 File No.: EXP202200956

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 February 22, 2023, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against ENERGÍA

COLLECTIVE, S.L. (hereinafter, the claimed party), through the Agreement that

transcribe:

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File No.: EXP202200956

AGREEMENT TO START THE SANCTION PROCEDURE

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

based on the following:

FACTS

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated December 20

of 2021 filed a claim with the Spanish Agency for Data Protection. The

The claim is directed against Energía Colectiva, S.L. with NIF B98670003 (hereinafter,

the claimed party or incoming trader). The reasons on which the

claim are as follows:

The complaining party states that there has been a change in its marketer

electricity without your consent.

Thus, the claimant indicates that she has been aware of the impersonation of

your identity in contracting the electricity supply with the claimed party,

having carried out a change of marketer with a change of owner, which

had a contract with Iberdrola Clientes, SAU.

Date on which the claimed events took place: November 11, 2021.

Relevant documentation provided by the claimant:

- Complaint to the National Police dated November 12, 2021.

- Simple note from the Madrid Land Registry certifying that the party

Claimant is the owner of the home.

- Certificate of low voltage electrical installation of the home dated 4

March 2019.

- Electricity supply contract with Iberdrola Clientes, SAU and invoices

of electricity emitted, where the contract holder is the party

claimant; as a distribution company Iberdrola Distribución Eléctrica, S.A.U.

and as supply point identification (CUPS): (...).

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

hereafter LOPDGDD), said claim was forwarded to Iberdrola Clientes, SAU,

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

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 February 7, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On March 3, 2022, this Agency received a written response

indicating

"Apparently, and as is clear from the claim, a third person has

made a contract with another retailer outside Iberdrola Clientes, SAU,

on the point of supply of the claimant. On behalf of Iberdrola Clientes, SAU,

We confirm that there has been no intervention in this management, which we are unaware of, and that

No information about you has been provided, neither in this regard nor in any other. By

For our part, we can only provide the information that has already been communicated to the

claimant:

- That there is an electricity supply contract with reference ***TELEPHONE.1 on the

aforementioned supply point, with registration date 03/18/2019 and cancellation date

11/10/2021.

- That it is also stated that the cancellation was made by an outgoing marketer, that is,

that Iberdrola Clientes, SAU receives a communication from the distributor,

requesting the change of supplier of said contract, and has an obligation to

serve the same.

Iberdrola Clientes, SAU does not have more information in this regard, it was not aware

that the change could be non-consensual, nor can it do anything other than

meet the distributor's request and assign its contract. this performance

We insist, it has nothing to do with the protection of the personal data of the

claimant, but rather with a procedure related to the contract that apparently

is held with a retailer outside Iberdrola Clientes, SAU, on the point

of the claimant's supply".

THIRD: On March 9, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant 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:

INVESTIGATED ENTITIES

During these proceedings, the following entities have been investigated:

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Iberdrola Clientes, SAU with NIF A95758389 with address at Pza. Euskadi, nº

5 - 48009 Bilbao (Bizkaia) (hereinafter, the outgoing marketer)

I-de Redes Eléctricas Inteligentes, S.A.U. with NIF A95075578 with address at

Avenida de San Adrián, Nº 48 – 48003 Bilbao (Bizkaia) (hereinafter, the

distributor)

- Collective Energy, S.L. with NIF B98670003 with address at C/ don Juan de

Austria, 28 doors 3 and 4 - 46002 Valencia (hereinafter, the marketer

incoming)

RESULT OF INVESTIGATION ACTIONS

In order to investigate the occurrence of the events described, on March 14

of 2022, a request for information was made to the outgoing marketer and dated

March 16, 2022 to dealer.

The responses to these requirements were entered into the electronic headquarters of the

Spanish Agency for Data Protection dated April 7, 2022, the response

of the distributor, and dated April 13, 2022, the response of the marketer

outgoing.

Manifestations that are collected in the answers

The distributor shows that:

- Any contractual modification that a marketer requests from a

distributor is made through XML digital requests complying with the formats

of exchange between agents established by the CNMC.

- The communication channel is the Supply Point Management web portal

where the exchange of XML files is carried out, to which they only have

accesses i-DE itself and the marketing companies.

- The distributor is a mere executor of these requests as long as they comply with

certain technical conditions and the formats themselves, so this does not

makes value judgments about whether a change of marketer, a change of owner

or both, are from within the habitual and contractual relationship between the

client and the marketing company, nor does it receive any kind of

supporting documentation of the signing of the contract between the end customer and the

marketer.

- In a request for a change of vendor with a change of owner, since it is a

strictly administrative request, no type of documentation is requested

technique, such as the Certificate of Electrical Installations (CIE), the Act

of Commissioning (APM) or similar, and therefore it is enough with the own

XML request that has legal validity for all purposes.

The outgoing marketer shows that:

- As an outgoing marketer, you do not have any control over the change of a

your customer to another vendor.

- The only agent that interacts with the outgoing marketer is the distributor,

without the incoming marketer or the customer interacting with the

outgoing marketer.

The only information you received in connection with the change (subject of this

Expediente) is the XML message from the distributor "low by marketer

outgoing" that it keeps and custody together with the rest of the documentation

contractual.

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On April 21, 2022, information was requested from the incoming marketer and with

dates May 13 and 19, 2022 your response was entered in the electronic headquarters and in

the Agency register, respectively.

 Request for supply address and CUPS

The telephone recording is provided in which the contracting of electricity is carried out by

part of the new owner for his new habitual residence and in the conversation that

maintained with the agent of the incoming marketer provides the following information:

- CUPS, other than the CUPS of the home owned by the claimant.

- Supply point address: “***ADDRESS.1, they put ***FLAT.2,

but actually in ***FLAT.2 there is ***FLAT.2 A, ***FLAT.2 left, and

FLOOR.2 right and I'm on ***FLOOR.1", reiterates "FLOOR.1", adds

"There must have been an error when making the contract and they put ***PISO.2 and

here in the *** FLAT. 2 live two people who are not me, they are two neighbors

different" and repeats the address again: "***ADDRESS.1, ***FLOOR.1".

In relation to the address of the supply point provided by the new holder, the

The incoming marketer indicates and documents that in the portal that the

distributor makes available to the incoming marketer to make the request for

change of marketer, in relation to the farm ***ADDRESS.1 there are two

references: ***REFERENCE.1 and ***REFERENCE.2.

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The supply address that appears when selecting ***REFERENCE.1 is

***ADDRESS.1, ***FLAT.1 – Madrid and the CUPS: (...), CUPS of the dwelling

property of the complaining party

The supply address that appears when selecting ***REFERENCE.2 is

***ADDRESS.1 ***FLAT.2 – Madrid and the CUPS: ***CUPS.1, CUPS that the

The new owner provided within the framework of the contracting by telephone.

And additionally, it adds as "Possible cause of the facts that motivate the

request":

After making the appropriate checks regarding this case,

we have located what we suspect may be the origin of the events that

have given rise to this information requirement.

As the new owner indicates in the call, in the contract with Iberdrola the

address that appears is that of "***PISO.2" and specifies on several occasions that the

correct door would be the "basement - patio".

As can be seen in the portal that the distributor makes available to

the marketer for the management of its activities in relation to the farm

***ADDRESS.1, there are 2 references ***REFERENCE.1 and ***REFERENCE.2.

That is, the addresses associated with the CUPS are exchanged, so

that in the CUPS ending in 07HV the address that appears in the distributor is

***ADDRESS.1 ESC. 1 ***PISO.2 and the CUPS that ends in 04HZ is the one that

it appears in the distributor as basement 1, so there could be an error

human when processing the switching.

 Electricity supply contract

A copy of the contract signed by the new owner dated November 8,

2021 and it is verified that the address of the supply point and the CUPS code that

includes are those of the home owned by the claimant.

Processing of the change of supplier or switching

The distributor points out and documented that on November 8,

2021, the incoming marketer made a request to change the marketer without

change of owner and that was rejected by the distributor because the owner provided in the

itself was the new owner, not coinciding with the owner that was current to the

distributor up to that time, the complaining party.

In the XML request that the incoming marketer exchanged with the distributor the

The data provided is the data of the new owner and the CUPS of the property owned

of the complaining party.

The incoming marketer conveys in his response that, after the objection of the

distributor to the change of marketer, on November 9, 2021 requested the new

holder verification of the data provided.

And it provides a screenshot addressed to the new owner with the following information:

WE NEED A VERIFICATION

We have managed your registration request with the distributor in your area, distributor, and

informs us that the current contract is not in your name.

We need to confirm that the supply point located in “C/

***ADDRESS.1 ***FLAT.1” is really a change of owner, that is, that the

electricity bills were in someone else's name.

Could you check it please?

It is important that you provide us with the CUPS, which is on any of your invoices.

previous company, to continue with the procedures, this way we will avoid errors of

management.

If you can't find it, don't worry, send us the last invoice and we'll look for it

us.

Thank you for your collaboration, as soon as you confirm this, we will send it back to the

distributor.

The response of the new owner to this request is not provided.

Likewise, the inbound marketer adds in his response:

"The new CUPS should have been verified, through a new contribution of the same by the client, otherwise it would not have been activated. This is how it is explained in the procedure followed by our contractors, that in order to relaunch switching the client must say the CUPS in a clear and precise way. This call was made by one of our regular platforms, Global Sales Solutions (GSS) belonging to to the Covisian Group, a call that was coded as follows:

SFID: GS002004, 11/09/2021, 18:24:01

When requesting the call from GSS in order to contribute it to this procedure, They tell us that they cannot locate it and that this may be due to human error, moreover, we are informed that the agent responsible for that call was removed from service with dated November 16 for malpractice whose nature has not been revealed to us."

And it provides a screenshot of the email received from Covisian, dated 11 May 2022, in which he is informed of what is indicated in the previous paragraph.

On November 10, 2021, the incoming marketer requested from the distributor a change of vendor together with a change of owner in the name of the new headline.

In the XML request that the incoming marketer exchanged with the distributor the The data provided is the data of the new owner and the CUPS of the property owned of the complaining party. The change became effective on November 11, 2021.

On April 22, 2022, new writs from the party entered the Agency claimant.

In these writings, he repeats part of the content already included in the claim presented, reports that he went to the offices of the outgoing marketer where he They commented "that I could sign up with them again, telling me that I just need to bring my previous contract with them and some invoice that confirm the contract that I have previously maintained with them".

CONCLUSIONS

- On November 10, 2021, the incoming marketer made

request for change of dealer with change of owner to the distributor to

the new owner and his new habitual residence. In the XML request that the

incoming marketer exchanged with the distributor, the data that was

provided are data of the new owner and the CUPS of the property owned by the

complaining party. On November 11, 2021, the

change.

- In the electricity supply contract signed by the new owner

with the incoming trader dated November 8, 2021, the data

supply point, address and CUPS, which are included are those of the

home owned by the claimant.

- The incoming marketer does not certify that the new holder provided, in the

framework for the contracting of energy services, the CUPS for housing

owned by the claiming party as CUPS of their new home.

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, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

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 claimed party is accused of committing an offense for violation of the

article 6.1 of the GDPR.

Article 6 of the GDPR, ***PISO.2, the heading "Legality of processing", details in its

section 1 the cases in which data processing is considered lawful:

"1. Processing will only be lawful if it meets at least one of the following

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

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 to the treatment

carried out by public authorities in the exercise of their functions."

In turn, article 6.1 of the LOPDGDD, indicates, on the treatment of data

based on the consent of the affected party that: "1. In accordance with

provided in article 4.11 of Regulation (EU) 2016/679, it is understood by

consent of the affected any manifestation of free, specific,

informed and unequivocal by which he accepts, either by means of a declaration or a

clear affirmative action, the processing of personal data concerning him (…)".

Classification of the infringement of article 6 of the GDPR

II

The violation of article 6 for which the party claimed in the

this initiation agreement is typified in article 83 of the GDPR that,

*** FLOOR.2 the heading "General conditions for the imposition of fines

administrative".

"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

of a company, of an amount equivalent to a maximum of 4% of the volume of

overall annual total business of the previous financial year, opting for the one with 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 Regulation (EU) 2016/679."

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

instruction, it is considered that the facts exposed could suppose the violation of

the provisions of article 6.1 of the GDPR.

The documentation in the file shows that the conduct of the

claimed party (incoming marketer) contrary to the principle of legality, has

consisted

where on November 10, 2021, the incoming marketer requested the distributor

a change of vendor together with a change of owner in the name of the new

headline.

Thus, it turns out that the incoming marketer exchanged with the distributor the

data of the supply point, address and CUPS code, of the home owned by the

complaining party. The change became effective on November 11, 2021.

It should be noted that the electricity supply contract signed by the
new owner with the party claimed on November 8, 2021, the data of the
supply point, address and CUPS code, which are included are those of the home
property of the complaining party.

Likewise, the claimed party (incoming marketer) does not certify that the new
owner will provide, within the framework of the contracting of energy services, the code
CUPS of the home owned by the claimant. It must be specified that the new
owner provided the number of the CUPS for whose supply point he wanted to hire the
electric power.

On the other hand, the defendant states that "This call was made by one of the
our usual platforms, Global Sales Solutions (GSS) belonging to the Group
Covisian, a call that was coded as follows:

SFID: GS002004, 11/09/2021, 18:24:01

When requesting the call from GSS in order to contribute it to this procedure,
They tell us that they cannot locate it and that this may be due to human error, moreover,
we are informed that the agent responsible for that call was removed from service with
dated November 16 for malpractice whose nature has not been revealed to us."

Given the foregoing, it should be added that, of the circumstances listed in article 6.1
of the GDPR on which a priori the legality of the treatment carried out by the
claimed party, the only one that could be invoked as a legal basis for the treatment
carried out would be section b): "the treatment is necessary for the execution of a
contract in which the interested party is a party or for the application at his request of
pre-contractual measures;"

This circumstance legitimizes the processing of data concerning the party

in a contract and that it is necessary for its performance or it is necessary to deal with

pre-contractual character. In no case can it serve as a basis for processing data

unrelated to who is a party to the contract, for what is of interest here, a number of CUPS

that does not correspond to the supply point of the home for which the customer requests

to the claimed party contracting the electricity supply, but is associated with

the home of a third party, the claimant.

Article 5.2. of the GDPR includes the principle of proactive responsibility by virtue of the

which the person responsible for the treatment will be responsible for compliance with the provisions

in paragraph 1 and able to demonstrate compliance. The principle of proactivity

transfers to the data controller the obligation not only to observe the

principles that preside over the treatment, also that of being able to demonstrate said

compliance.

Article 5.2 of the GDPR is developed in article 24 of the GDPR which obliges the

responsible for adopting the technical and organizational measures that are appropriate

"to guarantee and be able to demonstrate" that the treatment has been in accordance with the GDPR.

The precept establishes:

"Responsibility of the data controller"

"1. Taking into account the nature, scope, context and purposes of the

treatment, as well as risks of varying probability and severity for

rights and freedoms of natural persons, the data controller

apply appropriate technical and organizational measures in order to guarantee and be able to

Demonstrate that the treatment is in accordance with this Regulation. said

measures will be reviewed and updated when necessary.

2. When they are provided in relation to the treatment activities,

the measures referred to in paragraph 1 shall include the application, for

part of the person responsible for the treatment, of the appropriate protection policies

of data.

3. Adherence to codes of conduct approved under article 40 or to a

certification mechanism approved under article 42 may be

used as elements to demonstrate compliance with obligations

by the controller."

In the event that we examine the data controller the claimed party

should have implemented organizational measures that would allow it to guarantee the legality

of the treatment carried out: that the personal data processed really concerned

your client and not to third parties, because only in such case the treatment could

be based on the legal basis of article 6.1.b) of the GDPR and considered lawful. Was

obliged to verify and be able to prove that its client, as a result of a

transfer of use, whatever the legal title that protected it, was the new

user of the dwelling corresponding to the supply point and that the CUPS that was going to

to treat coincided with that of the supply point for which the client requested to contract.

The verification of these extremes and the obtaining and conservation of the

documentation proving it was a necessary measure in accordance with article

6.1 in connection with article 5.2 of the GDPR, since, as explained, if the

CUPS data is inaccurate and does not coincide with that of the household supply point

of the client of the incoming marketer its treatment is not lawful, at least the

The legal basis of this treatment cannot be the circumstance of section b) of the

article 6.1. of the GDPR.

As indicated, article 24 of the GDPR, which develops article 5.2, obliges the

controller to adopt the technical and organizational measures that

are adequate to "guarantee and be able to demonstrate that the treatment is in accordance with

with this Regulation" and sends to assess the need and suitability of the

measures to these criteria: the "nature", the scope, the context and the purposes of the

treatment" and "the risks [....] for the rights and freedoms of natural persons".

When an electricity retailer manages at the request of a client a change of

supplier for a given point of supply processes various data

information of your new customer, including the CUPS data of the supply point and

the treatment carried out has an impact on the information that is transferred to the

information on supply points (SIPS) of the zone distributor. If, furthermore, as

here has happened, the marketer manages before the distributor, as

representative of the incoming client, a change of ownership of the CUPS, the scope of the

treatment has an extraordinary relevance for the SIPS and a great risk for the patients.

rights of clients in the event that the CUPS does not correspond to that of the point of

incoming customer supply.

In short, the particular nature and scope of the personal data processed with

occasion of the management of change of marketer with and without simultaneous change

owner, the purpose pursued with that treatment and the risks that its

treatment may involve the rights of third parties, determines that the

trading companies are obliged to adopt the organizational and technical measures

suitable to guarantee compliance with the obligations imposed by the GDPR.

In accordance with the evidence available at this stage of agreement of

start of the disciplinary procedure, and without prejudice to what results from the investigation,

it is concluded that the claimed party could have committed a violation of the

article 6.1 of the RGPD, since, on the occasion of a change of marketer with

simultaneous change of owner that his client requested, he treated without any legal basis the

Data from the electrical CUPS code of the claimant's home.

IV.

Sanction proposal

In order to establish the administrative fine that should be imposed, the following

provisions contained in article 83 of the GDPR, which states:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective,

deterrents

provided

and

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

individual case, in addition to or in lieu of the measures contemplated in

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

administration and its amount in each individual case shall 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

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

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

treatment;

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 whether the person in charge or the person in charge notified the infringement and, if so, in 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 to mechanisms of

certification 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 obtained or losses avoided, directly or

indirectly, through the infringement."

Regarding this last section k) of article 83.2 of the GDPR, the LOPDGDD, article

76, "Sanctions and corrective measures", provides:

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

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 data processing.

personal information.

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 offence.

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

violation, which 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 controversies between those and any interested party."

In accordance with the transcribed precepts, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the fine to

impose on the claimed entity as responsible for a violation of the provisions

in article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR, in a

initial assessment, the following factors are considered concurrent in this case:

As aggravating circumstances:

- The evident link between the business activity of the defendant and the

treatment of personal data of clients or third parties (article 83.2.k, of the GDPR

in relation to article 76.2.b, of the LOPDGDD).

- Article 83.2.b) intentionality or negligence in the offence;

The claimed party has acted with a serious lack of diligence in the treatment

made on the occasion of the development of the business activity that is its own. TO

purpose of the degree of diligence that is required to display in compliance with

data protection regulations, it is worth mentioning the SAN of 10/17/2007 (rec. 63/2006),

that despite having issued ***PISO.2 the validity of the previous regulations is

fully applicable. It states that “[...] the Supreme Court comes

understanding that imprudence exists whenever 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, professionalism must be especially weighted

or not of the subject, [...] "

Article 83.2. d) "the degree of responsibility of the person responsible or in charge of the

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

applied under articles 25 and 32.”

The claimed party did not adopt the organizational measures referred to in the

Article 25 of the GDPR and which were essential in the event of fact

proposed to guarantee respect for the principle of legality: verification that the

CUPS that was going to be treated coincided with that of the supply point

provided by the client.

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 70,000

€ (seventy thousand euros) for the infringement of article 6 of the GDPR typified in article

83.5 a) GDPR.

The concurrence of extenuating circumstances is not appreciated.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE for COLLECTIVE ENERGY,

S.L. with NIF B98670003, for the alleged violation of the provisions of article 6.1

of the GDPR, typified in article 83.5.a) of the GDPR

SECOND: APPOINT as instructor R.R.R. and, as secretary, to S.S.S.,

indicating that any of them may be challenged, if applicable, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Sub-directorate General of Inspection of

Data in the actions prior to the start of this sanctioning procedure.

FOURTH: That, for the purposes set forth in article 64.2 b) of the LPACAP, the sanction

that could correspond would be an administrative fine amounting to €70,000

(seventy thousand euros).

FIFTH: NOTIFY this agreement to ENERGÍA COLECTIVA, S.L. with NIF

B98670003, granting a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations must provide your NIF and the procedure number that appears in the

heading of this document.

If, within the stipulated period, he 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 1 the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the period granted for the formulation of allegations to the

present initiation agreement, which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at €56,000 (fifty-six thousand euros),

resolving the procedure with the imposition of this sanction.

In the same way, 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 to the corresponding

apply for acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

allegations at the opening of the procedure. Voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain

established at €42,000 (forty-two thousand euros).

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts

indicated above (€56,000 or €42,000), you must make it effective through your

Payment in the account IBAN number: ES00-0000-0000-0000-0000-0000 opened in the name of

the Spanish Data Protection Agency in the bank CAIXABANK, S.A.,

indicating in the concept the reference number of the procedure that appears in the

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heading of this document and the reason for reducing the amount to which

welcomes.

Likewise, you must send proof of income to the General Subdirectorate of

Inspection to continue with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 9, 2023, the claimed party has proceeded to pay

the sanction in the amount of 42,000 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the

recognition 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 appeal via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

Yo

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, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

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

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), ***PISO.2 the

The heading "Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202200956, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ENERGÍA COLECTIVA, S.L..

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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