

968-150719

□ Procedure No.: PS/00444/2019

RESOLUTION R/00173/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00444/2019, instructed by the Agency

Spanish Data Protection Agency to IBERDROLA CLIENTES, SAU, in view of the

claim filed by A.A.A., and based on the following,

BACKGROUND

FIRST: On December 4, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate sanctioning proceedings against IBERDROLA

CUSTOMERS, SAU. Notified of the initial agreement and after analyzing the allegations

presented, on January 17, 2020, the resolution proposal was issued that

is transcribed below:

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Procedure no.: PS/00444/2019

926-101219

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

to the following:

BACKGROUND

FIRST: On May 20, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),

through which he makes a claim against IBERDROLA CLIENTES, SAU with NIF

A95758389 (hereinafter, the claimed one).

SECOND: In accordance with the provisions of article 65 of Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the Data Protection Delegate that you may have appointed, requiring you to send the requested information and documentation to this Agency. East request for information was made within the framework of the file with code of reference E/06164/2019.

THIRD: Once the period of one month that was given to the claimed person for inform the Spanish Agency for Data Protection, as indicated in the

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second background, without the respondent providing the pertinent response, the

The claim was admitted for processing on October 4, 2019.

FOURTH: In relation to the investigation actions referenced with the

code E/10742/2019, a new request for information was sent to the respondent,

alluding to the claim outlined in the first antecedent, so that, within the term of

ten working days, submit to this Agency the information and documentation that

it was pointed out in it. The request, which was made in accordance with the regulations

established in Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter, LPACAP), was collected by the

responsible on November 12, 2019, as stated in the certificate of

Notific@ that works in the file.

FIFTH: On December 4, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with

in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged infringement

of article 58.1 of the RGPD, typified in article 83.5 e) of the RGPD.

SIXTH: The aforementioned initial agreement was collected by the person in charge on the 9th of December 2019, as stated in the Notific@ certificate that works in the proceedings.

After the period of ten business days granted in the initial agreement for the presentation of arguments, the respondent has not presented arguments.

SEVENTH: On January 13, 2019, the claim made by Mr.

A.A.A. urging IBERDROLA CLIENTES, SAU to send to the party claimant certification in which he stated that he has fulfilled the right to deletion exercised by it or denied reasoned indicating the causes for which that the requested deletion is not admissible, within the framework of file TD/00324/2019.

EIGHTH: Attached as an annex is a list of documents in the process.

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

PROVEN FACTS

FIRST: The information requirements indicated in the second background and fourth were notified electronically, in accordance with the provisions of article 43 of the LPACAP.

SECOND: The respondent has not responded to the information requirements carried out by the Agency within the periods granted for it, namely:

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1st. The request made within the framework of the file with reference code

E/06164/2019, in which the deadline to respond was one month.

2nd. The request made within the framework of the investigative actions

referenced with code E/10742/2019, in which the deadline to respond was

ten business days.

THIRD: The notification of the agreement to initiate this procedure

sanctioning was carried out electronically through the Notific@ system, being

collected by the person in charge on December 9, 2019.

FOURTH: The respondent has not submitted arguments to the agreement to initiate this

penalty procedure.

FOUNDATIONS OF LAW

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

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and

in the art. 47 and 48.1 of LOPDGDD.

II

In accordance with the evidence available at the present time of the

sanctioning procedure, it is considered that the defendant has not sought the

Spanish Data Protection Agency the information requested.

With the aforementioned conduct of the defendant, the power of investigation that article

58.1 of the RGPD confers to the control authorities, in this case, the AEPD, it has been

seen hampered.

Therefore, the proven facts are deemed to constitute an infraction, attributable to the

claimed, for violation of article 58.1 of the RGPD, which provides that each

The control authority will have, among its investigative powers:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the

representative of the person in charge or the person in charge, who facilitate any information required for the performance of its functions; b) carry out investigations in the form of data protection audits; c) carry out a review of the certifications issued under article 42, paragraph 7; d) notify the person in charge or the person in charge of the treatment of the alleged violations of this Regulation; e) obtain from the controller and the in charge of the treatment access to all personal data and to all the information necessary for the exercise of its functions; f) gain access to all premises of the controller and processor, including

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any equipment and means of data processing, in accordance with the Procedural law of the Union or of the Member States.”

III

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: "no facilitate access in breach of article 58, section 1”.

In the same article it is established that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) as a maximum of the global total annual turnover of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as

very serious the following conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority to the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the competent data protection authority.”

IV

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

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Consequently, it is appropriate to graduate the sanction to be imposed in accordance with the criteria that established in article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

In the initial assessment it was found that no extenuating circumstances were applicable, and

The following facts have been considered as aggravating:

- Art. 83.2 b) RGPD: the intention or negligence in the infringement. Is about a company that is not newly created and should have procedures established for the fulfillment of the obligations that contemplates the data protection regulations, among them, to respond to the requirements of the supervisory authority.

- Art. 83.2 k) RGPD: any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the Losses avoided, directly or indirectly, through the infringement. The claim refers to the particular case of a person, but the

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data processing to which it refers, may potentially affect a very high number of clients of the responsible entity or users of the service provided by the responsible entity.

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction IBERDROLA CLIENTES, SAU, with NIF A95758389, for a violation of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €5,000.00 (FIVE THOUSAND euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, informs that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same. With the application of this reduction, the sanction would be established at 4,000.00 euros and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditioned to the Withdrawal or waiver of any administrative action or recourse against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, must do so effective by depositing it in restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the Bank CAIXABANK, S.A., indicating in the concept the reference number of the

procedure that appears in the heading of this document and the cause, for voluntary payment, reduction of the amount of the sanction. Also, you must send the proof of entry to the General Subdirectorate of Inspection to proceed to close The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you. so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP).

BBB

INSTRUCTOR

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: On March 6, 2020, IBERDROLA CLIENTES, SAU has

SECOND

proceeded to pay the sanction in the amount of 4,000 euros using the reduction provided for in the motion for a resolution transcribed above.

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THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under

the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified

the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at

least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00444/2019, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to IBERDROLA CLIENTES, SAU.

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

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

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

regulation of the Contentious-Administrative Jurisdiction, within a period of two months to

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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