

□ File No.: PS/00398/2021

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On October 14, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanctioning proceedings against IBERDROLA  
CLIENTES, SAU (hereinafter, the claimed party), by means of the Agreement  
transcribe:

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### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in  
based on the following

### FACTS

FIRST: A.A.A. (hereinafter, the complaining party) dated March 8, 2021  
filed a claim with the Spanish Data Protection Agency.

The claim is directed against IBERDROLA CLIENTES, SAU with CIF A95758389  
(hereinafter, the claimed party).

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The reason on which the claim is based is that the entity claimed at the request of the tenant of the house he has rented has modified the contracted power without the consent of the claimant, despite being the holder of the supply contract.

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), on April 26, 2021, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

On May 27, 2021, this Agency received a written response from the claimed entity indicating that the claimant is the holder of the supply contract of a dwelling that the claimant has rented, thereby contravening article 79 of Royal Decree 1955/2000, which requires that the supply contract be personal and its holder must be the effective user of the energy.

The claimant has requested the right of access to the recordings of the days that It is known that his identity has been supplanted, 01/07/2021, 02/10/2021, 02/18/2021 and 02/24/2021.

In this sense, the entity claimed states that in order to prevent damage to the personal data protection rights of third parties, prefer to wait for indications express consent of the judicial authority, or any other competent authority, to proceed to deliver a copy of the telephone recordings of the tenant and effective user of the energy, for a supposed impersonation of identity, since it could constitute a transfer of data without consent.

The supply contract that is the object of the conflict was entered into on July 30, 2020, and low on March 24, 2021, noting that there is an outstanding debt of €XXX.XX for rights generated by decreases and increases in

power requested, therefore this amount does not correspond to consumption

actually carried out.

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In said contract there are several claims and interactions, motivated by what

Sounds like a dispute between landlord and tenant.

Regarding the mobile phone that the claimant says has been modified in his contract,

alluding to an alleged identity theft by its tenant,

there is a telephone call dated 01/07/2021 to the customer service telephone channel

of the claimed entity, in which the person who identifies himself as a tenant of the

housing, provides all the data of both the holder of the contract and the point of

supply, requests to make the payment of the debt that is pending in said

supply (XXX,XX.-€), for which it is necessary to send an SMS that enables

make the payment, providing this person with the mobile phone that contains the details of the

point of supply, and which the claimant now alleges not to recognize.

THIRD: On June 21, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOUNDATIONS OF LAW

Yo

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

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to

resolve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

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In this sense, article 6.1 of the LOPDGDD, establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood affected person, any manifestation of free, specific, informed and inappropriate will. unequivocal by which he accepts, either through a statement or a clear action affirmative, the treatment of personal data that concerns you".

For its part, article 6 of the GDPR establishes the following:

"1. The processing will only be lawful if at least one of the following conditions is met:

nes:

- a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

by public authorities in the exercise of their functions.”

III

In accordance with the evidence available at the present time,

considers that the facts denounced, that is, modifying the contracted power and

personal data of the contract concluded between the claimant and the claimed, upon request

of the tenant of the dwelling object of the supply, without the consent of the

claimant, nor any other cause of legitimacy of the treatment, despite being the

claimant contracting party of the supply, supposes a violation of art. 6 of the

GDPR.

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IV

Article 72.1 b) of the LOPDGDD states that “according to what is established in the

article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment in article 6 of Regulation (EU) 2016/679.”

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Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

Thus, in response to what results from the investigation, it will be possible to order the claimed party that within the designated period proceeds to carry out the actions necessary so that the treatment of the personal data used adjusts to the GDPR provisions.

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This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD, considering as aggravating the intentional action of the respondent to modify the contract entered into with the claimant (article 83.2 b).

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

IBERDROLA

FIRST: START SANCTION PROCEDURE against

CLIENTES, SAU with CIF A95758389, in accordance with the provisions of article 58.2.b) of the RGPD, for the alleged infringement of article 6 of the RGPD, typified in the article 83.5.b) of the RGPD and for prescription purposes, by article 72.1 b) of the LOPDGDD.

SECOND: APPOINT instructor to B.B.B. and, as secretary, to C.C.C., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sec- Public Tor (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimants and their documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

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FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 70,000 euros (seventy thousand euros) without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to IBERDROLA CLIENTES, SAU with CIF A95758389, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be set at €56,000 (fifty-six thousand euros), resolving the procedure with the imposition of this sanction.

Similarly, 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 its amount. With the application of this reduction, the sanction would be established at €56,000 (fifty-six thousand euros), and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €42,000 (forty-two thousand euros).

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In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts previously indicated €56,000 or €42,000, you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorato of

Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga Pérez Sanjuán, Resolution 4/10/2021

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SECOND: On October 28, 2021, the claimed party has proceeded to pay of the sanction in the amount of 42,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD 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 Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

- "1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.
2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but 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 with each other.

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

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

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00398/2021, 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, 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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

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