

□ File No.: EXP202203966

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claiming party) dated March 1,
2022 filed a claim with the Spanish Data Protection Agency. The
claim is directed against NATURGY IBERIA, S.A. with NIF A08431090 (in
below, the claimed party or Naturgy). The reasons on which the claim is based are
the following:

The claimant states that on April 29, 2021, she registered the services
electricity and gas supply with the trading company Repsol. Point out that the 6
December 2021, the claimed party processed the cancellation of the contract for the supply of
gas that it maintained with its previous trading company, registering the contract
of gas with Naturgy, without having given its consent to do so.

And, provide the following relevant documentation:

Lawsuit registered on January 28, 2022.

Gas bills and contract signed with Repsol.

Naturgy invoice from December 2021.

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
forward LOPDGDD), said claim was transferred to the claimed party, for
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements established in the regulations of
Data Protection.

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 April 1, 2022 as It appears in the acknowledgment of receipt that is in the file.

On June 24, 2022, this Agency received a written response stating the following: "that we have not located the contract requested in proceedings. For this reason, we have proceeded to cancel the only invoice issued for the period that the contract was active with our marketer ***INVOICE.1 of ***DATE.1 to ***DATE.2 of amount XX.XX €. They have

Issued credits to bank account used by customer to make payments

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ES00 0000 0000 0000 0000 00000 of XX.XX € corresponding to billing annulled, X.XX € for legal interest on the money and, finally, we take into account what indicated in the file, €XX.XX as compensation for quality of service".

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (LOPDGDD), when submitted to the Spanish Data Protection Agency (hereinafter, AEPD) a claim, it must evaluate its admissibility for processing, must notify the claimant of the decision on the admission or non-admission to procedure, within three months from the date the claim was entered into this Agency. If, after this period, there is no such notification, it will be understood that the processing of the claim continues in accordance with the provisions of Title

VIII of the Law.

Said provision is also applicable to the procedures that the AEPD

would have to process in exercise of the powers attributed to it by other

laws. In this case, taking into account the above and that the

claim was filed with this Agency, on March 1, 2022, it is communicated

that your claim has been admitted on June 1, 2022 for processing, having

Three months have elapsed since it entered the AEPD.

FOURTH: On September 16, 2022, the Director of the Spanish Agency

of Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of Article 6.1 of the GDPR, typified in

Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations in which, in summary, it states that: "Upon receipt of this

disciplinary file, we have carried out the appropriate search in our

systems and we have found the documentation requested by the AEPD in its Request

of Information that allows us to conclude that the contract made to the Complainant

it was correct. Naturgy sincerely regrets not having provided the correct information

at an initial moment to this Agency and the inconveniences that this may have

behave and has taken the appropriate measures so that a situation like the one

exposed does not repeat itself.

Of the documentation that accredits the validity of the contract made in the name of

the claimant. According to Naturgy's computer records, dated 3

December 2021, from the company Sociedad de Gestión y Comunicación One Star SL, subcontracted by Naturgy for the provision of business advisory services and attracting domestic customers, within the framework of a commercial campaign, the telephone number ***PHONE.1 belonging to the claimant to make a commercial offer.

The contracting was carried out through a tool in which, during the process of contracting, if the client expresses his intention to contract, an SMS is sent to your phone number, which contains a link to a website where it is shown to the www.aepd.es

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customer the information of the products offered and contractual conditions, and where You must click on a "button" to give your consent for the contracting and debit SEPA, thus registering the date and time in which the client manifests his willingness to contract, as well as the IP from which it is carried out.

The entire contracting process, from sending the SMS, its content, access to the linked website, selected preferences, date and time, and IP from the that the hiring is consented, is certified by a Trusted Third Party, the entity Aviva Voice Systems & Services, S.L. (Hereinafter Aviva), with CIF B-84216142 and address at Calle Golfo de Salónica, 27– 5ºB, 28033, Madrid.

Thus, regarding the contracting of the claimant, it is attached as Document No. 7 telephone locution in which he is heard as the person who identifies himself as A.A.A. contracts with NATURGY the Gas Use Fee product with a 5% discount discount on consumption and a voucher of 15 euros for the supply point located at c/

***ADDRESS.1 with CUPS (...).

Likewise, attached as Document No. 8 the certification issued by Aviva for said contract, which on its first page accredits the following: • On the 3rd of December 2021 at 5:05 p.m. an SMS was sent to the mobile phone number

***TELEPHONE.1 of the claimant. • Said SMS contained a link to the website where

All the information on the products offered was shown, in which very clearly

It is observed that the offer and the products are from Naturgy, as well as the conditions of contracting, and the consent to contract was requested. • Next, being

at 5:05 p.m., the aforementioned website was accessed, and at 5:06:23 p.m., from the address (...),

clicked on the "Contract" button contained in said web page, through which

confirms the willingness to contract, so there is no doubt that the

Complainant formalized its contract with Naturgy.

Thus, the certificate issued by Aviva attached to this document certifies

that from the Claimant's telephone number the contracting of the

Tariff Per Gas Use for the supply point identified above, both the

commercial call made by the NATURGY collaborating company such as the shipment

of the SMS through which the Tariff for Gas Use was contracted,

made to the telephone number ***TELEPHONE.1 that the claimant has reported as

himself in the complaint that he filed before the Duty Court and was forwarded by this

Agency along with your Request for Information.

From the foregoing, it can be concluded that the recruitment call was made at the number of

claimant's telephone number and the contract was also accepted from said telephone number

telephone so that the hiring would have been carried out correctly by it. About

based on the foregoing, it has been proven that NATURGY did have the

consent of the Claimant to process their personal data in order to

formalize the contract so that Naturgy has not committed the infringement that

charged in the Commencement Agreement”.

SIXTH: On October 4, 2022, the procedure instructor agreed

perform the following tests:

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"1. The claim filed by Ms.

A.A.A. and its documentation, the documents obtained and generated during the phase

admission to process the claim.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

initiation of the referenced sanctioning procedure, presented by NATURGY

IBERIA, S.A., and the accompanying documentation”.

SEVENTH: A list of documents in the file is attached as an annex.

procedure.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

1st. The claimant states that the claimed party entered into a supply contract

of gas in his name on December 6, 2021, thus processing the deregistration with his

previous marketing company, without her having knowledge of it or

had given their consent to do so.

2nd. According to Naturgy's computer records, dated December 3,

2021, from the company Sociedad de Gestión y Comunicación One Star SL,

subcontracted by Naturgy for the provision of business advisory services and

attracting domestic customers, within the framework of a commercial campaign, the telephone number ***PHONE.1 belonging to the claimant to make a commercial offer.

3rd. In the telephone locution provided by Naturgy, it is heard as the person who identifies as A.A.A. contracts with Naturgy the Gas Use Fee product with 5% discount on consumption and a voucher of 15 euros for the supply point located at c/ ***ADDRESS.1 with CUPS (...).

4th. In the certification issued by Aviva for said contract, it is accredited that the 3 December 2021 at 5:05 p.m. an SMS was sent to the mobile phone number ***TELEPHONE.1 of the claimant. Said SMS contained a link to the web in which All the information on the products offered was shown, in which very clearly It is observed that the offer and the products are from Naturgy, as well as the conditions of contracting, and the consent to contract was requested. then being at 5:05 p.m., the aforementioned website was accessed, and at 5:06:23 p.m., from the address (...), clicked on the "Contract" button contained in said web page, through which confirms the willingness to contract.

EIGHTH: On October 27, 2022, a resolution proposal was formulated, proposing: <<That by the Director of the Spanish Data Protection Agency the sanctioning procedure is ARCHIVED with file number EXP202203966 open to the entity NATURGY IBERIA, S.A. with NIF A08431090 for an infraction of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR>>.

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The proposed resolution was notified on October 28, 2022. The party

Respondent did not present allegations.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

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."

II

breached obligation

The defendant is accused of committing an infraction for violation of article 6

of the RGPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which

that the processing of data by third parties is considered lawful:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

a) the interested party gave his consent for the processing of his 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 processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of 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 conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not outweigh the interests or fundamental rights and freedoms of the

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interested party that require the protection of personal data, in particular when the interested is a child. The provisions of letter f) of the first paragraph shall not apply. application to processing carried out by public authorities in the exercise of their functions”.

II

Classification and qualification

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"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, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for

the highest amount:

a) The basic principles for the treatment, including the conditions for the consent in accordance with articles 5,6,7 and 9.”

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1

very serious infringement, in this case the limitation period is three years,

<<b) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679>>.

IV.

Sanction proposal

In this case, Naturgy provided the consent verification voice recording verbal granted in the contracting and certification issued by a third company for said contract.

In the certification issued by Aviva for said contract, it is accredited that on the 3rd of December 2021 at 5:05 p.m. an SMS was sent to the mobile phone number

***TELEPHONE.1 of the claimant. Said SMS contained a link to the web in which

All the information on the products offered was shown, in which very clearly

It is observed that the offer and the products are from Naturgy, as well as the conditions of contracting, and the consent to contract was requested. then being

at 5:05 p.m., the aforementioned website was accessed, and at 5:06:23 p.m., from the address (...), clicked on the "Contract" button contained in said web page, through which confirms the willingness to contract.

Consequently, Naturgy acted with reasonable diligence in contracting and in the processing of personal data that it entails.

For all of which, it must be concluded that after analyzing the denounced facts,

allegations and evidence provided in the procedure, no elements have been accredited

evidence that allows Naturgy to be attributed a violation of article 6.1 of the GDPR.

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It can be concluded that in accordance with the above facts and legal grounds, and

in accordance with the provisions of article 89.1 and 3 of Law 39/2015, of October 1, of

Common Administrative Procedure of the Public Administrations, the

disciplinary procedure for non-infringement, of article 6.1 of the GDPR.

For this reason, and given the above, by the Director of the Spanish Agency for the Protection of Data.

RESOLVES:

FIRST: FILE the disciplinary procedure with file number

EXP202203966 open to the entity NATURGY IBERIA, S.A. with NIF A08431090 for violation of article 6.1) typified in article 83.5.a) of the aforementioned GDPR.

SECOND: NOTIFY this resolution to the denounced entity NATURGY IBERIA, S.A. with NIF A08431090.

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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