

□ Procedure No.: PS/00097/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated 09/03/2018 has entry in the Spanish Protection Agency
of Data (AEPD) a claim of D. A.A.A. (hereinafter referred to as the claimant) against
EDP ENERGÍA, S.A.U., with NIF A33543547 (hereinafter, the claimed or EDP)
based on the treatment that has been carried out of your personal data despite not having
entered into any contract with her.

SECOND: In view of the facts set forth in the claim, the AEPD, under
of what is prevented in Royal Decree-Law 5/2018, of July 27, of "urgent measures
for the adaptation of Spanish Law to the regulations of the European Union in
data protection" that entered into force on 07/31/2018 and in the Organic Law
3/2018, of December 5, on the Protection of Personal Data and Guarantees of the
Digital Rights (LOPDGDD), which entered into force on 12/07/2018, carried out the
following actions:

A. Within the framework of reference file E/07119/2018, by means of a document dated
10/08/2018, transfers the claim to EDP to proceed with its analysis,
notify the claimant of the decision adopted and inform this Agency within the term of
one month on the causes that have caused the incident that originates the claim and
about the measures adopted to avoid the repetition of similar events. In that
On the same date, the AEPD sends a letter to the claimant in which it acknowledges receipt of its
claim and informs you of the actions carried out.

The response of the respondent has entry in the AEPD on 09/11/2018 and in it states the following:

1. That the claimant bases his claim on the treatment he has done of your personal data in the contracting of an electrical supply without your consent and adds in this regard that the hiring was carried out in a telephone "through SELECTRA" by Ms. B.B.B., on behalf of the claimant.

2. Explain that the hiring was carried out in two phases:

(I) In the first phase, by telephone, through D. ^a B.B.B., who stated be the claimant's partner and act on his or her behalf. The aforementioned lady contributed and confirmed all personal data of the claimant that was necessary to formalize the contract; also the address of the supply point and the data

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of the claimant and "authorized to consult the Universal Code of Point of Supply in the database of consumers and points of supply of electricity".

It underlines that, as can be seen at minute 1:24 of the recording of the Telephone conversation in which Ms. B.B.B. consented to the hiring -recording that the respondent has provided annexed to her brief- claims to be "user of the aforementioned supply" and "is responsible for the accuracy of the information provided". Then the bank account number was read.

It adds that, as is credited in the recording, at minute 2:28, Ms. B.B.B. it was informed that both your personal data and those of your representative would be

treated by EDP.

(II) A second phase, after the consent given verbally, in

which “an express and positive action of confirmation was required by the contracting party, to complete the process”: he was required to reply to a message from SMS text with the word “Yes”.

The respondent has provided the following documents:

1. A CD with the recording of the telephone conversation with Ms.

BBB which is transcribed below:

<<-Mrs. B.B.B. to hire I need your consent, okay?

-Yes

-Well, it is 10:39 a.m. on May 17, 2018. Doña B.B.B., with NIE

***NIF.1, as a couple and on behalf of the holder, D. A.A.A., with NIE ***NIF.2, te-

phone ***PHONE.1 and email ***EMAIL.1 has called SELECTRA and

accepts the offer of the company EDP at the address ***ADDRESS.1, which consists of

a 10% discount on the fixed gas term for CUPS ES020833056079000

(...) and a 2% discount on the valley term of electricity consumption for CUPS

ES0031300560790008 on the current EDP price of electricity (...)

The Client declares himself a user of the aforementioned supply and is responsible for the accuracy of the information provided for the search of the technical data of the supply nistro, especially the direction.

The chosen payment method is direct debit to the account ES XX XXXX

XXXXXXXXXXXXXXXXXXXX and will be charged on the date indicated on the invoice.

On your behalf, and after passing a risk analysis of the operation, we will necessary steps to activate the previous contracts, moment from which the new contract will come into effect. From there (...)

The contract will have a duration of one year, renewable for the same period except

15 days advance notice.

Are you satisfied with the above information and conditions of the contract?

- Yes.

Thank you very much. In a few days you will receive the contract, including the document of withdrawal in duplicate of which you will only have to return one of the signed

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copies in the self-stamping envelope that we will enclose with you.

You have 14 calendar days to exercise your right of withdrawal in the form whatever you deem appropriate.

We will proceed to start the procedures immediately unless you tell us deny the contrary.

Your personal data and those of your representative will be processed by EDP Comercializadora S.A.U., and EDP Energía, S.A., for the management of their contracts, prevention of fraud, profiling based on EDP customer information as well as the making personalized communications about products or services directly mind related to their contracts.

Additionally, you must answer yes or no to the following questions:

Do you allow us to present you with energy-related offers after the completion of of the contract or send you information at any time about products or services of the financial, insurance or automotive sectors of companies collaborating with EDP?

- Yes

- Do you allow us to complete your commercial profile with information from databases

of third parties in order to send you personalized proposals and the possibility of contract or not certain services?

-Yes

We remind you that you and your representative may exercise your rights of access, rectification, cancellation and opposition at any time by requesting it to through any of the channels indicated in the General Conditions that

You can consult it on our website: www.edpenergia.es.

This request will be registered with the code that I am going to indicate and will be used gives in future contacts. Please take note. You don't need to take note, Ms. B.-

B.B., because I'm going to send it to you in the next message, okay?

Look, it's 057180517 S9CC.

Remember that the certificate must be in force to carry out the contract.

tion correctly.

In the next few days you will receive an email to activate your customer profile.

you in the company EDP. That way you will receive an email when you have an invoice available.

wearable, instead of receiving them on paper (...)>>

2. Copy of an SMS message that you forwarded to the phone number provided

by the contracting party. It states that the message, in addition to specifying the terms of the

offer that was agreed by telephone, includes the date, time and telephone from which

the message was sent, as well as the recipient's telephone number and "the date, time and content of the reply to it"

The document provided by EDP that it identifies as a "copy of the message

SMS" offers the following features. In its first paragraph it says: "Confirmation

of acceptance of communication by sms. On 2018-05-17 10:44.15 an SMS was sent

from the phone number +34658806873 with the text: EDP Offer.

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057180517F9B6. Please reply Yes to this SMS to activate and accept discounts. Thanks. Details: [http:// edpconfirma.es/CKEAKAOAZS](http://edpconfirma.es/CKEAKAOAZS), to the number of phone ***PHONE.1". "This message was answered with the notification ID CKEAKAOAZS, on 2018-05-17 10.47.05 and with the text: Yes, which we accept as valid for the processing of the product offered in the document shown next."

The document immediately below bears the EDP logo and the "Your EDP offer" section. Dedicate your first paragraph to the identification data of the claimed entity. The second, under the heading "Personal data" offers the name of the claimant (A.A.A.); your NIF (***NIF.2) -which coincides with the one that the claimant made appear on the form submitted to the AEPD-; supply address (***ADDRESS.1) -which also coincides with the data of the address that the claimant provided in your claim- and the telephone number ***TELEFONO.1.

3. Copy of a letter, with the EDP logo, addressed to the claimant, in which

The date of 07/11/2018 is recorded, in which it is limited to informing you that, regarding the contracting the supply with said entity, has proof that it was carried out by Mrs. BBB "acting in your name and on your behalf." What was Ms. B.B.B. who provided all your personal data and the others that were necessary for formalize the contract. And that this person declared to be a user of the supply and to become responsible for the veracity of the information provided. The letter ends with this affirmation: "We can only conclude that EDP has observed all precautions required and that this hiring has been, at all times, in good faith on the part of

EDP”

B. In accordance with the provisions of article 65.2 of the LOPDGDD, on the date 03/21/2019 the agreement for admission to processing of this claim was signed.

THIRD: On 09/05/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, in accordance with the provided in articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged violation of Article 6.1. of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: Once the aforementioned initiation agreement was notified, on 09/24/2019 the respondent presented brief of allegations in which he requested the filing of the proceedings for having acted correctly and in accordance with the law and, subsidiarily, the reduction of the amount of the penalty.

He stated in support of his file claim that he acted with the diligence that was coming from; that the data of the claimant were provided by Ms. BBB in the frame of a contracting process, who gave consent on their behalf and representation, this being the legitimizing basis of its treatment.

In addition, EDP provided in this process a copy of the arbitration procedure followed before the Consumer Arbitration Board of ***CCAA.1, promoted by the claimant, that the 10/02/2018 I submit a request for arbitration, for the same facts that originated the

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claim before the AEPD. According to the documentation provided on 03/06/2019, it was

dictated arbitral award in which the claims of the claimant upon concluding that the contract is considered to be validly concluded upon being accredited its celebration. Work in the file provided by the claimed entity both the request for arbitration made by the claimant, and the notification to the claimed, the invoices that EDP issued in the name of the claimant and the Arbitration Award issued on 03/06/2019 in which the claimant's claim is dismissed.

FIFTH: On 06/01/2020 a trial period is opened in which it is agreed carry out the following procedures:

- Consider reproduced, for the purposes of evidence, the claim presented and its attached documentation, as well as the documents obtained and generated by Inspection Services before EDP. Consider reproduced the allegations to the initiation agreement of PS/00097/2019 presented by EDP and the documentation that accompanies them.
- Request EDP to send this Agency the documents detailed below.

continuation:

1. Contracting by EDP of electricity and gas supplies on behalf of the claimant was made, as stated by the respondent in her response to the informative request prior to the admission to processing of the claim, through of SELECTRA. EDP is required to explain what the legal relationship was that it maintained in May 2018 with that company. Request a copy of the agreements, pacts or contracts entered into between the two that regulate the SELECTRA's performance in contracting EDP's supplies and that was in force in May 2018.

2. EDP is required to provide screenshots of its systems computers with the information that appears in them associated with the contracts that they were registered in May 2018 in the name of the claimant.

- Request ORANGE ESPAGNE, S.A.U. to report if it provided the service

for the line ***TELEFONO.1 in May 2018. If not, request

the name of the telephone operator from which the line was ported to ORANGE and

the date on which the portability of the aforementioned mobile line took place. In case of

that the telephone service had been contracted with ORANGE ESPAGNE,

S.A.U., in May 2018, it is requested that you provide the name, surnames and NIF of

the person who appeared in their systems as the owner of the line.

On 06/16/2020, both ORANGE ESPAGNE, S.A.U. as EDP gave

response to the tests carried out whose content is in the file.

SIXTH: Royal Decree 463/2020, "declaring the state of alarm for the

management of the health crisis caused by Covid 19", published in the BOE on

03/14/2020, in its Third Additional Provision, "Suspension of deadlines

administrative", ordered:

"1. Terms are suspended and the deadlines for the processing of the

procedures of public sector entities. The calculation of the deadlines

will resume at the moment in which this Royal Decree loses its validity or, in its

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case, the extensions thereof.

2. The suspension of terms and the interruption of terms will apply to the entire

public sector defined in Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations."

This suspension was lifted on 06/01/2020. Royal Decree 537/2020,

published in the BOE on 05/23/2020, establishes in article 9:

“Administrative deadlines suspended by virtue of Royal Decree 463/2020, of 14

of March”. “With effect from June 1, 2020, the computation of the deadlines

Administrative procedures that had been suspended will be resumed, or restarted, if so

would have foreseen in a norm with the force of law approved during the validity of the

state of alarm and its extensions” (Underlining is from the AEPD)

Taking into account the days remaining to complete the procedure

from the date on which the suspension of deadlines was agreed to the day on which it was

foreseen the end of the term of 9 months to resolve foreseen in the LOPDGDD, and

added those days from 06/01/2020, the last day of the term to dictate and notify

the resolution is July 16, 2020.

Of the actions carried out in this proceeding and of the

documentation in the file, the following have been accredited:

PROVEN FACTS

1. The complainant reports that EDP has processed their personal data linked to a

electricity supply contract without your consent and without having entered into any

contract with the claimant.

2. EDP has provided a CD with the recording of a telephone conversation in which

a third, Mrs. B.B.B., identifies himself as the claimant's partner, declares to act in

his representation and in such concept he gives his consent to the contracting and facilitates

the personal data of the claimant (name, two surnames, NIF, bank details,

CUPS number and address of the supply point) In addition, “authorized to consult

the Universal Supply Point Code in the consumer database and

electricity supply points” and claimed to be a “user of the aforementioned supply” and

stated that "is responsible for the accuracy of the information provided." Ms.

BBB was informed in the course of the conversation that both her data

personal data such as those of your client would be processed by EDP.

3. EDP has stated that “an express and positive confirmation action was required by the contracting party, to complete the process”, demanding that he answer an SMS text message with the word “Yes”. The respondent has provided a copy of SMS message sent to the phone number provided by the partner of the claimant during contracting. The message, in addition to the terms of the offer that was agreed by telephone, includes the date, time and telephone from which it was
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sent, as well as the recipient telephone number and "the date, time and content of the reply to it".

4. EDP has provided a copy of the Award issued by the Regional Arbitration Board of Consumption of *** CCAA.1 dated 03/06/2019, totally rejecting the claims of the claimant. In Basis III, Background of the matter, it is indicated:

“(…) Since the plaintiff has not attended the Arbitration Hearing, it has not been possible to request clarification of the events that occurred, although it is reasonably infer that your request to cancel the invoice is due to your position of not having contracted with the defendant any service or supply, since it states 'no have signed anything.

For its part, the company maintains that the claimant contracted with them the supply of electricity and natural gas, providing specific dates of the respective registrations, as well as the information that said contracts are currently in
sick leave, also specifying their dates...

It is therefore evident that the basic question to be elucidated will be to determine if whether or not there was a valid contract between the parties. (...)

Consequently, the contract must be considered validly concluded, since

It has been sufficiently proven that there was confirmation via SMS, a method accepted as legitimate by law, and made to the mobile phone number of the claimant (the underlined corresponds to the AEPD).

The Award issued has the following content: "That should be DISMISSED

(Document from

TOTALLY. and thus claimant D's claim is made.

***NIF.2

), filed against the company EDP ENERGIA, S.A.U. and without

Identity

pronouncement on the certain debt that may exist, since neither one party nor the other have presented the corresponding invoices so that they could be reviewed by this Arbitral Body (the underlining is from the Award).

A.A.A.

5. This Agency is not aware that the claimant had filed against the cited Award appeal for annulment.

FOUNDATIONS OF LAW

Yo

The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the RGPD and in the art. 47 and 48.1 of LOPDGDD.

II

Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, in its article 89, Proposal for a resolution in the

sanctioning procedures, states that:

"1. The investigating body will resolve the completion of the procedure, with file of the actions, without it being necessary to formulate the proposal for resolution, when in the instruction procedure it is made clear that any of the following circumstances occur:

a) The non-existence of the facts that could constitute the infraction.

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b) When the facts are not proven.

c) When the proven facts do not constitute, in a manifest way, an infringement administrative.

d) When it does not exist or it has not been possible to identify the person or persons liable or appear exempt from liability.

e) When it is concluded, at any time, that the infraction has prescribed"

III

EDP was charged in the agreement to initiate the disciplinary proceedings with the violation of article 6 of the RGPD, "Legality of the treatment", in which section 1 establishes the cases in which the processing of third-party data is considered lawful: "1. The treatment will only be lawful if it meets at least one of the following conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(...)"

Law 40/2015, of October 1, on the Legal Regime of the Public Sector,

establishes in its article 21, Obligation to resolve, that "1. The Administration is

obliged to issue an express resolution and to notify it in all procedures

whatever its form of initiation.

In cases of prescription, waiver of the right, expiration of the procedure

or withdrawal of the request, as well as sudden disappearance of the object of the

procedure, the resolution will consist of the declaration of the circumstance that

concur in each case, with an indication of the facts produced and the rules

applicable.

Excepted from the obligation referred to in the first paragraph, the assumptions

of termination of the procedure by pact or agreement, as well as the procedures

relating to the exercise of rights subject only to the duty of declaration

responsible or communication to the Administration."

IV

As stated in the First Precedent, the facts claimed by the affected party

on 09/03/2018 they are based on the treatment that the company EDP had carried out

of your personal data linked to an electricity contract despite the fact that

He claims not to have entered into any contract with her.

However, regarding these same facts, the claimant made a request for

arbitration before the JJAA of Consumption of ***CCAA.1 questioning the validity of the contract

of supply and registration in the service. To this end, it works in the file provided by

EDP full copy of the arbitration procedure.

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The arbitration procedure is governed by Royal Decree 231/2000, which regulates the consumer arbitration system and, in matters not provided for in it, by the Arbitration Law 60/2003. Article 40 of the aforementioned Law 60/2003 provides that "Against a final award The annulment action may be exercised in the terms provided in this title.

As indicated in the preceding Foundations on 03/06/2019, issued the Arbitration Award that agreed to totally reject the claimant's claim formulated against the company EDP and considered "validly concluded the contract, since that it has been sufficiently proven that there was confirmation via SMS, method accepted as legitimate by law, and made to the mobile phone number of the claimant" (the underlined corresponds to the AEPD).

Article 40 of Law 60/2003 provides that "Against a final award, exercise the annulment action in the terms provided in this title.

However, there is no evidence that against the Award that the JJAA of ***CCAA.1 issued in the matter at hand would have been exercised by the current claimant the annulment action before the Civil and Criminal Chamber of the Court Superior Court of Justice of ***CCAA.1 within the two months following their notification, in the terms provided in Title VII of Law 60/2003, on Arbitration.

On the other hand, article 43 of Law 60/2003 states that "The award produces effects acts of res judicata and against him it will only be possible to exercise the annulment action and, in its case, request the review in accordance with the provisions of Law 1/2000, of January 7, of Civil Procedure for final sentences."

Thus, while there is no news that the Award issued by the JJAA of

***CCAA.1 would have been appealed for annulment and, given that the award produces res judicata, this Agency is bound by the aforementioned arbitration resolution. For such reason, it is appropriate to agree on the file of the sanctioning file that concerns us.

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Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Agree on the FILING of the sanctioning file opened to EDP ENERGÍA, S.A.U., with NIF A33543547.

SECOND: NOTIFY this resolution to EDP ENERGÍA, S.A.U., with NIF A33543547.

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

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

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

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

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

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

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

aforementioned Law.

Sea Spain Marti

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