

936-031219

□ Procedure No.: PS/00102/2020

RESOLUTION R/00269/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00102/2020, instructed by the Agency

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

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

BACKGROUND

FIRST: On March 24, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate sanctioning proceedings against IBERDROLA

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

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Procedure No.: PS/00102/2020

935-090320

AGREEMENT TO START A SANCTION PROCEDURE

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

Data and based on the following:

FACTS

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated October 18, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against Iberdrola Clientes, SAU with NIF A95758389 (hereinafter,

the claimed).

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The claim states that a third party that has nothing to do with the claimant, received his electricity bill at his email address, corresponding to the month of September of the year 2019.

He adds that this invoice contains sensitive data (full name, NIF, address and part of your bank account number).

Provide the following documentation with your claim:

E-mail that sent the claimant to the third party, in which it is observed I attach the claimant's invoice dated September 27, 2019, which contains your personal data.

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

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

In addition, the following extremes are noted:

This claim is brought to the attention of the respondent on the 27th of November 2019, requiring you to send this document within a month

Agency, information on the response given to the claimant when exercising the

rights regulated in articles 15 to 22 of the RGPD, the causes that have motivated the incident that gave rise to the claim and the measures taken to prevent similar incidents occur, dates of implementation and controls carried out

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to check its effectiveness, being notified by the Notification Service

Electronic and Enabled Electronic Address, with date of availability and acceptance on November 28, 2019.

On February 11, 2020, the Director of the Spanish Agency for Data Protection, agrees to accept the submitted claim for processing.

The record shows that on the 18th of the same month and year, the require the claimed party so that within a period of ten business days inform this Agency on the facts. Being notified on February 19 of this year.

Once the periods given in both notifications have elapsed, no response from the respondent.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

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

II

The RGPD, in its article 4.11 defines the consent of the interested party as

“Any manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the processing of personal data concerning you”.

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In this sense, Organic Law 3/2018, of December 5, on the Protection of

Personal data and guarantee of digital rights article 6.1 of the RGPD,

establishes that “in accordance with the provisions of article 4.11 of the Regulation

(EU) 2016/679, the consent of the affected party is understood to be any manifestation of

free, specific, informed and unequivocal will by which he accepts, either

by means of a declaration or a clear affirmative action, the processing of data

personal matters that concern him”.

On the other hand, article 5 of the RGPD regulates the principles related to the

treatment of personal data, establishing that they must be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not

deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of

scientific or historical research or statistical purposes, in accordance with article

89, paragraph 1, without prejudice to the application of technical and organizational measures

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measures imposed by this Regulation in order to protect the rights and

freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

2. The data controller will be responsible for compliance with the

provided in paragraph 1 and able to demonstrate it ("proactive responsibility").

III

In accordance with the evidence available in this

time, and without prejudice to what results from the investigation, it is considered that of the

facts denounced, that is, the visualization of the claimant's data by the

of a third party unrelated to it, allow verifying that the claimed party has not been able to guarantee adequate security in the treatment of the personal data of the claimant, thus incurring in the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the controller to demonstrate its compliance.

#### IV

Article 72.1.a) of the LOPDGDD states that "according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

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

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679

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Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

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

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum.

or, in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

In the present case we are dealing with unintentional negligent action, but

identified significant (article 83.2 b)

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Basic personal identifiers (full name,

NIF, address and part of the numbering of the bank account), according to article 83.2

g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE AGAINST IBERDROLA CUSTOMERS,

SAU with NIF A95758389, for the alleged infringement of article 5.1 f) of the RGPD, typified in article 83.5 a) of the RGPD

SECOND: ORDER IBERDROLA CLIENTES, SAU with NIF A95758389, from in accordance with the provisions of article 58.2 d) of the RGPD, so that within ten days proceed to order the person in charge or in charge of the treatment, that the Treatment operations comply with the provisions of the RGPD.

THIRD: APPOINT D. B.B.B. as instructor. and, as secretary, Ms. C.C.C., indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection.

FIFTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the C/ Jorge Juan, 6

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sanction that could correspond would be 40,000 euros (forty thousand euros) without prejudice to what results from the instruction.

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



header of this document.

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

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at 32,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 32,000 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 24,000 euros.

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

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (32,000 or 24,000 euros), you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

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

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

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

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: On June 19, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 24,000 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

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

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

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

the competent body to resolve the procedure will apply reductions of, at

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least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00102/2020, of

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

SECOND: NOTIFY this resolution to IBERDROLA CLIENTES, SAU.

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by

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

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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