

Procedure No.: PS/00045/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/0045/2019, instructed by the Spanish Agency for

Data Protection to LINDORFF HOLDING SPAIN, S.A.U. (nowadays

INTRUM), having regard to the complaint filed by Ms. A.A.A. (hereinafter the

claimant), and based on the following

BACKGROUND

FIRST: On 07/26/2018 you have entry in this Spanish Agency for the Protection of

Written data of the claimant, in which she claims the entity LINDORFF HOLDING

SPAIN, S.A.U., (currently INTRUM and hereinafter LINDORFF), for the

following facts: The inclusion of your personal data in the ASNEF file

for a debt at the request of the LINDORFF entity; debt that is not true

having been notified of the inclusion in the file nor required for payment by the

creditor entity, which does not know who it is; that requested the cancellation of the data

to EQUIFAX IBERICA, S.L. has responded by informing him of the precautionary discharge of the

debt with LINDORFF, inclusion that has harmed him in operations with other

entities.

SECOND: In view of the facts denounced in the claim, of 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 found that the responsible for the treatment is the claimed.

On 09/26/2018, the claim submitted was transferred to LINDORFF for analysis and communication to the complainant of the decision adopted in this regard. Likewise, it required so that within a month it would send to the Agency determined information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.

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- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

LINDORFF, in writing dated 10/29/2018, states in response to the request for information from the AEPD the following: that Liberbank and Banco Castilla La Mancha celebrated with LINDORFF raised to public deed dated 04/21/2017 the acquisition of the loan portfolio, among which was the one corresponding to the

claimant; that therefore LINDORFF manages the aforementioned credit as a new creditor; that on 07/13/2018 received from Equifax Ibérica, S.L. data confirmation request that appear in the ASSNEF file by request for cancellation at the request of the claimant; that LINDORFF initiated an internal procedure to determine the verification of doubt, proceeding to the stoppage of the management and precautionary discharge of the files of solvency; that after the appropriate verifications it was concluded that the debt was liquid, expired and payable.

Likewise, in a letter dated 11/07/2018, LINDORFF provides the acknowledgment of 10/29/2018 regarding to the response offered to the complainant.

THIRD: On 06/24/2019 the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 6.1.a) of the RGD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGD.

FOURTH: Once notified of the initiation agreement, LINDORFF, I request in writing date 06/25/2019 copy of the file and extension of the deadline for allegations; the 07/02/2019 both the copy and the requested extension.

On 07/15/2019, the representative of the respondent made a summary of the following allegations: that it has not breached any provision of the RGD; that received the requirement of the Agency proceeded to determine the verification of the debt, paralyzing its management and concluding that it was true, liquid and enforceable; that the entity has processed the claimant's data because it was transferred by Liberbank in consideration of the assignment contract signed between both entities; that has a legitimate interest for the treatment with the purpose of collecting the debt by judicial and extrajudicial procedures; furthermore, LINDORFF, despite the contract of assignment I request the assignor the contract that gave rise to the debt but despite the

efforts made that one did not respond; that there is a lack of guilt

entity acting as assignee of the debt; that they be archived

present performances.

FIFTH: On 07/31/2019 a period of practice tests began,

remembering the following

- Consider reproduced for evidentiary purposes the complaint filed by the complainant and its documentation, documents obtained and generated by the Services of Inspection that are part of the file.

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-Assume reproduced for evidentiary purposes, the allegations to the initial agreement presented by LINDORFF, and the documentation that accompanies them.

-Request a copy of the assignment agreement signed with LIBERBANK from the person claimed.

On 08/06/2019 LINDORFF responded to the test formulated whose content work on file.

SIXTH: In accordance with the provisions of article 89 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, (hereinafter LPACAP), a resolution is issued with the completion of the procedure and filing of the proceedings, when it became clear during the investigation the following circumstances: that the proven facts do not constitute, overt mode, administrative infraction.

PROVEN FACTS

FIRST. On 07/26/2018 it has entry in this Spanish Agency for the Protection of

Written data from the claimant, in which she claims that LINDORFF has included her personal data in the ASNEF file for a debt that is not true, not having been notified of the inclusion in the file nor required for payment by the creditor entity, which also does not know who it is; that requested the cancellation of the data to EQUIFAX have communicated the precautionary low of the debt, inclusion that has harmed him in operations with other entities.

SECOND. It is stated that the personal data of the claimant were included in the ASNEF file at the request of LINDORFF as a result of a debt of 345.37 euros being the registration date on 11/02/2017.

THIRD. LINDORFF has reported that Liberbank and Banco Castilla-La Mancha transferred to LINDORFF through a contract formalized in a public deed a portfolio of credits, among which was a credit amounting to 345.37 euros compared to the claimant and who has managed the credit as data controller until on 07/23/2018.

It also indicates that on 07/13/2018 it received from EQUIFAX IBERICA, S.L., in charge of the ASNEF file, communication requesting confirmation of the data that appeared in the file due to cancellation request, for which an internal procedure was initiated to verification of the credit proceeding to the stoppage of the management and the cancellation precautionary in ASNEF on 07/23/2018.

He continues that after the appropriate checks he concluded that the debt was true due and payable.

FOURTH. There is a copy of the crossed e-mails of LINDORFF and LIBERBANK in relation to the claimant's debt.

On 07/16/2018 LINDORFF sends you an e-mail and asks about the debt indicating: "We have received a claim from the owner through Equifax and we would need that you tell us if the debt is payable or not", not stating any answer.

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On 10/04/2018 LINDORFF sends you an e-mail and asks about the same question:

“We must respond to a complaint from the AEPD, so we would need you to

They will indicate if the debt is due and will provide us with the movements that originated the debt”.

On 10/22/2018, LIBERBANK responds in the same way stating that: “No

We have no information to the contrary.”

FIFTH: It is known that LINDORFF sent LIBERBANK new e-mails on the days

06/25/2019, 07/01/2019 and 07/15/2019 in which he requested that they send him the

Evidence of the existence of the assigned debt under the assignment agreement

signed by both entities, not recording any response to the aforementioned emails.

SIXTH: A certification from LIBERBANK has been provided indicating that the contract of

VISA Credit Card number XXXX.XXXX.XXXXXXXXXXX in the name of the

As of 04/21/2017, the claimant presented a debt of 345.37 euros and impressions of

screen of the movements of the card associated with the contract.

SEVENTH: There is an informative letter dated 06/05/2017 sent to the address of the

claimant informing him of the assignment of LIBERBANK's debt to

LINDORFF.

LINDORFF has provided a document from SERVIFORM as provider of the delivery of

requirements for payment and assignment of credits of LINDORFF in which it indicates that the

process of generating, printing and posting the letter of requirement

above was carried out without the occurrence of events that prevented the normal development

of the same; the delivery note, dated 06/09/2017, accepted by the post office duly validated and, EQUIFAX's certification that the letter addressed to the claimant, with references NT17060113333 had not been returned for any reason to the section of Mail designated for this purpose.

FOUNDATIONS OF LAW

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.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations, establishes in its article 89, Proposal for resolution in sanctioning procedures, section 1, the following:

II

"1. The investigating body will resolve the completion of the procedure, with file of the actions, without it being necessary to formulate the proposal for

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resolution, when in the instruction procedure it is made clear that any of the following circumstances occur:

- a) The non-existence of the facts that could constitute the infraction.
- b) When the facts are not proven.

c) When the proven facts do not constitute, in a manifest way, an infringement

administrative.

d) When it does not exist or it has not been possible to identify the person or persons

liable or appear exempt from liability.

e) When it is concluded, at any time, that the

infringement".

Article 5, Principles relating to processing, of the GDPR states that:

III

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness,

loyalty and transparency

(...)

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");

(...)

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

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

In turn, in article 6, Legality of the treatment, of the RGPD establishes that:

"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;

(...)"

Article 4 of the GDPR, Definitions, in section 11, states that:

"11) «consent of the interested party»: any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that

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concern him".

Also article 6, Treatment based on the consent of the affected party,

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

Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU)

2016/679, consent of the affected party is understood to be any manifestation of will

free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

2. When the data processing is intended to be based on consent

of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the

maintenance, development or control of the contractual relationship".

And article 20, Credit information systems, which establishes:

"1. Unless proven otherwise, the data processing will be presumed lawful.

related to the breach of monetary, financial or

credit through common credit information systems when the requirements are met.

following requirements:

a) That the data have been provided by the creditor or by someone acting on his behalf.

account or interest.

b) That the data refer to certain, overdue and payable debts, whose

existence or amount had not been the subject of an administrative or judicial claim for

the debtor or through an alternative dispute resolution procedure

binding between the parties.

c) That the creditor has informed the affected party in the contract or at the time

to require payment about the possibility of inclusion in said systems, with

indication of those in which it participates.

(...)

2. The entities that maintain the system and the creditors, regarding the

treatment of the data referred to their debtors, will have the condition of

co-responsible for data processing, being applicable what is established by

Article 26 of Regulation (EU) 2016/679.

It will be up to the creditor to ensure that the required requirements are met

for inclusion in the debt system, responding for its non-existence or

inaccuracy.

(...)"

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In the present case, the examined claim deals with the illegality in the treatment of the personal data of the claimant carried out by LINDORFF materialized in the inclusion of personal data in the ASNEF file by a debt that is not recorded is true, due and payable.

IV

As proof of the treatment of the data carried out by the claimed party, we we refer to the documentation that works in the file, especially the one provided by the person in charge of the ASNEF file, indicating that the personal data of the claimant were included in the ASNEF file at the request of LINDORFF at as a result of a debt of 345.37 euros, the registration date being 11/02/2017.

In the agreement to initiate this procedure it was stated that the contract of which the origin of the debt brings cause and which was attributed to the claimant, remaining associated with your personal data in the information file credit, has not been accredited. While there is no evidence that the claimant consented to contracting the debt derived from said contract is foreign to him. The attribution to claimant of the aforementioned debt is an inaccurate figure.

That is why the conduct of the defendant contrary to the principle of legality has consisted of communicating to a credit information system (the ASNEF file) a debt that, with respect to the alleged debtor, the claimant, was not certain, neither due nor required. In addition, the entity has not provided or accredited the verifications by the which determined and concluded that the debt was liquid, due and payable.

The document that the respondent has provided to the Agency has focused exclusively in the deed of assignment of credits signed with Liberbank; certificate of the lender stating that the contract in the name of the claimant

presented on 04/21/2017 a debt of 345.37 euros and screen prints of its

systems referring to the movements made with the card associated with the contract of

bill; however, there is no evidence whatsoever to suggest that said

debt is attributable to the claimant.

However, from the documentation held by this Agency and which has

been provided by the defendant, evidence that despite the foregoing displayed the

minimum diligence that was appropriate considering the circumstances of the case, which

that prevents us from appreciating in the case examined the concurrence of guilt or

negligence attributable to the aforementioned entity, necessary to be able to demand responsibility

for a conduct that, in principle, is unlawful.

As stated in the proven facts LINDORFF before the communication

received from the person in charge of the ASNEF file, EQUIFAX requesting confirmation of the

data linked to the claimant as a result of the exercise of the right of

cancellation formulated by the same on 07/12/2018, paralyzed the management proceeding to the

precautionary discharge in the file and addressed the assignor of the debt through e-mails from

07/16/2018 and 10/04/2018 requesting information about whether the debt was true and

required, responding LIBERBANK on 10/22/2018 indicating that it did not have

no information to the contrary.

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Subsequently, when the sanctioning procedure was opened, it was addressed again

by e-mails on 06/25/2019, 07/01/2019 and 07/15/2019 requesting that they be offered

Evidence of the existence of the assigned debt under the assignment contract

signed by both entities, not stating any response from the assignor to the aforementioned emails.

In this sense, the SAN of 04/26/2002 (Rec. 895/2009) states: "In effect, no it is possible to affirm the existence of culpability from the result and this is what makes the Agency by maintaining that by not having prevented the security measures the result there is guilt. Far from it what must be done and is missing in the Resolution is to analyze the sufficiency of the measures from the parameters of average diligence required in the data traffic market. Well, if you act with full diligence, scrupulously fulfilling the duties derived from diligent action, there is no affirm or presume the existence of any guilt.

Also the SAN of 04/29/2010, in its sixth Legal Basis, regarding of a fraudulent hiring, indicated that "The question is not to elucidate whether the appellant processed the personal data of the complainant without her consent, as if whether or not you used reasonable diligence in trying to identify the person with who signed the contract.

The requirement of sanctioning responsibility implies the concurrence of the subjective element of the infraction, essential requirement as it governs in our Sanctioning law the principle of culpability that prevents imposing sanctions based on the strict liability of the alleged offender.

The presence of the subjective element or culpability in a broad sense, such as condition for the sanctioning responsibility to arise, has been confirmed by the Constitutional Court, among others, in its STC 76/1999, in which it states that the Administrative sanctions share the same nature as criminal ones, since they are one of the manifestations of the ius puniendi of the State and that, as a requirement derived from the principles of legal certainty and criminal legality enshrined in the articles 9.3 and 25.1 of the C.E., its existence is essential to impose it.

In the same sense, Law 40/2015 on the Legal Regime of the Public Sector

provides in article 28, under the heading "Responsibility":

"1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law

recognize capacity to act, affected groups, unions and entities without

legal personality and independent or autonomous estates, which result

responsible for them by way of fraud or negligence."

In short, from the documentation provided by the respondent, it is evident that

acted with reasonable diligence and taking appropriate and appropriate measures

in order to guarantee that the debt that had been acquired from LIBERBANK complied with the

requirements to be included in the default file. Thus, absent the

subjective element of the infraction, no sanctioning responsibility derives

of the facts that are submitted to the assessment of this body, which requires

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agree on the file of the investigation actions carried out.

Therefore, as stated,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE LINDORFF HOLDING SPAIN, S.A.U. (nowadays

INTRUM), with NIF A86128147, for the alleged infringement of article 6.1.a) of the RGPD,

sanctioned in accordance with the provisions of article 83.5.a) of the aforementioned RGPD.

SECOND: NOTIFY this resolution to LINDORFF HOLDING SPAIN,

S.A.U. (currently INTRUM).

In accordance with the provisions of article 50 of the LOPDPGDD, the

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 Director of the Spanish Agency for Data Protection within a period of

month 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.

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

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

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