

□ Procedure No.: PS/00106/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 18, 2019, it had entry in this Spanish Agency
of Data Protection a document presented by A.A.A. (hereinafter the
claimant), through which he makes a claim against IBERDROLA CLIENTES,
SAU with NIF A95758389 (hereinafter, the claimed).

SECOND: In view of the foregoing, there are indications of a possible
breach of the provisions of Regulation (EU) 2016/679 (General Regulation
of Data Protection, hereinafter RGPD), which has motivated the opening of the
file E/11287/2019.

In accordance with the provisions of article 65 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights
(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the Delegate
of Data Protection that in his case would have designated, requiring him to send
to this Agency the requested information and documentation. This requirement
of information was not answered in time. The claim was admitted for processing
date February 11, 2020.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out
of previous investigative actions to clarify the facts in
matter, by virtue of the investigative powers granted to the authorities of
control in article 57.1 of the RGPD, and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

Within the framework of investigation actions E/01421/2020, it was sent to the

claimed a request for information, related to the claim outlined in the

first paragraph, so that within ten working days it could present before this

Agency the information and documentation indicated therein. This requirement was

registered departure on February 18, 2020 with number 014818/2020.

FOURTH: The request for information, which was carried out 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 February 19, 2020, as stated in the certificate of

Notific@ that works in the file.

FIFTH: By means of Royal Decree 463/2020, of March 14, the state of

of alarm for the management of the health crisis situation caused by the COVID-

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19 (BOE nº 67 of March 14). In its Third Additional Provision, point 1, it is

established the suspension of terms and the interruption of deadlines for processing

of the procedures of public sector entities. "The computation of deadlines

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

case, the extensions thereof."

Subsequently, in article 9 of Royal Decree 537/2020, of May 22, by which

The state of alarm declared by Royal Decree 463/2020, of 14 December, is extended.

March, which declares the state of alarm for the management of the situation of

health crisis caused by COVID-19 (BOE nº 145 of May 23), it was arranged

the resumption of administrative deadlines in the following terms:

“With effect from June 1, 2020, the computation of administrative deadlines

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

in a regulation with the force of law approved during the validity of the state of alarm and

their extensions.”

SIXTH: On April 1, 2020, the Director of the Spanish Agency for

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

alleged infringement of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD.

Due to the interruption of the terms and the suspension of the terms

administrative provisions established in the third additional provision of the Royal Decree

463/2020 declaring the state of alarm, the start agreement of this

The sanctioning procedure was notified to the respondent on June 3, 2020.

SEVENTH: The respondent answered the requirements made, being registered

in this Agency on April 13, 2020 with number 014371/2020.

EIGHTH: On June 17, 2020, allegations of the initiation agreement are received.

In them, the respondent requests that the file of this procedure be agreed

sanctioning party, by not concurring the presupposition of fact set forth in the agreement of

beginning. He alleges that he did respond to the request for information, since on April 7

filed a response brief regarding files E/11287/2019 and E/01421/2020

in the Common Electronic Registry of the General State Administration.

PROVEN FACTS

FIRST: The information requirements indicated in the second background

to fourth were notified electronically through Notific@ al claimed, with

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:

1st. The request made within the framework of the file with reference code E/09628/2019, in which the deadline to respond was one month.

2nd. The request made within the framework of the investigative actions referenced with code E/01423/2020, in which the deadline to respond was ten business days.

THIRD: The respondent answered the requirements made, being registered in this Agency on April 13, 2020 with number 014371/2020.

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FOURTH: Although the agreement to initiate this sanctioning procedure is signed on a date prior to the response to the requirements indicated in the fact second, due to the declaration of the state of alarm, its notification occurred in date after the filing of said answer.

FOUNDATIONS OF LAW

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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, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

II

In this proceeding, it is pertinent to note that there has been a anomalous situation as a result of the suspension of administrative deadlines

motivated by the declaration of the state of alarm. Although the respondent had not provided the required information at the time of signing the start-up agreement, finally provided it, and its presentation occurred before it was practiced irrefutable notification of the agreement to initiate the sanctioning procedure, and before, therefore, that it could be considered effective.

III

Article 89 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, in its first section provides the following:

“The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances:

- a) The non-existence of the facts that could constitute the infraction.
- b) When the facts are not proven.
- c) When the proven facts do not constitute, in a manifest way, an infringement
- 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 administrative. infringement”.

In this case, according to the available evidence,

It is considered that the person claimed has sought the Spanish Agency for the Protection of

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Data the information you requested. Consequently, it is appropriate to agree on the file of the process.

Therefore, as stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE procedure PS/00106/2020.

SECOND: NOTIFY this resolution to IBERDROLA CLIENTES, SAU, 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

Director of the Spanish Data Protection Agency

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