

□ Procedure No.: PS/00194/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) files a claim against
IBERDROLA CLIENTES, S.A.U., with NIF A95758389 (hereinafter, the claimed or
IBERCLI) that has entry in the Spanish Agency for Data Protection (AEPD),
sent by the OMIC of the City Council of ***LOCALIDAD.1, on 06/08/2018.

The claim is motivated by the inclusion of the personal data of the
claimant in the financial solvency file ASNEF, informed by the claimed,
dated 07/07/2014 for a debt that you do not recognize as yours and for registering
his name two electricity contracts that he denies having entered into.

The claimant states that on 03/15/2018, on the occasion that
denied a financial transaction, you learned that your personal data
they appeared in a file of patrimonial solvency for an alleged debt. proceeded
then to exercise the right of access before EQUIFAX that informed him on the date
03/27/2018 that, associated with his NIF, name and two surnames, there was a debt
included in the file on 07/07/2014, for an outstanding balance of 140.45 euros, for a
product of electricity, the reporting entity being "IBERDROLA COMERCIALI". The
address linked to the claimant that the claimed party provided to ASNEF was
***ADDRESS.2. The claimant declares that he has never resided at that address nor
belongs or has belonged.

In the complaint filed with the Police on 05/03/2018, the claimant states that

the debt for which he was included in ASNEF came from a contract that was in force between 2009 and 2013, with number 284187185, to which he is a stranger; that can't provide more information because the company does not provide it and that "Iberdrola" has stated that there is also another contract in force in his name, in ***ADDRESS.1, with number 446975126, active since 2012, which has all current payments. The claimant insists that he has not resided in that domicile or have any dwelling at that address.

Attach these documents to your claim:

- EQUIFAX letter dated 03/27/2018 responding to the right of access.

The complaint filed at the Police Station of ***LOCALIDAD.1 on

-

05/03/2018.

- An electricity bill -number 21180403010085034-, issued on

04/03/2018, belonging to the supply contract reference number

446975126. The name appears on the invoice as the holder of the contract, two surnames and NIF of the claimant. The delivery address is

***ADDRESS 1. In the section devoted to supply data,

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identifies the CUPS number (***CUPS.1). Also included are the data

partially anonymized direct debit payment accounts and is recorded as

“Fiscal address” the ***ADDRESS.2.

- Letter from IBERDROLA Customer Service, addressed to the claimant and his

address, dated 04/09/2018. As a letter reference number

indicates the number 446975126 (which is that of one of the contracts that acknowledges as yours) and the claim number 564484300. In the letter apologize for any inconvenience they may have caused you and inform you who are working on resolving your claim.

- Letter that IBERDROLA Customer Service addresses to the claimant and his address, dated 04/27/2018, with reference number 446975126 (number of one of the contracts that the complainant does not recognize as his) and number of claim 564484300. The letter reiterates the request for apologies to claimant and informs him that "...once the verifications necessary, we have verified that cancellation of the contract was requested on the date 04/03/2018 by the contract holder through our Customer Service Client.

SECOND: In view of the facts exposed, the AEPD carried out actions tending to its clarification having knowledge of the following extremes:

A.

Within the framework of E4028/2018, the claimant was notified of the written claim and attached documents and information was requested. On 07/12/2018 the claimed respond in the following terms:

two.

1. That on 10/24/2018, "the debt of €140.60 associated with the claimant and mentioned by him in his written complaint, was removed from the file ASNEF-EQUIFAX, not stating D. [the claimant] currently in said file for debts of IBERCLI" (The underlining is from the AEPD)

"That after analyzing the claim filed by D. [the claimant], it has been been able to ascertain that the hiring was carried out at the customer service point

client of one of our collaborating partners on January 11, 2012,
when IBERDROLA GENERACION was the energy marketer" (El
underlined is from the AEPD)

That the hiring was not carried out directly by the complainant, but
by providing your data by D^a B.B.B.. Provides a copy of the
application and the corresponding contract where the name and surname of the
complainant and the signature of "B.B.B." (hereinafter B.B.B.)

It indicates that, at present, this contract could not have been carried out, since
that if a person contracts on behalf of another, they must provide the corresponding
authorization and it is verified by calling the holder. By

IBERDROLA has reiterated this procedure to the collaborating partner in which
the hiring was done.

Provide the following documents:

3.

Four.

The "Letter to the electricity distributor", signed by B.B.B. the

a.

01/11/2012. The document bears the indication "Letter to be sent by the
client to IBERDROLA GENERACIÓN, S.A.U., essential for
carry out the procedures for activating the contract with the Distributor of

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electricity".

As the recipient of the document ("current distributor") you have
"IBERDROLA". Through the document, the change of the
previous marketer to IBERDROLA GENERACIÓN for CUPS
***CUPS.1.

Copy of the written contract signed by "B.B.B." on 01/11/2012

b.

with IBERDROLA GENERACIÓN, with NIF A95075586. They consist of
data of the claimant: name, two surnames and NIF. The address of
supply is ***ADDRESS.1 and the CUPS is ***CUPS.1.

1. The respondent stated that she provided a recording of the conversation
telephone request for cancellation of the contract made by the complainant, without
However, there is no recording. On February 19, 2019, it was
requests the aforementioned recording from IBERDROLA.

B. On April 1, 2019, the respondent has sent the following to the Agency
information:

The date of registration of the complainant's data in the ASNEF file is

1.

on July 7, 2014 and the withdrawal date on 10/24/2018.

On 03/13/2019, they have sent a communication to the

two.

complainant, informing him that his claim has been addressed and that
has discharged you from Financial Credit Institutions, as well as that the debt has been cancelled.

3.

They state that as soon as the claimant requested the withdrawal "of the
contracts in question, IBERCLI responded to their request, deregistering the
themselves".

Four.

claimant, (no date stated), verifying that:

Bring a CD with the recording. It is a call made by the

The claimant states that two contracts have been made

a.

his name, supplanting his identity, at two different addresses and that

the day before, the last of them has been discharged. They confirm that

has requested discharge.

He requests that the contracts be sent to him, although he has already been informed

b.

the day before the first of them cannot be sent

because it is very old and that the second one has to be requested from

through an email that they provide.

THIRD: On 06/04/2019, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the entity claimed in accordance with

to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 6 of Regulation (EU) 2016/679,

General Data Protection (RGPD) sanctioned in article 83.5.a).

FOURTH: Once the initiation agreement was notified, the respondent presented arguments on

08/02/2019 in which you request the filing of the proceedings or, alternatively, that

the concurrence of circumstances that mitigate its responsibility is appreciated in accordance with

to articles 85.2 of the RGPD and 76.2 of the LOPDGDD, replacing the sanction of

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administrative fine provided for in the initiation agreement for a warning sanction or warning, in accordance with the provisions of article 58.2., letters a) and b), in connection with article 85.2 of the RGPD.

In support of the aforementioned claims, it invoked, in summary, these arguments:

A. Alleges the following background:

- That contract (i), reference 284187185, was assumed on 06/30/2009 by IBERDROLA GENERACIÓN, S.A.U., as this entity was responsible for then the commercialization of energy in the IBERDROLA group. add that it was Iberdrola Distribución, S.A.U., “who provided the contracting data, including, among the same the number of the National Identity Document of the complainant” to IBERDROLA GENERACION, S.A.U., since it was initially Iberdrola Distribución, S.A.U., who marketed the electricity contracts.
- Warns that the invoices derived from the contract (i) were being paid within term without incident until the one issued on 12/14/2012.
- Insists that “...for a period of more than three years...no incidence in relation to said subscriptions, nor was the question in any way ownership of the supply.
- Explains that from the invoice of 12/14/2012 there were four non-payments for a total amount of 397.53 euros although it is only the debt derived from the invoice of the 01/18/2013, for an amount of 140.60 which was reported to ASNEF. This entry in the ASNEF file was kept until 10/24/2018, date of cancellation of the incident.
- Regarding contract (ii), with reference 446975126, it explains that it had been at “the customer service point of one of the collaborating partners of IBERDROLA”. And it states that the supply “was contracted, on behalf of the

complainant, D., for whom he responded to the name of B.B.B., signed the contract as B.B.B. As can be verified, this person shares the last name with the claimant, which, together with the proof of the National Identity Document, allowed us to infer that the hiring was carried out with a person linked to the complainant for reasons of kinship". (The underlining is from the AEPD) The respondent refers to this effect to the documentation provided to the AEPD in the course of the information requested in the phase of admission to processing of the claim: The documents are these:

a) The copy -hardly legible- of a contract -being absolutely illegible the information that should appear in its right header and in the header left contains an Agent code. The document contains the name, surnames and NIF of the claimant for the address of

*** ADDRESS.1 before transcribed. CUPS electrical data; the date, 01/11/2012, and the signature of "B.B.B. DNI ***NIF.2".

b) A document, signed by "B.B.B." with DNI ***NIF.2, dated 01/11/2012, bearing the IBERDROLA logo and on the left side the legend IBERDROLA GENERACIÓN, S.A.U., tax identification number A95075586, which includes the economic conditions of the previous contract.

c) Document, signed by B.B.B." with DNI ***NIF.2 01/11/2012 addressed to Electricity distributor in which it informs you that you have signed a contract for electricity supply with Iberdrola Generación, SAU, for the CUPS ***CUPS.1.

-Affirms that all the invoices derived from the aforementioned contract, for more than six years, www.aepd.es

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have been paid by direct debit. The entity does not inform who it is the holder of the bank account in which the payment is made.

B. Confirmed that on two occasions energy contracts were signed electricity associated with the data of the claimant, the respondent states: "... of said background, it follows that IBERDROLA could not have had any indications that would lead it to suspect, even indirectly, that the aforementioned contracts had been produced with identity theft. Further on, he adds that, having satisfied the invoices repeatedly there was no indication that could undermine its conclusion that the service had actually been contracted by the claimant.

- States that "in both cases the number of the National Identification Document was provided. Identity of the claimant, as well as information proving his identity.

Likewise, it appears that the second of the contracts was entered into in the name and on behalf of of the claimant by a person with respect to whom identity existed in the first last name, which allowed at least to infer, the existence of kinship between her and the claimant".

-Explains that in the case analyzed the usual modus operandi of identity theft. The impersonator would only have collected the data of the claimant in order to make him the holder of a supply contract that, not However, it intended to satisfy throughout its validity and with its own means."

All of which constitutes, in his opinion, a clear indication of the legality of the contracts.

FIFTH: The initiation agreement of PS/194/2019, in point 3 of its operative part agreed to include in the disciplinary file for evidence purposes the claim filed by the claimant and his documentation and the documents obtained and generated by the Data Inspection Subdirectorate during the admission phases pending and previous investigations, as well as the Report of previous actions of

inspection.

SIXTH: Of the actions carried out in this procedure and of the documentation in the file, the following were accredited:

FACTS

1.- Mr. A.A.A., with NIF ***NIF.1, declares that IBERCLI communicated his personal data- to the ASNEF asset solvency file linked to a debt derived from a contract that he never entered into that the entity had registered without his consent or knowledge associated with a domicile in which he has not lived and is not owned by him (**ADDRESS.2). It also states that the respondent registered a second con- treatment associated with your data that, likewise, denies having celebrated, at the address of ***ADDRESS.1, which is not and has not been your address.

2.- The claimant filed a complaint with the Police on 05/03/2018 in which he stated that, when your financial institution denied you the granting of a loan for appearing included in the ASNEF asset solvency file, proceeded to exercise the right of action process before EQUIFAX who informed him on 03/27/2018 that his personal data was included in ASNEF, reported by "IBERDROLA COMERCIALI", for debts arising from an "electricity/gas" product for an unpaid balance of €140.45, The date of registration of the incident was 07/07/2014.

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He also stated in the police report that IBERCLI informed him that there was another contract deal in his name that he did not enter into, at the address of ***ADDRESS.1, with number of contract 446975126, which was active, with all payments up to date, and

that through IBERCLI he proceeded on 04/03/2018 to manage his withdrawal.

3.- The documentation in the file shows that, associated with the data

of the claimant -name, two surnames and NIF-, the claimed registered two

contracts that he denies having entered into:

(i) contract with reference 284187185, linked to an address at ***ADDRESS.2.

It was in force between 2009 and 2013. Four invoices remained unpaid for two

amounts of €29.72; €93.92; €140.46 and €139.36. Part of the unpaid debt (an im-

postage of 140.60 euros) was included in ASNEF with registration date 07/07/2014 and was given

discharged on 10/24/2018.

(ii) contract with reference 446975126 at the address of ***ADDRESS.1. Contract

You have all your bills paid. The claimant, through the claimed, once

Once the facts are known, he proceeds to manage his withdrawal on 04/03/2018.

4.- There are various letters in the file that IBERCLI sent to the claimant and his domi-

mycilio referring to the contract with reference (ii) 446975126:

a. Dated 04/09/2018, responding to the claim made on 04/03/2018, in the

that they apologize for the damages that may have been caused and inform them of

they are working on resolving the claim.

b. Dated 04/27/2018, in which they apologize for the inconvenience caused and

report that they have verified that "the cancellation of the contract was requested on 04/03/2018,

by the holder of the contract 446975126, through our Customer Service.

tea".

5. Work in the file, provided by the claimant, a copy of an invoice issued by

IBERCLI, associated with the contract with reference number 446975126 (ii), addressed to

name and personal address of the claimant, issued on 04/03/2018. corresponds

to the billing period from 03/27/2018 to 04/03/2018 and is associated with the supply

electric of ***ADDRESS.1.

6. The respondent has stated that as soon as the claimant requested the withdrawal “of the contracts in question, IBERCLI responded to their request, canceling them”.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Yo

Article 25 of the LPACAP provides that, in proceedings initiated ex officio,

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the expiration of the maximum term established without it having been dictated and notified express resolution does not exempt the Administration from compliance with the obligation legal to resolve:

“Lack of express resolution in proceedings initiated ex officio.

1. In the procedures initiated ex officio, the expiration of the maximum term is-

established without an express resolution having been issued and notified does not exempt the Administration of compliance with the legal obligation to resolve, producing the following you effects:

a) In the case of procedures from which the recognition

or, where appropriate, the constitution of rights or other favorable legal situations, the

Interested parties who have appeared may understand that their claims have been dismissed.

due to administrative silence.

b) In procedures in which the Administration exercises sanctioning powers-

or, in general, of intervention, likely to produce unfavorable effects or

lien, expiration will occur. In these cases, the resolution declaring the

expiration will order the filing of the proceedings, with the effects provided for in article

ass 95.

(...)” (The underlining is from the AEPD)

On the other hand, article 64 of the LOPDGDD, “Form of initiation of the

procedure and duration”, it says in section 2:

“When the purpose of the procedure is to determine the possible

existence of an infringement of the provisions of Regulation (EU) 2016/679 and in the

this organic law, will be initiated by means of an initial agreement adopted by its own

initiative or as a consequence of a claim.

If the procedure is based on a claim filed with the Agency

Spanish Data Protection, in advance, it will decide on your

admission for processing, in accordance with the provisions of article 65 of this organic law.

When the rules established in article 60 of the

Regulation (EU) 2016/679, the procedure will start by adopting the

draft agreement to start the sanctioning procedure, which will give

formal knowledge to the interested party for the purposes set forth in article 75 of this law

organic.

Once the claim is admitted for processing, as well as in the cases in which the Agency

Spanish Data Protection Agency acts on its own initiative, prior to the

initial agreement, there may be a phase of preliminary investigation actions, which

shall be governed by the provisions of article 67 of this organic law.

The procedure will have a maximum duration of nine months from the

the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances.” (The underlining is from the AEPD)

In the present case, considering the date of the initiation agreement, which dates from

June 4, 2019, it can be concluded that the procedure has expired

sanctioning agent that concerns us, and consequently must agree to file the

present performances.

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Without prejudice to what is indicated in the preceding Basis, article 95 of the

LPACAP that regulates the effects of the expiration declaration, specifies in its section

C 3:

“The expiration will not produce by itself the prescription of the actions of the party.

cular or Administration, but expired procedures will not interrupt the

prescription period.

In cases where it is possible to initiate a new procedure by

not having produced the prescription, the acts and procedures may be incorporated into it

whose content would have remained the same had the expiration not occurred. In

In any case, in the new procedure, allegation procedures must be completed.

tions, proposition of evidence and audience with the interested party.”

For these purposes, it is recalled that the claim that gave rise to the opening of the

disciplinary file dealt with the alleged commission by the claimed of a

infringement of article 6.1 of the RGPD, typified in article 83.5.a) and qualified by the LOPDGDD, article 72.1.b), of very serious infraction, being its limitation period of three years.

Considering the aforementioned precepts and others of general application,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Declare the EXPIRY of the sanctioning procedure PS/00194/2019

according to the provisions of article 25.1.b) of the LPACAP, in relation to article 64.2

of the LOPDGDD, with the effects provided for in article 95 of the LPACAP and agree on the FILE of the actions carried out.

SECOND: Notify this resolution to IBERDROLA CLIENTES, S.A.U., with

NIF A95758389

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

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