to give you information about the address that we request you must send us documentation that proves you as the owner of the farm, deed or, failing that, rental agreement.

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4/18

We are available for any questions or clarification on our website

[www.eredesdistribucion.es](http://www.eredesdistribucion.es) or on the customer service telephone number 900.907.003”

There are successive and repeated requests for information made by the claimant about the identity of the person who had requested the change of marketer with change of ownership from EDP to another marketer without, according to E-REDES, will come to reliably prove their legitimacy to access the information requested.

FIFTH. The claimant filed a claim with the CNMC for the same facts; in response to the request made by the aforementioned organization E-REDES manifested that:

“(…)

1. On 10/08/2020 E-Redes received a request from the respondent, n° \*\*\*REQUEST.2 for process on the referred CUPS, a change of marketer without change of owner, to name of D... (the contractor).

Said request was rejected because the owner of the supply point did not coincide with the holder in whose name the request for change of marketer was made.

(...)

2. On 10/22/2020, a request was received from the respondent No. \*\*\*REQUEST.3 for a change of marketer with change of owner, in the name of the contracting party, which was activated with date 10/24/2020.

(...)

3. On 11/05/2020 the claimant contacted E-REDES by phone to inquire by the person who requested the change of marketer with a change of owner on the CUPS \*\*\*CUPS.1.

In said call he was informed of the impossibility of providing him with the data required in compliance with current regulations on data protection.

4. On the same day, the claimant sent an email with the following text:

(reflected in fact 4).

5. On 11/12/2020 E-REDES received a request from EDP ENERGIA, S.A.U., no.

\*\*\* REQUEST.4 to process a change of marketer without a change of owner, to lady's name... (the claimant), which was rejected because the owner of the point of supply with the holder in whose name the request for change of marketer.

(...)

6. On 11/13/2020 E-REDES received a request from EDP ENERGIA, S.A.U., no.

\*\*\*REQUEST.5 for change of marketer with change of owner, in the name of Mrs.... (the claimant), which was activated on 11/15/2020.

(...)"

SIXTH. E-REDES in writing dated 02/18/2021 has stated that: "...which is not E-REDES who receives the request for change of marketer and ownership, but that it is the incoming marketer who receives it and who transmits it to me represented, as a distributor, the minimum and essential information to process the

petition received by it in accordance with the normative procedures established and that are mandatory compliance under penalty of incurring a Violation of energy sector regulations. Corresponding to the marketer incoming to make the checks that are pertinent before carrying out

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5/18

said request, to ensure that it meets the necessary requirements to be processed."

SEVENTH. The respondent in writing dated 05/24/2021 has indicated that "...that no There are personal data associated with the claimant in the commercial systems of the company... That is, a contract has not been registered in your name and, therefore, no No phishing has occurred.

Although, in relation to the CUPS that appears indicated... as confirmed by the Responsible for Treatment, it was associated with two contracts carried out carried out by a third party (that is, they were not associated with the claimant). Specifically, as is credited...Don B.B.B. (\*\*NIF.1) requested that it be given registration, in your name, an electricity supply contract for the home located in \*\*\*ADDRESS.1, 33012 of Oviedo (Asturias)..."

EIGHTH. There are recordings related to the contracts carried out, in those that the teleoperator in the contract verification process, when refers to the address of the supply in the particular domicile of the contracting party, it is interrupted by it indicating the correct address:

"(...)



Teleoperator: "And we are going to contract for the address \*\*\*ADDRESS.3, 33012-

Oviedo (Asturias), the temporary open day rate with CUPS \*\*\*CUPS.2.

Then, for the address \*\*\*DIRECTION.3, 33012-Oviedo (Asturias), we will contract

the Endesa 3.2 gas rate for CUPS \*\*\*CUPS.3

And we are going to contract for the address \*\*\*DIRECTION.2, 330112-Oviedo (Asturias).

Contracting: center no, center no, left

T: Left?, ah okay

C: 7th, left.

T: It appears as the center, well I'll put it like, it's perfect then I'll check it for you

this, it looked like the one you had before as a center

\*\*\*ADDRESS 1

for address

, 330112-Oviedo (Asturias) we hire the rate there

\*\*\*CUPS.1

50 hours for CUPS

C: very good

T: and the account number in which we are going to charge the receipts..., of which you are the owner, the owner of said bank account, right?

C: Yes

(...)" (the underlined corresponds to the AEPD).

In the second of the recordings provided, the contracting party wishes to re-register

discharge in the supply of electricity, not knowing the reason for which it was discharged

the previous contract in force since 10/24/2020.

And in the third of these recordings provided, hiring of 02/09/2021, it happens

the same as in the first (here there is no information on CUPS), figuring the

Next:

Teleoperator: ...and the rate that we are going to contract is the happy 50 hours for the

address \*\*\*ADDRESS.2, in Oviedo (Asturias) 33000...

Contracting: no center no, left door

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6/18

T: Left?, okay

C: yes, it's not center, it's left.

T: Here they have you as a center,

C: The same is that error for what they changed ehh?, but it is left

T: It shouldn't because these are data from the distributor

C: Yes, but I'm telling you because there is center left and left only

T: Ok, and yours is left alone

C. That's right

T: Okay, well then for the address... I'll change that for you, don't worry,

\*\*\*ADDRESS.1, in Oviedo (Asturias) 33012 and then the account number in which

let's upload the receipts...

(...)” (the underlined corresponds to the AEPD).

NINETH. The respondent has provided the contracting protocol followed by the channel

telephone telemarketing called "Residential telemarketing procedure and

business".

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that:

"The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, insofar as they are not contradict, in the alternative, by the general rules on the administrative procedures."

The facts claimed are specified in the impersonation in the contracting of the electricity supply located at the domicile of the claimant, the true owner of the home where the CUPS was located, as it was linked to the address from a third party who had nothing to do with the claimant.

II

Article 58 of the RGPD, Powers, establishes in its section 2:

"two. Each supervisory authority will have all of the following powers corrections listed below:

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i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

(...)"

The RGPD deals in its article 5 with the principles that must govern the

treatment of personal data and mentions among them that of accuracy, pointing out

that:

"1. The personal data will be:

(...)

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");

(...)"

What is stated in the aforementioned rule must be put in relation to article 5,

Accuracy of the data, of the new Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), which establishes in section 1 that:

"1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be

accurate and, if necessary, updated.

(...)"

In relation to this principle, in recital 39 of the GDPR, among other

issues it is stated that:

“(39) (...) to ensure that personal data is no longer kept

time than necessary, the data controller must establish deadlines for its

deletion or periodic review. All reasonable steps must be taken to

ensure that inaccurate personal data is rectified or deleted.

And recital 71:

“(71) (...) in order to guarantee a fair and transparent treatment regarding the concerned, taking into account the specific circumstances and context in which process personal data, the data controller must use appropriate mathematical or statistical procedures for profiling, apply appropriate technical and organizational measures to ensure, in particular, that the factors that introduce inaccuracies in the personal data are corrected and minimizes the risk of error, secure personal data in such a way that it is take into account the possible risks to the interests and rights of the interested party and

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8/18

prevent, among other things, discriminatory effects on natural persons for reasons race or ethnic origin, political opinions, religion or belief, union membership, genetic condition or health status or sexual orientation, or treatment that results in to measures that produce such an effect..." (the underlining corresponds to the AEPD).

III

1. From the documentation in the file it is evident that the claimed has violated article 5.1.d), principle of accuracy, in relation to the Article 5 of the LOPGDD, Accuracy of the data, by causing the cancellation of the contract of electricity supply that the claimant maintained with the company EDP from the 05/27/2013, for the domicile owned by the claimant located at

\*\*\*ADDRESS.2, in Oviedo (Asturias) and CUPS \*\*\*CUPS.1, associating the aforementioned CUPS to the address of a third party that had nothing to do with the claimant, linking the CUPS prior to the domicile of the third party located at \*\*\*ADDRESS.1, in Oviedo (Asturias), being used by the claimed party to register the supply electrical in the latter direction.

Therefore, the obligation derived from article 5.1.d) establishes the need to that the personal data collected is accurate, and must be adopted in all time reasonable steps to ensure that the data is not inaccurate, being those responsible for the treatment who have to answer for the fulfillment of this obligation.

In this sense, the National High Court indicated in its sentence of 02/27/2008, Appeal 210/2007, <<... The principle of truthfulness or accuracy has great relevance, insofar as it is not only necessary that the data be collected for its treatment according to a series of criteria (principle of proportionality) and that they are used for purposes compatible with those that motivated the collection (principle of purpose), but also requires that whoever collects and processes personal data personal character guarantees and protects that the information submitted to treatment is not inaccurate and up-to-date.

Non-compliance or violation of the principle of truthfulness may have important consequences for the affected...>>. In relation to the aforementioned article and its updating (which would be the manifestation of the principle of accuracy that could understood as non-compliant), requires that "reasonable measures be taken to ensure that Delete or rectify without delay the personal data that is inaccurate with regarding the purposes for which they are processed".

In this regard, article 5.1.d) does not impose the adoption of disproportionate measures to update the data, but the reasonable ones, taking into account the available means and the

purpose for which the data is used. This is also expressed in recital 39 of the GDPR.

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9/18

2. The claimed by the activity that develops, knows the importance of correctly associate CUPS with the supply contracts it formalises, as well as the effects that derive from the inaccuracy of this data, for which a special care about it.

The Supreme Court (Sentences of 04/16 and 04/22/1991) considers that guilty element follows "... that the action or omission, qualified as an infraction punishable administratively, must be, in any case, attributable to its author, for intent or recklessness, negligence or inexcusable ignorance."

For its part, the National Court, in Judgment of 06/29/2001, in matters of protection of personal data, has declared that "... the simple negligence or breach of the duties that the Law imposes on people responsible for files or data processing to exercise extreme diligence..."

The Supreme Court has understood that there is imprudence whenever disregards a legal duty of care, that is, when the offending subject does not behave with due diligence. Diligence whose degree of demand will be determined in attention to the concurrent circumstances, such as the special value of the good legal protection and the professionalism required of the offender. In this sense, the judgment of 06/05/1998 requires professionals in the sector "...a duty to know especially the applicable regulations. In similar terms, the

Judgments of 12/17/1997, 03/11/1998, 03/02 and 09/17/1999.

Applying the previous doctrine, the National High Court, in several sentences, among others, those dated 02/14 and 09/20/2002 and 04/13/2005, requires entities to special diligence operates in the data market when carrying out the use or treatment of the same, since it is the protection of a right of the people to whom these refer, so that their custodians

They must be especially diligent and careful when carrying out operations with the same and must always opt for the interpretation that is most favorable to the protection of the legal goods protected by the norm.

In this regard, ENDESA failed to comply with the legal mandate that the data respond accurately to the situation of those affected, violating the principle enshrined in article 5.1.d) of the RGPD.

3. It should be noted that the contracting of electricity supply by the claimed can be carried out through different channels: telephone, Web channel, distributors, which includes its own sales offices and external stores, security forces external sales (stands at fairs, shopping centers, etc., or home visits with prior request), etc.

In the present case, on 10/07/2020, it was requested through the channel telephone the registration in the electrical supply for the home of the contracting party who was processed as registration with change of marketer and owner, in accordance with what is contained in Resolution C2-CNMC.

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10/18



It should be noted that in accordance with the specific regulations of the electricity sector, the change of owner and marketer procedure is carried out exclusively with the intervention of the new marketer (in this case, ENDESA) since it is the latter that interacts with the new client, manages the change of owner and marketer and is obliged to collect from the new client the supporting documentation of being the effective user of the home as well as keep it at the disposal of the distributor and the Supplier Change Office (OCSUM)

This matter develops various legal standards, among which it is worth mentioning Royal Decree 1955/2000, of December 1, which regulates the activities of transportation, distribution, marketing, supply and authorization procedures of electrical energy installations, whose article 83 deals with the "Transfer and subrogation of tariff supply and network access contracts" ; the real Decree 1011/2009, which regulates the Supplier Change Office, by entrusted to him among his functions (article 3) the verification of the cash consent of the consumers to the change of supplier. also the royal Decree 1435/2002, which regulates the basic conditions of acquisition contracts of energy and access to low voltage networks, which dedicates its article 7 to the "Information system of points of supply that must be maintained by the distributor", the Third Additional Provision of Royal Decree 1074/2015 and Resolutions of the National Commission of Markets and Competition.

The protocol for managing a change of marketer with a change of holder attributes to the incoming marketer the condition of sole interlocutor of the client and the responsibility of executing all the necessary actions for change management.

Transferring these considerations to the present case in which

initially blamed E-REDES, this entity did not intervene in the

infringing conduct attributed to him by the claimant.

On the contrary, it is the conduct of the defendant that led to the violation of the

article 5.1.d) of the RGPD, causing the withdrawal of the owner of the electricity supply,

the claimant, who had signed a contract with the company EDP for her home

(ELECTRICITY CUPS \*\*\*CUPS.1), registering a third contracting party who lived in

the same building but at a different address, assigning it the same CUPS.

As regards the CUPS number of the claimant's home, this

data is not linked to a person but to a specific dwelling and, furthermore, works in

power of attorney of the area distributor (along with the name, surnames, NIF and address

user of the home) as provided for in Royal Decree 1435/2002, in

its article 7.

The respondent himself in writing on 01/05/2022 has stated that "As

was exposed in the arguments to the Agreement presented on October 28,

2021, the particular gift ... requested through the telephone channel, and up to two

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11/18

occasions, that the electricity supply was registered in your name, for the CUPS

\*\*\*CUPS.1 (corresponding to the home of Mrs.

the claimant

) ..."

In addition, the facts also show that on 10/08/2020 E-REDES received the

first request of the respondent to process, on CUPS \*\*\*CUPS.1

corresponding to the claimant's home, a change of marketer without change of owner, in the name of the contracting party and it was rejected for not matching the owner of the supply point with the owner in whose name the request for change of vendor.

So. the action contrary to article 5.1.d) of the RGPD must be attributed to ENDESA, violation of the principle of accuracy that states that the data must be accurate and up-to-date; infringement of the aforementioned principle that caused CUPS to linked to the claimant's home was used to register the contract of supply linked to the home of a third party located in the same building, a fact that was not exact, which was the reason for the cancellation of the contract that the claimant had signed and PED in 2013.

4. As it appears in the recordings provided by the respondent regarding contracts made, it is recorded how the teleoperator refers to the address of the supply in the private address of the third party and is interrupted, in both cases, by the contracting party indicating the correct address:

“(…)

And we are going to contract for the address \*\*\*ADDRESS.2, 330112-Oviedo (Asturias).

Contracting: center no, center no, left

Energy Advisor: Left?, ahh okay

C: 7th, left.

AE: It appears as the center, well I'll put it to you like, it's perfect then

i check this, it looked like the one you had before as center

For the address \*\*\*DIRECTION.1, 330112-Oviedo (Asturias) we hired the rate there are 50 hours for CUPS \*\*\*CUPS.1

C: very good

AE: and the account number in which we are going to charge the receipts..., from which you are the owner, the owner of said bank account, right?

C: Yes

(...)"

And in the hiring of 02/09/2021:

T: ...and the rate that we are going to contract is the happy 50 hours for the direction

\*\*\*ADDRESS.2, in Oviedo (Asturias) thirty-three thousand...

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12/18

C: no center no, left door

T: Left?, okay

C: Yes, it's not center, it's left.

T: Here they have you as a center,

C: The same is that error for what they changed ehh?, but it is left

T: It shouldn't because these are data from the distributor

C: Yes, but I'm telling you because there is center left and left only

T: Ok, and yours is left alone

C. That's right

T: Okay, well, then for the direction... that I'll change that for you, I won't

worry, \*\*\*ADDRESS.1, in Oviedo (Asturias) 33012 and, then, the number of account in which we are going to load the receipts...

(...)"

As we pointed out previously, the number of CUPS is a piece of information that is

linked to the home, so the teleoperator at that moment in which they were verifying the data to proceed with the contracting of the electricity supply with the contracting party, it should have been diligent, adopting the necessary precautions and guarantees and pertinent to prevent the CUPS of the claimant's home from being associated with the contracting party's home because it should be informed that if you changed the address of the supply, the CUPS number assigned to it had to be different.

It follows from all of the above that the defendant violated article 5.1.d) of the RGPD that indicates that the data must be exact and, if necessary, updated (principle of accuracy), basic principle of the data protection regulations of personal character.

The defendant himself has claimed to recognize that CUPS is a sequence alphanumeric that is difficult to memorize, as it is personal data associated with the electricity or gas supply of each home and it is possible to access to it because it is one of the fields that must always appear in the invoice; therefore, if the claimant, as can be deduced from the recording, did not have the bill in front is difficult to understand, as the respondent states that the teleoperator asked the contracting party to confirm the CUPS \*\*\*CUPS.1 and that he He confirmed it with a "very good".

Such statement is not true and suffers from excessive voluntarism in light of the transcript of the recording; nor does it appear that the teleoperator requested to confirm the other two CUPS that appear in the recording for the address

\*\*\*ADDRESS.3, 33012-Oviedo (Asturias), \*\*\*CUPS.2 and \*\*\*CUPS.3, open tempo rate day and gas rate respectively whose contracts were also formalized.

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Moreover, if it is already difficult to memorize a single one of those sequences alphanumeric letters that CUPS consists of, memorizing three should be considered homework for chosen.

#### IV

The respondent has argued that the Proposal does not mention that the third contracting party signed through a digital mechanism the particular conditions of contracting and that the Agency in its report on the "Ex officio Inspection Plan on Distance Contracting in Telecommunications Operators and Energy Traders", recognizes this system to accredit contracts carried out by telematic means, considering that we are facing a case of inconsistency on the part of the Agency when assessing the facts that here occupy.

It is true that the Agency has emphasized the need to verify the procedures used in the telecommunications and energy sectors to identify the interested persons with the aim of avoiding the impersonation of identity and the corresponding frauds, as well as the way in which companies prove the contracting of their services.

However, in the present case the question that is elucidated is the violation of the principle of accuracy, that is, whether reasonable measures were taken to ensure that the data was not inaccurate; No if in the contracting carried out accredited the identity of the interested person, guarantees of identification of the contractor before carrying out the contract or systems were used with additional guarantees, etc. but that the conduct of the defendant entailed the Violation of the regulations on the protection of personal data,

article 5.1.d) of the RGPD, causing the withdrawal of the owner of the electricity supply, who had a contract with the merchant company EDP for his home (CUPS for electricity \*\*\*CUPS.1), registering a third contracting party who lived in the same building but in a different address, assigning it the same CUPS, so it cannot allege lack of responsibility for the events that occurred.

The defendant also invokes the reduction of the amount of the sanction reducing it.

In this regard, it should be noted that, taking into account that it is a infraction classified as very serious and that in accordance with article 83 of the RGPD can be sanctioned, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount", for which a significant reduction is already applied Of the same. The STS, Chamber 3, of December 16, 2003 (Rec. 4996/98) already pointed out that the principle of proportionality of sanctions requires that "the discretion granted to the Administration for the application of the sanction is develop weighing in any case the concurrent circumstances, in order to

C/ Jorge Juan, 6

28001 – Madrid

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14/18

achieve due proportionality between the alleged facts and the responsibility required".

Principle of proportionality that is not understood to have been violated, considering provided the sanction proposed to the entity for the proven facts and

weighing the concurrent circumstances.

Otherwise, the specific circumstances that have been taken into account for the graduation of the amount of the sanction are detailed in Basis VI of this resolution.

v

The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in particularly the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)”.



SAW

In order to establish the administrative fine to be imposed,  
observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which  
point out:

"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, 5 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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

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15/18

in 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, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case, what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered 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 mechanisms certificates 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 realized or losses avoided, direct or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments of personal data.

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 after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

data.

C/ Jorge Juan, 6

28001 – Madrid

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16/18

In accordance with the precepts transcribed, in order to set the amount of the sanction to be imposed in the present case for the infraction typified in article 83.5.a of the RGPD for which the claimed person is responsible, in an initial assessment, the following factors are considered concurrent:

Aggravating circumstances are considered:

- The nature, seriousness and duration of the infringement: the facts considered tested seriously affect a basic principle relating to data processing of a personal nature, such as the accuracy and updating of data, if, as the damages caused as a result of interference in the sphere of privacy of the claimant because we must not forget that we are facing the infringement of a fundamental right to the protection of personal data; the

claimant was forced to contact the distribution company as a result of the leave produced and being deprived of the contractual relationship that it had with its supplier company since 05/27/2013, in addition to having to process the high in it; file a claim with the National Commission of Markets and of Competition and before the AEPD for the same facts (article 83.2, a) of the GDPR). .

- The way in which the supervisory authority became aware of the infringement, in the extent to which this has been through the claim of the affected party.
- The degree of responsibility of the claimed party and the measures implemented to prevent similar incidents from occurring, because despite the fact that the claimed declares to have a procedure that regulates the updating of the data that come from the SIPS (Supply Points Information System) specifically of the CUPS of the houses, has not been able to avoid events such as those that have given rise to this claim with the damages caused to the claimant (article 83.2, d) of the GDPR).
- The activity of the allegedly infringing entity is linked to the data processing of both customers and third parties. In the activity of the entity claimed, it is essential to process the personal data of your customers so, given the volume of business of the same, the importance of the conduct object of this claim is undeniable (article 76.2.b) of the LOPDGDD in relation to article 83.2.k).
- Although it cannot be argued that the defendant has acted intentionally, there is no doubt that there is a serious lack of diligence in his performance. Connected to the degree of diligence that the data controller is obliged to deploy in the fulfillment of the obligations imposed by the data protection regulations, the SAN of 10/17/2007 can be cited. Although it was

dictated before the validity of the RGPD, its pronouncement is perfectly extrapolated to the case we are analyzing. The ruling, after alluding to the fact that the entities in which the development of their activity entails a continuous treatment of customer data and third parties must observe an adequate level of diligence, specified that "(...) the Supreme Court has understood that there is imprudence whenever a legal duty of care is disregarded, that is, when the offender fails to

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C/ Jorge Juan, 6

28001 – Madrid

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17/18

behaves with due diligence. And in assessing the degree of diligence, especially weigh the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is constant and abundant handling of personal data, it must be insisted on the rigor and exquisite care to comply with the legal provisions in this regard" (article 83.2, b) of the RGPD).

- The volume of business of the claimant is one of the leading companies within the Spanish market, due to its business purpose (article 83.2, k) of the RGPD).
- The continuing nature of the infringement: it should be noted that the infringement of the principle of accuracy, as a consequence of contracting for the point of supply linked to the claimant's home occurred on 10/07/2020, but the 02/09/2021 the electricity supply for the residence of the contracting party, incurring the same error, proceeding to contract (article 76.2.a) of the LOPDGDD in relation to article 83.2.k).

Extenuating circumstances are considered:

- Only one person has been affected by the offending conduct.

Based on these factors, it is considered appropriate to propose a sanction of €50,000.

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: IMPOSE ENDESA ENERGÍA, S.A.U. with NIF A81948077 for a infringement of article 5.1.d) of the RGPD, typified in article 83.5 of the RGPD, a fine of €50,000 (fifty thousand euros).

SECOND: NOTIFY this resolution to ENDESA ENERGÍA, S.A.U. with NIF A81948077.

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.

C/ Jorge Juan, 6

28001 – Madrid

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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->

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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28001 – Madrid

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