

□ Procedure No.: PS/00207/2020

RESOLUTION OF PUNISHMENT 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 claimant) dated April 9, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against Servicios Prescriptor y Medios de Pago, E.F.C., S.A.U.

with NIF A86373701 (hereinafter, the claimed one).

The claimant states that the respondent requires the payment of a

treatment for which he had only requested a quote without formalizing any contract of
financing.

He adds that his data was reported to the asset solvency file and

BADEXCUG credit.

It states that the events took place on ***DATE.1.

And, among other things, it provides the following documentation:

□ Letters sent by TEAM4 with dates of October 18, November 5 and 12
December 2018.

□ Letter sent by EXPERIAN BUREAU DE CRÉDITO S.A. dated 15
January 2019 informing the claimant of the inclusion of her data in the
BADEXCUG file.

□ Letter sent by ASNEF-EQUIFAX dated January 15, 2019
informing the claimant of the inclusion of their data in the ASNEF file.

□ Complaint filed with the Municipal Consumer Information Office of
Madrid dated December 12, 2018.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, on May 6, 2019, it was agreed not to admit the claim filed by the claimant for processing, in accordance with the stipulated in article 65.2 of the LOPDGDD, after the analysis carried out on the documents provided and the concurrent circumstances, no evidence was found rationale of the existence of an infringement in the field of competence of the Agency Spanish Data Protection.

THIRD: The claimant filed on May 20, 2019, an appeal for replacement, providing new documentation, highlighting the contract, without signing, of a medical treatment that the affected party states was never carried out and that had only requested a quote, finally opting for another treatment with a lower budget and for which financing was not necessary.

And provides, among others, the following documents:

- ☐ Stomach reduction operation budget.
- ☐ Loan contract request not signed by the claimant.

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2/7

- ☐ Bulletin of adherence to insurance for death, unemployment, disability, etc. not signed.

- ☐ Communication from EVO FINANCE indicating the monthly payment plan.
- ☐ Request to the BANKIA entity for a refund of an improper charge originating from EVO FINANCE and modification of the SEPA direct debit order.

On July 2, 2019, the Director of the Spanish Agency for the Protection of

Data, agrees to estimate the reversal appeal filed by the claimant against the Resolution of this Agency issued on May 6, 2019, having provided new relevant documentation for the purpose of considering that the question raised could be contrary to current regulations on data protection.

FOURTH: Information requested from EQUIFAX IBERICA, S.L. (hereinafter, EQUIFAX) on the data of the claimant reported to the ASNEF file, dated June 3 of 2020 is received in this Agency, response to the request sent by EQUIFAX stating that there are no records of the claimant from any entity in the ASNEF file.

Information requested from EXPERIAN BUREAU de CRÉDITO, S.A. about the data of the claimant informed to the BADEXCUG file, dated July 1, 2020, receives in this Agency a response to the request sent by this company indicating that currently there are no data reported to the BADEXCUG file of the claimant, although in her historical file, there was a registration reported by EVO FINANCE on January 13, 2019, for an unpaid amount of XXX €, which was given unsubscribed on June 23, 2019 as a result of the automatic update weekly data file sent by the entity.

FIFTH: On August 11, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD.

SIXTH: Once the initiation agreement has been notified, the entity claimed, by means of a letter of dated September 17 of this year, made, in summary, the following allegations:

“The respondent has a loan and credit agreement duly signed through an electronic signature process with the intervention of a trusted third party in which the loan applicant was identified and her consent was obtained contract, which was provided through the aforementioned electronic signature process.

1. Evo Finance loan and credit agreement in the name of the claimant

duly signed electronically through the service provider

trusted electronic mail by consigning an OTP code "One

Time Password"

1.1 Trusted electronic service for certified electronic contracting

contracted by Prescriptor Services with the service provider entity

trusted electronics Logalty Servicios de Tercero de Confianza, S.L.

(hereinafter Logalty) aimed at proving the validity of the contract, the

identity of the contracting party and the provision of their consent.

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3/7

Prescriptor Services (previously, "Evo Finance") has contracted with the entity

provider of trusted electronic services Logalty a service of

Certified Electronic Contracting.

Logalty is a provider of trusted electronic services and other services

in accordance with the provisions of the RGPD.

In accordance with article 30.2 of the Electronic Signature Law, Logalty is

included in the list of trusted electronic service providers, both

qualified and unqualified, of the Ministry of Economic Affairs and

Digital Transformation.

All communications between Client and Logalty are made through

telematic transactions signed electronically under a secure system of

communications.

Logalty's Certified Electronic Procurement includes as standard the certified copy of the document perfected by the parties, with a mechanism of control of the integrity of the content and making a notarial deposit of the summary function of the content of all contracts

The following documentary evidence is provided as document No. 4:

YO.

II.

III.

IV.

Loan and credit agreement dated 08/02/2018 in the name of the claimant with his DNI signed by electronic signature with seal of Logalty, unique identifier and time stamp,

General Conditions sent by email to the claimant and additionally accessible through the address ***URL.1, as specified indicates in the contract;

Documentation provided by the claimant during the process of hiring: a) copy of your ID, b) payroll of the claimant corresponding to the month of June 2018 and c) savings book in your favor proof of the bank account incorporated into the contract in the Order of SEPA direct debit, IBAN account.

Certificate issued by Logalty in accordance with the indicated previously accrediting contractual perfection

This specific agreement, as well as the definition of the perfection process electronic contract is collected in two different places of the contractual documentation that was sent by email to the claimant to your email address

For all that, one cannot expect to find that the contractual document to be contributes is signed in a handwritten way in the boxes provided by the loan applicant. The aforementioned boxes are blank because the act of The signature is constituted by the series of electronic evidences that are accredited with the certificate provided as a non-tamperable document with a unique identifier, digitally signed by Logalty and time-stamped that includes the evidence electronic information obtained during the contracting process as well as the contract electronically signed.

In this regard, it is noted that as part of the services provided by Logalty is the sending of two SMS in case of signing by mobile for the perfection/signature of the contract by the recipient. The contract certificate www.aepd.es

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28001 – Madrid

4/7

electronic includes the contract downloaded by the client upon receipt of email sent to your email address whose particular and general conditions were read and subsequently accepted through the OTP code that was forwarded to your mobile phone number. The certificate bears a code of unique identification matching the electronic time stamp contained in the right margin of the contract.

In conclusion, the claimant electronically signed the Loan Agreement and Credit giving your consent to it and the clause of treatment of personal data included in it

As confirmation of the electronic signature of the loan contract Services

Prescriptor transferred the amount requested to the establishment designated by the claimant”.

FIFTH: On October 26, 2020, the respondent was notified of the opening of the testing period, considering all the previous actions incorporated, as well as as the documents provided by the claimed entity.

PROVEN FACTS

1º On April 9, 2019, the claimant states that the respondent requires the payment of a treatment for which you have only requested an estimate without formalizing any financing agreement.

2º On September 17, 2020, the respondent states that the claimant accepted the particular and general conditions of the Loan and Credit Agreement giving their consent through the electronic signature process whose validity legal is the same as if it were handwritten. Proof of this is the certificate of electronic contracting issued by Logalty.

3º In the loan and credit agreement dated 08/02/2018, the name of the claimant with their DNI signed by means of an electronic signature with a Logalty stamp, unique identifier and time stamp,

It confirms the remission of the General Conditions sent by mail email to the claimant and additionally accessible through the address

***URL.1, as indicated in the contract;

Likewise, there is the documentation provided by the claimant during the contracting process: a) copy of your DNI, b) payroll of the claimant corresponding to the month of June 2018 and c) savings book in your favor certifying of the bank account included in the contract in the Direct Debit Order direct SEPA, IBAN account.

Likewise, the certificate issued by Logalty in accordance with the indicated

previously accrediting the contractual perfection.

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5/7

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

Law 39/2015, of Common Administrative Procedure of the Administrations (LPACAP) establishes in its article 89.1 that "the termination of the procedure, with filing of the actions, without the need to formulate of the proposed resolution, when in the instruction of the procedure it is stated

I declare that any of the following circumstances exist:

a) The non-existence of the facts that could constitute the infraction".

III

The defendant is imputed the commission of an infraction for violation of Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the cases in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

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6/7

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in it and, in

particularly the following:

(...)

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

IV

In the case at hand, after a detailed study of the documents in this proceeding, and the claims of the respondent,

We must point out that the loan and credit agreement of the date 08/02/2018 the name of the claimant with her DNI signed by signature electronic with Logalty seal, unique identifier and time stamp,

It confirms the remission of the General Conditions sent by mail email to the claimant and additionally accessible through the address ***URL.1, as indicated in the contract.

Likewise, there is the documentation provided by the claimant during the contracting process: a) copy of your DNI, b) payroll of the claimant corresponding to the month of June 2018 and c) savings book in your favor certifying of the bank account included in the contract in the Direct Debit Order direct SEPA, IBAN account.

Likewise, the certificate issued by Logalty certifying the perfection contractual.

Therefore, the file of this sanctioning procedure proceeds.

Having seen the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE sanctioning procedure PS/00207/2020, instructed to

Prescriptor Services and Means of Payment, E.F.C., S.A.U. with NIF A86373701, for having accredited that he used reasonable diligence, since the claimant formalized a financing contract.

SECOND: NOTIFY this resolution to Prescriber Services and Media

Pago, E.F.C., S.A.U. with NIF A86373701

In accordance with the provisions of article 50 of the LOPDPGDD, 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 in accordance with art. 48.6 of the

LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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7/7

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

counting 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 in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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