

937-240719

Procedure No.: PS/00304/2019

RESOLUTION R/00532/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00304/2019, instructed by the Agency

Spanish Data Protection Agency to IBERDROLA CLIENTES, SAU, given the complaint

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On September 20, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate sanctioning proceedings against IBERDROLA

CLIENTES, SAU (hereinafter, the claimed party), through the Agreement that is transcribed:

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AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: D.A.A.A. (hereinafter, the claimant) dated March 1, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against IBERDROLA CLIENTES, SAU, with NIF A9575839 (in

later, the claimed one). The grounds on which your claim is based are that,

initially, he contracted the electricity supply of his home with the respondent, and

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later, when he rented it, he changed ownership of the supply to the name of the tenant. In this regard, it states that, at the end of the contract of lease, contacted the claimed party to proceed again to change the owner supply and inform you that there are unpaid invoices.

Thus, after paying the debt, he requests it again, and they tell him that cannot be carried out since your data is included in the SOLCENT file.

SECOND: In view of the facts denounced in the claim, of the documents provided by the claimant, of the facts and documents of which he has had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

On October 30, 2018, the claim was transferred to the respondent within the framework of the actions with reference E/8056/2018.

On March 1, 2019, the respondent has sent the following to the Agency information in relation to the facts denounced:

1.- After analyzing the claim filed by the complainant, they have determined that he had his rented home and that on October 5, 2016 he changed ownership of the supply contract in the name of the tenant.

2.- When you request the change of ownership, at the end of the contract, you are informed that there are several unpaid invoices.

3.- On August 10, 2018, the debt is paid and proceeds to give registration of the contract in the name of the complainant.

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On March 11, 2019, IBERDROLA is required to provide information on relation to the SOLCENT file to which the claimant refers and on the possible inclusion of your data in the solvency files. The letter is sent by @notifica and it is delivered to the company that same day.

As of the date of this report (May 31, 2019), IBERDROLA has not given response to the request for information.

THIRD: According to the documentation in the file, it is accredited that the Spanish Agency for Data Protection addressed the entity responsible for Iberdrola requesting information on the facts subject to inspection, in two occasions. Thus, on the one hand, they answered the first of the date requirements October 30, 2018, and on the other they did not respond to the second of them, that of October 11 March 2019, which constitutes the factual budget of an alleged infringement of the personal data protection regulations.

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 and 48 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

## II

Article 58 of the RGPD, "Powers", states:

"2 Each supervisory authority shall have all of the following powers  
corrections listed below:

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(...)

i) impose an administrative fine under Article 83, in addition to or instead of  
of the measures mentioned in this section, depending on the circumstances of the  
particular case

(...)"

## III

The obligations that the RGPD imposes in general on those responsible and  
treatment managers are regulated by articles 24 to 31. Among them article 31  
refers to the "Cooperation with the Control Authority" that indicates:

"The person in charge and the person in charge of treatment and, where appropriate, their representatives,  
They will cooperate with the control authority that requests it in the performance of their duties.  
functions".

Failure to comply with such obligation constitutes an infringement of the RGPD typified  
in its article 83.4:

"Infractions of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of EUR 100,000 or,  
in the case of a company, an amount equivalent to a maximum of 2% of the  
global total annual turnover of the previous financial year, opting for  
the largest amount:

a) The obligations of the person in charge and the person in charge in accordance with articles 8,  
11, 25 to 39, 42 and 43,

(...)"

For its part, the LOPDGDD typifies in article 72.1 as very  
serious the following:

"(...)

ñ) Failure to facilitate access by data protection authority personnel  
competent to personal data, information, premises, equipment and means of  
treatment that are required by the data protection authority for the

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exercise of its investigative powers.

The LOPDGDD dedicates to the "Powers of investigation and audit plans  
preventive" articles 51 to 54. The aforementioned Organic Law 3/2018 specifies in its  
article 51.1 that "The Spanish Agency for Data Protection will develop its  
research activity through the actions provided for in Title VIII and  
preventive audit plans" (emphasis is from the AEPD). In turn, the title  
VIII of the Organic Law regulates in its article 67 the "Previous actions of  
research".

The documentation in the file shows that within the framework of the  
Previous investigation actions E/01919/2019 the Data Inspection of the  
AEPD made an informative request to the respondent, to which she did not respond. The  
The request was signed electronically on March 11, 2019, on the same date  
was made available to the claimed person through the notification system and was also  
accepted by her. Such extremes are evidenced by the Certificate of the Service of  
Electronic Notifications and Authorized Electronic Address of the FNMT that works in  
The file.

As stated in the Report of Previous Actions, dated 05/31/2019:

“On March 11, 2019, Iberdrola is requested information regarding the  
SOLCENT file to which the complainant refers and about the possible inclusion  
of your data in solvency files. The letter is sent by @notifica and consists  
delivered to the company that same day.

As of the date of this report (May 31, 2019), Iberdrola has not given  
response to the request for information.

The refusal of the respondent to collaborate with the investigation of the authority  
Spanish data protection.

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In the determination of the administrative fine that corresponds to impose,  
to observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that  
point out:

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“Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement,

in particular if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, establishes:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

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may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.



f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of data.

h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

Without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of a fine that would be appropriate to impose on the one claimed by the alleged infringement of the RGPD, in an initial assessment, it is appreciated that the following factors:

Regarding the infringement of article 31 of the RGPD typified in article 83.2. GDPR:

-The close link between the activity of the claimed party and the processing of personal data (article 83.2.k, RGPD in relation to 76.2.b, of the LOPDGDD)

- It is also necessary to take into account the conduct of the entity that cooperated with this Agency at first sending the requested information. Nevertheless, did not respond to the request dated March 11, 2019, requesting to IBERDROLA information in relation to the SOLCENT file to which it makes reference the complainant and about the possible inclusion of their data in the files of solvency. The letter is sent by @notifica and is delivered to the company the same day.

This is why it is considered appropriate to adjust the sanction to be imposed on Iberdrola and set it at the amount of €10,000 for the infringement of article 31 of the RGPD.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

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HE REMEMBERS:

1.

START SANCTION PROCEDURE against IBERDROLA CLIENTES, SAU,  
with NIF A9575839, for the alleged infringement of article 31 of the Regulation  
(EU) 2016/679, typified in article 83.4 of the aforementioned RGPD.

1. APPOINT D.R.R.R. as instructor. and as secretary to Ms. S.S.S.,  
indicating that any of them may be challenged, where appropriate, in accordance with  
what is established in articles 23 and 24 of Law 40/2015, of October 1, of  
Legal Regime of the Public Sector (LRJSP).

two.

INCORPORATE to the disciplinary file, for purposes of evidence, the claim  
filed by the claimant and its attached documentation; documents  
obtained and generated by the Subdirectorate General for Data Inspection  
during the investigation phase, as well as the report of previous actions  
of Inspection.

3. THAT, for the purposes provided in art. 64.2 b) of Law 39/2015, of 1  
October, of the Common Administrative Procedure of the Administrations  
Public, the sanction that could correspond would be 10,000 euros (ten thousand  
euros) for the infraction, without prejudice to what results from the instruction of the  
process.

4. NOTIFY this agreement to IBERDROLA CLIENTES, SAU, with NIF

A9575839, granting a hearing period of ten business days for

formulate the allegations and present the evidence that it deems appropriate.

In your brief of allegations you must provide your NIF and the number of

procedure at the top 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

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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

established at 8,000 euros (eight 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 8,000 euros (eight 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 6,000 euros (six thousand euros).

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 indicated above (8,000 or 6,000 euros), 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 Subdirectorate 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.

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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.

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Director of the Spanish Data Protection Agency

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SECOND: On October 15, 2019, the respondent has proceeded to pay the sanction in the amount of 8,000 euros making use of one of the two reductions provided for in the Start Agreement transcribed above. Therefore, there is no accredited acknowledgment of responsibility.

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 Home Agreement.

#### FOUNDATIONS OF LAW

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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.

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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. 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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00304/2019, 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 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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