 File No.: EXP202105473

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 11/04/2021 filed

claim before the Spanish Data Protection Agency. The claim is

directed against Naturgy Iberia, S.A. (hereinafter Naturgy) for the following reasons:

The complaining party shows that, on 11/02/2021, it received a

phone call from a Naturgy marketing company offering a

discount on electricity and gas supplies, which had your personal data

relating to name, surname, date of birth, ID, address and bank account,

in addition to the amounts that he had been paying for those supplies. Indicates that

during that call he did not confirm any contract change or subrogation in the

same in favor of Naturgy.

He adds that he was informed about the sending of two SMS with information about the

discounts to apply and who subsequently received an email from the address

"no-reply@Naturgy.com" with the indication "your contract is already available", to which

attaches a contract for dual supply and services that you did not authorize and whose conditions

unknown. According to the claimant, on the same day as the claim, it processed the

withdrawal of said contract and formulated before Naturgy the pertinent claim for

misuse of your personal data and commercial fraud.

The following documentation is provided with the claim:

. Copy of a "Dual supply and services contract" formalized in the name of the

claiming party, which includes the particular and general conditions, as well as the

direct debit order. It is also accompanied by a certification that

accredits the digital signature of the contract issued by a third entity duly

registered in the Registry of Network Operators (Aviva Voice Systems And Services,

S.L., hereinafter Aviva Voice), which acts in its capacity as a Third Party of

Confidence, which contains the details of the following communications by messages

SMS, email and WEB:

"1. Sending: SMS message on 2021-11-02 19:16 CET to the mobile number ***TELEPHONE.1 with

sender Naturgy with the following text:

"To finalize your contract, access ***URL.1".

2. The WEB page to which the link ***URL.1 points is hosted on our servers and is

has automatically generated custom… According to our records, at 2021-

11-02 19:16 CET this page was accessed. According to our records, the "I Agree" button

content on the WEB page to which said link points was clicked at 2021-11-02 19:16

CET from IP address ***NUMBER.1.

3. Sending: SMS message on 2021-11-02 19:16 CET to the mobile number ***TELEPHONE.1 with

sender Naturgy with the following text:

“…(name of the complaining party) Thank you for trusting Naturgy! Review your contract. Access

to: ***URL.1”.

. Call history, in which the call received by the party is marked

claimant.

. Email, dated 11/02/2021, to which the complaining party refers in the

text of your complaint. Includes a link to the "Customer Area".

. Email, dated 11/04/2021, sent from the address

"(...)@Naturgy.com", through which receipt of the claim made is acknowledged

by the complaining party before Naturgy.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

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

LOPDGDD), the claim was forwarded to the entities Naturgy and

Aviva Voice, so that they proceed with their 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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on 12/18/2021 by the entity

Aviva Voice and on 12/20/2021 by Naturgy, as stated in the acknowledgments of receipt that

work in the file.

On 12/28/2021, this Agency received a response letter from Aviva Voice,

by means of which it informs that it provides Naturgy with SMS and email services

certified emails, acting as a trusted service provider for

electronic signature, without any of its services consisting of the issuance or reception

of calls to offer products and services marketed by said entity or

none other.

On the other hand, on 01/20/2022, this Agency received a written response

of Naturgy reporting the following:

. Contracting for the supply of gas, electricity and maintenance refers to

a supply point owned by the claiming party and the

11/02/2021 by a commercial agent of the entity Gesterpool, S.L.U. (hereafter,

GESTERPOOL), with NIF B54691977, which provides advisory services and

commercial and technical support for customer acquisition, including conducting

telephone sales actions, and intervenes as the person in charge of the treatment. Bliss

contracting was certified by the Aviva Voice entity, as stated in the

documentation provided by the claimant, and confirmed by phone call

telephone "verification" carried out by GESTERPOOL, which is recorded.

. Naturgy responded to the withdrawal exercised by the claimant on 11/04/2021, in

so that the contract was not activated nor did it generate any charge. The effective drop of

The contracted maintenance services were carried out on 11/09/2021.

. Naturgy points out that, however, the review of the case carried out on the occasion of the

transfer of the claim has made it possible to appreciate very serious breaches of the

contractual obligations assumed by GESTERPOOL.

Thus, despite the fact that Naturgy's systems state that the contract was

carried out by an authorized GESTERPOOL commercial agent, this entity has

recognized that the contracting was carried out by an entity subcontracted by it,

called Callsisten Energy, S.L., without the consent or knowledge of Naturgy,

despite the fact that the Service Contract and the Treatment Commission Contract

entered into between Naturgy and GESTERPOOL contain clauses that prohibit

expressly to GESTERPOOL the subcontracting of works without the approval

prior and in writing from Naturgy.

GESTERPOOL has not recorded the initial telephone call that led to the sending of the

SMS in which the consent for contracting is obtained, so that Naturgy does not

You can access the recording to assess the quality of the service offered and the

compliance by GESTERPOOL with the Code of Good Commercial Practices

and the argument for remote sales, which Naturgy imposes on all its companies

collaborators.

Naturgy adds that it asked GESTERPOOL for more information on the actions of

Callsisten Energy, S.L. and that GESTERPOOL reported that said subcontractor refused to

collaborate, thus hindering Naturgy in its audit tasks and

contractually provided research.

For these reasons, Naturgy has revoked all access from GESTERPOOL to the

contracting tool and has terminated the contractual relationship with it, therefore

that it will not continue to provide services to Naturgy as it has not followed its instructions and

breached the obligations imposed to guarantee quality in contracting.

THIRD: On 02/04/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

1. The Naturgy entity, in response to the request made to it by the

AEPD Inspection Services, provided (i) a copy of the signed Service Contract

on 01/01/2021 with the entity GESTERPOOL, by virtue of which this entity provided

the first advisory services and commercial and technical support for attracting

customers, which includes carrying out telephone sales actions; (ii) Addendum to

said contract signed by both entities on 07/01/2021, which modifies

some opening clauses; (iii) and Treatment Assignment Contract, signed

also dated 07/01/2021, which according to Naturgy complements the

Services.

a) Of what is stipulated in the Service Contract provided, it is worth highlighting the clauses

following:

"(...)

(…).

(…):

(…)

(…)

(…)

(…).

(…) ".

b) In the aforementioned Addendum to the Service Contract, it is agreed to modify the

Seventh (sections 4 and 5) and Fifteenth stipulations of this Contract, which

are worded as follows:

". (…)

(…)

. (…)

(…).

(…).

. (…)

(…).

(…)".

c) As stipulated in the Processing Contract, which includes the

elements described in article 28 of the GDPR and complements the Contract of

Services, the following should be highlighted:

"1. (...)".

"(…)".

"(…):

(…):

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/17

(…)".

2. At the request of the Inspection Services, the entity Telefónica Móviles

España, S.A.U., operator of the line number of the complaining party

***TELEPHONE.1, confirmed the reception on this mobile line of a call made

by line ***TELEPHONE.2 on 11/02/2021.

On the other hand, the company Orange Espagne, S.A.U., operator of the calling line

***TELEPHONE.2, reported that this line is assigned to the reseller of said company

Neotel 2000, S.L., which, in turn, reported that the ownership of the aforementioned line

The caller corresponds to the entity Callsisten Energy, S.L., with NIF B01866565.

It also provided details of making a call on 11/02/2021 to the number

of the complaining party with a duration of 1614 seconds.

3. On 08/25/2022, additional information provided by Naturgy was received in the

which indicates the following:

. The data of the complaining party used in the telephone sales action does not

did not come from any database provided by Naturgy.

. The entity GESTERPOOL informed Naturgy that the telephone sales action was

carried out by the entity Callsisten Energy, S.L., subcontracted by GESTERPOOL, and

that the personal data of the complaining party used for that action came from

from a database of Callsisten Energy, S.L. itself, acquired from an entity

third.

In this regard, Naturgy warns that GESTERPOOL carried out this subcontracting without

your consent or knowledge, breaching contractual obligations

contracted.

4. On 08/19/2022, the entity GESTERPOOL was sent a request for

information, which is delivered on the 25th of the same month. In the absence of a response, it

sent a new requirement on 09/30/2022, which was also delivered to

GESTERPOOL on 10/10/2022, without receiving a response from this Agency

some.

5. On 10/10/2022, an information request was sent to the entity

Callsisten Energy, S.L., which expired on 10/21/2022. The request was reiterated

on 11/10/2022 by postal mail, which was returned by the Postal Service with the

indication “Unknown”. This last request was sent to the address of

Callsisten Energy, S.L. that appears in the Mercantile Registry, which coincides with the

verified before the AEAT.

FIFTH: On 01/11/2023, by the General Sub-Directorate of Data Inspection

the information available on GESTERPOOL is accessed in “Axesor”. (…).

SIXTH: On 01/23/2022, the Director of the Spanish Agency for the Protection of

Datos agreed to start a sanctioning procedure against the entity GESTERPOOL, with

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

of articles 28 and 58.1 of the GDPR, typified in article 83.4.a) and 83.5.e) of the

same Regulation, and qualified for prescription purposes as serious and very serious in

articles 73.l) and 72.1ñ) and o) of the LOPDGDD, respectively.

In the opening agreement it was determined that the sanction that could correspond,

attention to the existing evidence at the time of opening and without prejudice to the

resulting from the instruction, would amount to a total of 15,000 euros (fifteen thousand euros):

. For the alleged infringement of article 28 of the GDPR, typified in article 83.4.a)

of the same Regulation, a penalty amounting to 10,000 euros (ten thousand euros).

. For the alleged violation of article 58.1 of the GDPR, typified in article 83.5.e)

of the same Regulation, a penalty amounting to 5,000 euros (five thousand euros).

Likewise, it was warned that the imputed infractions, if confirmed, may

lead to the imposition of measures in accordance with the provisions of article 58.2 d)

of the GDPR.

SEVENTH: The notification to the claimed party of the opening agreement outlined in the

previous antecedent, in which a term was granted to formulate allegations and

propose proof, was delivered to GESTERPOOL through the Notification Service

Electronics on 02/01/2023.

After the period granted for the formulation of allegations, it has been verified

that no claim has been received from the claimed party.

EIGHTH: On 02/24/2023, a resolution proposal was formulated in the sense of

that the Director of the AEPD sanction the claimed party for an infraction

of article 28 of the GDPR, typified in article 83.4.a) of the same Regulation, and

classified as serious for the purposes of prescription in article 73.l) of the LOPDGDD,

with a fine of 10,000 euros (ten thousand euros); and for a violation of article 58.1 of the

GDPR, typified in art. 83. 5.e) of the aforementioned GDPR, and classified as very serious in the

article 72.1.ñ) and o) of the LOPDGDD, with a fine of 5,000 euros (five thousand euros).

NINTH: Notification of the proposed resolution outlined in the Background

Eighth was delivered to the claimed party on 03/06/2023, granting

deadline for making claims.

Said term elapsed without this Agency having received any letter from the

claimed part.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The Naturgy entity signed a contract with the GESTERPOOL entity,

dated 01/01/2021, by virtue of which the latter entity was obliged to provide

advisory services and commercial and technical support for customer acquisition,

including carrying out telephone sales actions, intervening in these

actions under the condition of person in charge of the treatment.

Both entities signed an Addendum, dated 07/01/2021, by which

modify some clauses of the Contract; and a Processing Contract,

also dated 07/01/2021.

All these documents stipulate that GESTERPOOL may not subcontract the

rights and obligations derived from the contract without the express, prior and

written by Naturgy. In the Processing Contract it is indicated that

GESTERPOOL must notify Naturgy, at least one month in advance,

the data of the third party with whom you intend to subcontract and the description of the service in

concrete that will be subcontracted, so that you can oppose.

SECOND: The claimant has stated that, on 11/02/2021, it received

a phone call on behalf of Naturgy offering discounts on

electricity and gas supplies.

THIRD: On 11/02/2021, the claimant digitally signed a

“Dual supply and services contract” executed in your name, which includes the order

debit direct debit. The digital signature of this document is certified by

a third party duly registered in the Register of Network Operators, which

acts in its capacity as a Trusted Third Party.

FOURTH: The complaining party processed with Naturgy the withdrawal of the contract,

which was attended by said entity on 11/04/2021 without having activated the

services.

FIFTH: Naturgy has stated that the contracting of its services by the

claimant was carried out with the intervention of Callsisten Energy, S.L., entity

subcontracted by GESTERPOOL without the consent or knowledge of Naturgy.

SIXTH: Naturgy has declared before this Agency that it has revoked all access

of GESTERPOOL to the recruitment tool and has terminated the relationship

contractual with it, having not followed its instructions and breached the

Obligations imposed to guarantee quality in contracting.

SEVENTH: The entity Telefónica Móviles España, S.A.U., operator of the

line of the complaining party ***PHONE.1, confirmed receipt on this line

mobile of a call made from the line ***TELEPHONE.2 on 11/02/2021.

EIGHTH: The entity Orange Espagne, S.A.U., operator of the line

***TELEPHONE.2, informed that the ownership of this line corresponds to the entity

Callsisten Energy, S.L., with NIF B01866565. He also provided details of the

making a call from this line, on 11/02/2021, to the mobile line number

of the complaining party, with a duration of 1614 seconds.

NINTH: On 08/19/2022, the AEPD Inspection Services sent to

the entity GESTERPOOL a request for information, which has been delivered on

25 of the same month. Given the lack of response, a new requirement was sent in

dated 09/30/2022, which was also delivered to GESTERPOOL on 10/10/2022, without

this entity has provided any response.

FUNDAMENTALS OF LAW

Yo

Competence

In accordance with the powers that article 58.2 of the GDPR grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law

3/2018, of December 5, Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures".

Breached obligation. Treatment manager.

II

Article 28 of the GDPR, "Processor", establishes:

"1. When a treatment is going to be carried out on behalf of a person in charge of the treatment,

This will only choose a person in charge who offers sufficient guarantees to apply measures

appropriate technical and organizational, so that the treatment is in accordance with the

requirements of this Regulation and guarantee the protection of the rights of the interested party.

2. The person in charge of the treatment will not resort to another person in charge without the prior authorization by

written, specific or general, of the person in charge. In the latter case, the person in charge will inform the

responsible for any changes foreseen in the incorporation or substitution of other

managers, thus giving the controller the opportunity to oppose such changes.

3. The treatment by the person in charge will be governed by a contract or other legal act in accordance with the

Law of the Union or of the Member States, which binds the person in charge with respect to the

responsible and establishes the object, duration, nature and purpose of the treatment, the

type of personal data and categories of interested parties, and the obligations and rights of the

responsible. Said contract or legal act shall stipulate, in particular, that the person in charge:

a) will process personal data only following documented instructions from the

responsible, including with respect to transfers of personal data to a third country or

an international organization, unless it is obliged to do so under Union law

or of the Member States that applies to the person in charge; in such a case, the person in charge will inform the

responsible for that legal requirement prior to treatment, unless such Law prohibits it by

important reasons of public interest;

b) will guarantee that the persons authorized to process personal data have

committed to respect confidentiality or are subject to an obligation of

confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another person in charge of the

treatment;

e) will assist the controller, taking into account the nature of the treatment, through measures

appropriate technical and organizational, whenever possible, so that it can comply with

their obligation to respond to requests that have as their object the exercise of rights

of the interested parties established in Chapter III;

f) will help the controller to ensure compliance with the obligations established in the

articles 32 to 36, taking into account the nature of the treatment and the information to

disposition of the manager;

g) at the choice of the controller, will delete or return all personal data once

ends the provision of treatment services, and will delete existing copies unless

where the retention of personal data is required under Union law or

Member States;

h) will make available to the person in charge all the information necessary to demonstrate the

compliance with the obligations established in this article, as well as to allow and

contribute to the performance of audits, including inspections, by the controller or

another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge shall inform

immediately to the controller if, in their opinion, an instruction violates this

Regulations or other provisions on data protection of the Union or of the

Member states.

4. When a person in charge of treatment uses another person in charge to carry out

certain treatment activities on behalf of the person in charge, will be imposed on this other

entrusted, by contract or other legal act established in accordance with the Law of the

Union or of the Member States, the same data protection obligations as the

stipulated in the contract or other legal act between the person in charge and the person in charge to whom

referred to in paragraph 3, in particular the provision of sufficient guarantees of application of

appropriate technical and organizational measures so that the treatment is in accordance with

the provisions of this Regulation. If that other manager breaches his obligations

of data protection, the initial processor will remain fully responsible to the

responsible for the treatment with regard to the fulfillment of the obligations of the other

in charge.

(…)

9. The contract or other legal act referred to in sections 3 and 4 shall be in writing,

including in electronic format.

(…)".

These specific obligations may be supervised by the enforcement authorities.

data protection, without prejudice to the control that may be carried out in relation to

with compliance with the Regulations or the LOPDGDD by the person in charge or the

treatment manager.

In accordance with the provisions of article 28 GDPR, the person in charge and the person in charge

of data processing must regulate the processing of data in a contract or act

legal linking the person in charge with respect to the person in charge; that contract or legal act

must establish the object, duration, nature and purpose of the treatment, the

type of personal data and categories of interested parties, the obligations and rights of the

responsible etc

The person in charge of the treatment, in turn, may resort to another person in charge

(“sub-processor”) provided that you have the prior written authorization of the

responsible for the treatment, either a specific or general authorization. In these

cases, the person in charge is obliged to inform the person responsible for the

changes in the incorporation or substitution of other managers, so that said

person responsible can oppose such changes.

The relationship that links the data controller and the person in charge, or the latter and another

commissioned, must be formalized in writing, including in electronic format. In

both cases must be imposed on the manager or "sub-manager" the same

obligations referred to in section 3 of article 28 transcribed.

In this case, a claim is made for making a call

commercial to the mobile telephone line of the complaining party whose purpose was

offer the services of the Naturgy entity (this commercial offer was accepted by the

complaining party, although he withdrew from it two days after acceptance).

The actions carried out have proven that said call took place and that it was

carried out by the entity Callsisten Energy, S.L., from a telephone line of its ownership, as of 11/02/2021, according to the details listed in the Proven Facts Seventh and Eighth.

In this regard, the entity Naturgy initially informed that the commercial call was carried out by an agent of the entity GESTERPOOL, which provides Naturgy with advice and commercial and technical support for customer acquisition, including the carrying out telephone sales actions, intervening as the person in charge of the treatment under the service contract formalized by both entities in date 01/01/2021.

However, Naturgy later transferred the result of the audit to the AEPD carried out on the case raised by the complaining party, giving an account of the information that was provided by GESTERPOOL, according to which the latter entity acknowledged that the indicated telephone call was made by the entity Callsisten Energy, S.L., subcontracted for this purpose by GESTERPOOL. Naturgy has told the respect that he was not aware of this subcontracting and that it was carried out without his consent, despite the fact that the Service Contract and the Contract of Assignment of the Treatment entered into between Naturgy and GESTERPOOL expressly prohibit GESTERPOOL the subcontracting of work without the prior written approval of Naturgy, as stated in the contractual stipulations that are outlined in the background of this agreement and the First Proven Fact.

Consequently, by virtue of the foregoing, it is considered that the facts exposed violate the provisions of article 28 of the GDPR by the entity GESTERPOOL, which gives rise to the application of the corrective powers that the article 58 of the aforementioned Regulation grants the Spanish Data Protection Agency.

Breached obligation. Delivery of information to the Inspection Services.

II

On the other hand, it is proven that GESTERPOOL has not provided the Agency with

Spanish Data Protection Agency the information that was required by the Services

of Inspection through writings of 08/19/2022 and 09/30/2022, which were

duly notified to said entity.

With this conduct, the power of investigation that article 58.1 of the GDPR confers

control authorities, in this case, the AEPD, has been hampered.

Therefore, GESTERPOOL has violated article 58.1 of the GDPR, which provides that

each supervisory authority shall have all the investigative powers indicated in

continuation:

"a) order the person responsible and the person in charge of the treatment and, where appropriate, the representative of the

responsible or of the person in charge, who provide any information required for the

performance of their duties;

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 infringements of the

this Regulation;

e) obtain access to all data from the data controller and data processor

personal data and all the information necessary for the exercise of their functions;

f) obtain access to all the premises of the controller and the processor,

including any equipment and means of data processing, in accordance with the

Procedural law of the Union or of the Member States”.

This breach gives rise to the application of the corrective powers that the article

58 of the aforementioned Regulation grants the Spanish Data Protection Agency.

Classification and classification of infractions

IV.

Failure to comply with the provisions of article 28 of the GDPR entails the commission for

GESTERPOOL of an offense typified in section 4.a) of article 83 of the

GDPR, which under the heading "General conditions for the imposition of fines

administrative" provides the following:

"4. Violations of the following provisions will be penalized, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a

company, of an amount equivalent to a maximum of 2% of the total annual turnover

of the previous financial year, opting for the highest amount:

a) the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and

43;”.

In this regard, the LOPDGDD establishes in its article 71 that "They constitute

offenses the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

For the purposes of the limitation period, article 73 of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, they are considered

serious and will prescribe after two years the infractions that suppose a substantial infringement

of the articles mentioned therein and, in particular, the following:

(…)

l) The hiring by a person in charge of the treatment of other managers without having the

prior authorization of the person in charge, or without having informed him about the changes produced in

subcontracting when legally required.

(…)".

On the other hand, failure to comply with the provisions of article 58.1 of the GDPR is

constituting an infringement classified in section 5.e) of article 83 of the GDPR,

that under the heading "General conditions for the imposition of fines

administrative" provides the following:

"5. Violations of the following provisions will be penalized, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a

company, of an amount equivalent to a maximum of 4% of the total annual turnover

of the previous financial year, opting for the highest amount:

e) non-compliance with a resolution or a temporary or definitive limitation of the treatment

or the suspension of data flows by the supervisory authority pursuant to article

58, section 2, or not providing access in breach of article 58, section 1".

For the purposes of the limitation period for infringements, the alleged infringement

prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as

the following behavior is very serious:

"ñ) Failing to facilitate the access of the personnel of the competent data protection authority to the

personal data, information, premises, equipment and means of treatment that are required

by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the inspection authority.

competent data protection".

V

corrective powers

In the event of an infringement of the provisions of the GDPR, among the

corrective powers available to the Spanish Data Protection Agency,

as supervisory authority, article 58.2 of said Regulation contemplates the

following:

"2 Each control authority will have all the following corrective powers indicated to

continuation:

(…)

b) send a warning to any person in charge or person in charge of the treatment when the

processing operations have infringed the provisions of this Regulation;”

(...)

d) order the person in charge or in charge of the treatment that the treatment operations are

conform to the provisions of this Regulation, where appropriate, of a given

manner and within a specified period;

(…)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;".

According to the provisions of article 83.2 of the GDPR, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine.

SAW

Sanction

Violation of the provisions of article 28 of the GDPR may be penalized with

a maximum fine of €10,000,000 or, in the case of a company, a fine of one

amount equivalent to a maximum of 2% of the total global annual business volume of the

previous financial year, opting for the highest amount, in accordance with the

Article 83.4 of the GDPR.

Violation of the provisions of article 58.1 of the GDPR may be penalized with

a maximum fine of €20,000,000 or, in the case of a company, a fine of one

amount equivalent to a maximum of 4% of the total global annual business volume of the

previous financial year, opting for the highest amount, in accordance with the

Article 83.5 of the GDPR.

With respect to the indicated infractions, taking into account the facts exposed, it is

considers that the sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. Thus

considers, in advance, the status of microenterprise of the claimed party and

its volume of business (recorded in the proceedings (...)).

In order to determine the administrative fine to be imposed, the

provisions of article 83.2 of the GDPR, precept that states:

"2. Administrative fines will be imposed, depending on the circumstances of each case.

individually, in addition to or in lieu of the measures contemplated in article 58,

section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

in each individual case due account shall be taken of:

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

affected stakeholders and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

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 controller or processor, taking into account

of the technical or organizational measures that have been applied by virtue of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

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

infringement and mitigate the possible adverse effects of the infringement;

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

Controller or processor notified the infringement and, if so, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the same

matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or certification mechanisms

approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as

financial benefits obtained or losses avoided, directly or indirectly, through

the offence".

For its part, article 76 "Sanctions and corrective measures" of the LOPDGDD

has:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of said article.

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

may be taken into account:

a) The continuing nature of the offence.

b) Linking the offender's activity with data processing

personal.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the

infringement.

e) The existence of a merger process by absorption subsequent to the commission of the infraction,

that cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

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

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which there are

disputes between those and any interested party".

In accordance with the precepts indicated, for the purpose of setting the amounts of the

sanctions to be imposed in the present case, it is considered appropriate to graduate said

sanctions according to the following criteria:

1. Violation of article 28 of the GDPR, typified in 83.4.a) of the aforementioned GDPR, and

classified as serious for the purposes of prescription in article 73.l) of the GDPR:

The following graduation criteria are considered concurrent as aggravating factors:

. Article 83.2.a) of the GDPR: "a) the nature, seriousness and duration of the

infringement, taking into account the nature, scope or purpose of the operation

treatment in question as well as the number of interested parties affected and the

level of damages they have suffered".

. The number of interested parties: the infringement affects all the interested parties who

are the object of the commercial campaigns that the entity has executed

subcontracted by GESTERPOOL.

. Article 83.2.b) of the GDPR: "b) intentionality or negligence in the infringement".

In this case, GESTERPOOL's negligence must be classified as "serious" for

how much his conduct implies a breach of the stipulated clauses

expressly in the contract signed with Naturgy.

In this regard, what was declared in the Judgment of the Hearing

National of 10/17/2007 (rec. 63/2006) that, based on the fact that they are entities

whose activity involves continuous data processing, indicates that "...the

The Supreme Court has understood that there is imprudence whenever

disregards a legal duty of care, that is, when the offender does not

behave with the required diligence. And in the assessment of the degree of diligence has

to weigh especially the professionalism or not of the subject, and there is no doubt

that, in the case now examined, when the appellant's activity is

constant and abundant handling of personal data must be insisted on the

rigor and exquisite care to comply with the legal provisions in this regard".

It is a company that performs personal data processing in a

systematic and continuous and that it must take extreme care in fulfilling its

data protection obligations.

This Agency understands that the diligence must be deduced from facts

conclusive, duly accredited and directly related

with the elements that make up the infringement, in such a way that it can be deduced

that it has occurred despite all the means provided by the

responsible to avoid it. In this case, the action of GESTERPOOL has no

this character.

. Article 76.2.b) of the LOPDGDD: "b) Linking the offender's activity

with the processing of personal data".

The high link between the activity of the offender and the performance of treatments

of personal data. It is considered the activity that develops, in which they are seen

involved personal data of numerous interested parties. this circumstance

determines a higher degree of demand and professionalism and, consequently,

of the responsibility of the claimed entity in relation to the treatment of

the data.

Considering the exposed factors, the valuation that reaches the fine, for the

violation of article 28 of the GDPR, is 10,000 euros (ten thousand euros).

2. Violation of article 58.1 of the RGPD, classified in 83.5.e) of the aforementioned RGPD, and

classified as very serious for the purposes of prescription in article 72.1.ñ) and o) of the

GDPR:

The following graduation criteria are considered concurrent as aggravating factors:

. Article 83.2.b) of the GDPR: "b) intentionality or negligence in the infringement".

In this case, GESTERPOOL's negligence must be classified as "serious",

considering the circumstances already indicated in section 1 above. you have

In addition, take into account that the breach of the obligation to provide information

to the supervisory authority occurs in relation to two requirements of

information that was sent to you by the Inspection Services of this

Agency.

. Article 76.2.b) of the LOPDGDD: "b) Linking the offender's activity

with the processing of personal data".

According to the circumstances expressed in section 1 above.

Considering the exposed factors, the valuation that reaches the fine, for the

violation of article 28 of the GDPR, is 5,000 euros (five thousand euros).

V

adoption of measures

Once the infringement is confirmed, it is necessary to determine whether or not to impose

GESTERPOOL the adoption of appropriate measures to adjust its performance to the

regulations mentioned in this act, in accordance with the provisions of article 58.2

d) of the GDPR, according to which each control authority may "order the person responsible or

processor that the processing operations comply with the

provisions of this Regulation, where applicable, in a certain way

and within a specified period…".

In this case, the entity Naturgy has declared that it has terminated the relationship

contractual agreement that it had signed with GESTERPOOL, to which it has revoked all

access to the contracting tool, by not having followed its instructions and

breached the obligations imposed. Based on this, it is not appropriate to impose

GESTERPOOL the obligation to adopt additional measures to the sanction of a fine.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE GESTERPOOL, S.L.U., with NIF B54691977, for a

infringement of article 28 of the GDPR, typified in article 83.4.a) of the same

Regulation, and classified as serious for the purposes of prescription in article 73.l) of the

LOPDGDD, a fine of 10,000 euros (ten thousand euros); and for a violation of

article 58.1 of the GDPR, typified in art. 83. 5.e) of the aforementioned GDPR, and classified as

very serious in article 72.1.ñ) and o) of the LOPDGDD, a fine of 5,000 euros (five

a thousand euros).

SECOND: NOTIFY this resolution to GESTERPOOL, SLU.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

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

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-

web/], or through any of the other registries provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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