 File No.: PS/00371/2021

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: Through the "Internal Market Information System" (hereinafter

IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the

Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the

cross-border administrative cooperation, mutual assistance between States

members and the exchange of information, was received in this Spanish Agency of

Data Protection (AEPD) a claim dated July 29, 2019, formulated

by a data subject before the data protection authority of Berlin (Germany). He

transfer of this claim to the AEPD is carried out in accordance with the provisions

in article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council

jo, of 04/27/2016, regarding the Protection of Physical Persons with regard to

to the Processing of Personal Data and to the Free Circulation of these Data (hereinafter

cessive, GDPR), taking into account its cross-border nature and that this Agency is

competent to act as main supervisory authority.

The aforementioned claim is formulated against HERTZ DE ESPAÑA, S.L. (hereinafter HER-

TZ), with registered office and sole establishment in Spain, in relation to the rental of

Firefly Car Rental cars, of which he was a client in Malaga, which repeatedly sent him

mind notifications about traffic tickets, speed limit violations,

etc., caused by third parties, to your email address ***USER.1.

I had informed customer service via fireflycustomercarespain@fireflyca-

rrental.com about the wrong email and the violation of data protection,

and was promised a correction in early July.

Provide email sent to your address on behalf of A.A.A. ***ADDRESS.1.

The data processing that is carried out affects interested parties in several States.

two members. According to the information incorporated into the IMI System, in accordance

with the provisions of article 60 of the GDPR, have declared themselves interested in the pre-

this procedure, in addition to the control authority of Berlin (Germany), the auto-

control authorities of: Denmark, Norway, Rhineland-Palatinate (Germany), Lower Sa-

Ionia (Germany), Sweden, Portugal, France and Italy.

SECOND: In view of the facts stated, the Sub-Directorate General for Inspection

of Data proceeded to carry out actions for its clarification, under the protection of the

powers of investigation granted to control authorities in article 58.1 of the

GDPR, having knowledge of the following points:

Background

B.B.B., with address: ***ADDRESS.2, filed a claim against Hertz Espa-

ña, S.L., with NIF B28121549 and address at C/ JACINTO BENAVENTE, nº 2- EDF B-3ª

PLANT - 28232 MADRID (MADRID).

Reason for which the sanctions have been sent to the email account

***USER.1

The representatives of HERTZ state that they have found an error in the database

contract data, where Dª. A.A.A., had been assigned as a contact email

tact in your rental contract, number (...) email ***USER.1.

This email belongs to the complaining party, D. B.B.B. and not to Dª A.A.A..

Consequently, there was an error in the database, where the owner of the

rental contract was assigned an email address, ***USER.1,

that belonged to a third party, the claiming party, D. B.B.B..

This error occurred at the time of data collection at the rental point,

located at Barcelona Airport – El Prat.

Therefore, when the entity received the traffic sanctions in the file,

sent the informative emails to the email address assigned to the rental contract.

read, which turned out to be wrong.

Reason for which the requested rectification right has not been correctly addressed.

by the complaining party

D.B.B.B. contacted the Customer Service of the brand of

Hertz España, S.L., Firefly Car Rental, on July 5, 2019, once received the first

of the informative emails with a traffic penalty, receiving a response to your

request for rectification on July 9, 2019, at 1:09 p.m.

the

answer

email fireflycus -

In

tomercarespain@fireflycarrentl.com, apologized to D. B.B.B. and was informed

that the email address from the file of Dª.

A.A.A..

from the

forwarded

The deletion of the e-mail from the sanctions file and from the management program

of Car+ contracts did not occur until July 30, which meant that, on July 29,

July, a second email was sent to the address ***USER.1, with a

second sanction linked to the contract of Dª A.A.A..

According to the representatives of the entity, in the spirit of not incurring in delay

improper actions, the Customer Service Department informed D.B.B.B. of

that the data corresponding to the email had been rectified, as it was

in the file managed directly by this Service, although, and in parallel, the Service

Customer Service office, following the established procedure, had requested the

rectification of the data to the appropriate departments (sanctions file and program

of Car+ contract management), which did not implement the change until July 30

of 2019, so, on this occasion, the rush to not incur delays, entails

rum to communicate to D. B.B.B. the rectification of the data required days before

for the effective deletion of the data to occur in all its systems.

Not having given time for the deletion of the email data in the file of

sanctions and the contract management program, when the second sanction was received.

tion, on July 29, the informative communication was sent to D. B.B.B., implemented

The final rectification of the data, in all systems, taking place on July 30.

Details of the measures adopted to meet the right of rectification and to avoid

tar that new traffic sanctions related to other clients are sent

The measures adopted by the entity for the complete deletion of the data object of

rectification requested by D. B.B.B., that is, the deletion of your email

***USER.1, were the following:

Yo.

Yo.

iii.

July 9, 2019, deletion of the file email

assigned by the Customer Service Department to the contract (...),

whose owner is Mrs. A.A.A., which erroneously appeared linked to the

email of the complaining party, D. B.B.B..

That same day, July 9, a request was made by the Service of

Customer Service for the deletion of the email in the file

management of fines and in the rental contract management program

Car+.

On July 30, 2019, the email data was deleted in

the Car+ contract management file.

On July 30, 2019, the email data was deleted in

the management file of the fines linked to the contract (...), in its mo-

document signed by Dª. A.A.A..

THIRD: On August 21, 2020, the Director of the AEPD adopted a

draft decision to archive the proceedings. Following the established process

in article 60 of the GDPR, on 08/31/2020 this

draft decision and the authorities concerned were informed that they had

four weeks from that time to raise pertinent objections and

motivated. Within the period granted for this purpose, the control authority of Berlin

presented its pertinent and reasoned objections to the effects of the provisions of the

Article 60 of the GDPR, in the sense that it considered that a file of

the proceedings but rather that the case be analyzed and a warning issued since

there had been a breach of the GDPR.

FOURTH: On July 19, 2021, the Director of the AEPD adopted a project

revised agreement to initiate disciplinary proceedings. Following the process is-

established in article 60 of the GDPR, that same day this document was shared in

the IMI system and the control authorities concerned were made aware that they had

two weeks from that moment to formulate pertinent and reasoned objections.

Once the term for this purpose has elapsed, the control authorities concerned do not present

pertinent and reasoned objections were raised in this regard, for which reason it was considered that all

the supervisory authorities agreed with that revised draft decision

and were bound by it, in accordance with the provisions of section 6 of the

Article 60 of the GDPR.

FIFTH: On August 16, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate sanction proceedings against HERTZ DE ESPAÑA,

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

tube, of the Common Administrative Procedure of Public Administrations (in

hereafter, LPACAP), for the alleged infringement of article 32 of the GDPR and article

5.1.f) of the GDPR, typified, respectively, in article 83.4 and 83.5 of the GDPR.

SIXTH: On January 14, 2022, the Director of the Spanish Agency for

Data Protection issued a resolution to rectify errors in the aforementioned agreement of

commencement of disciplinary proceedings and granted HERTZ DE ESPAÑA, S.L a new

term to formulate the allegations and propose the evidence that it deems appropriate.

in accordance with the provisions of section f) of article 64.2 of the LPA-

CHAP.

SEVENTH: Notified of the aforementioned resolution of rectification of errors of the agreement of

At the beginning, HERTZ submitted a pleading in which, in summary, it stated that:

FIRST.- ON THE SUPPOSED ERROR IN THE DATABASE OF

CONTRACTS

After an exhaustive internal investigation to delve into what happened, HERTZ has

doubts about the existence of the error because of the following:

- The contract number (...) with Mrs. A.A.A., whose postal address, as indicated

this is ***ADDRESS.1, is dated May 21, 2019, having been

this person who voluntarily provided the email address

***USER.1.

- Subsequently, the email address ***USER.1 appears in

the HERTZ contract database at a much later date, on the 7th of

February 2020, but this time associated with D. C.C.C. in the contract (...), whose

postal address, as indicated by the latter, is ***ADDRESS.2, having been

Provided by D.B.B.B. and that he was listed as an additional driver (he was

Attached screenshot of the contract record in the database

as Document 2).

- The fact of the uniqueness of this email address, which

combines letters and numbers, the letters corresponding to the initials of the

complaining party, leads us to conclude that it is very unlikely that the error was

given at the time of entering them into the database by the personnel of

HERTZ, but was provided by the person who signed the contract number (...), of

dated May 21, 2019.

- How is it feasible that traffic fines are sent for infractions that

occur in 2019 to an email address that is provided in 2020? is from

every point impossible.

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Based on the foregoing, it should be noted that any communication that had to be carried out

carried out, as is the case of notifications of traffic sanctions for corres-

corresponding infractions committed by Dª A.A.A., was made to the email address

electronic number provided at the time of hiring the car (year 2019), without

that an error was possible given the uniqueness of the email address

mentioned.

This implies that the error in the assignment of the email address could be ruled out.

email ***USER.1 to the contract (...) with Ms. A.A.A..

SECOND.- ON THE SINGULARITY OF THE CASE. NON-EXISTENCE OF REITERA-

TION OF CONDUCT BY HERTZ ESPAÑA. ISOLATED FACT, SUB-

HEALED AND COMMUNICATED TO THE CLIENT.

As the Agency points out in the Commencement Agreement (p. 10, paragraph): “it was a

specific case (of which there is no similar precedent in this Agency" and that

would explain by the fact that Dª A.A.A. provide email address

already mentioned.

In addition, as the Agency is aware, HERTZ proceeded to act immediately with the

purpose of trying to provide a solution as soon as possible to the claim made by the

complaining party. Specifically, the chronology of actions carried out by HER-

TZ was as follows:

- On July 5, 2019, the claimant sent an email to attention

to the client indicating that the email address ***USER.1 is in-

correct since it is not for A.A.A..

- On July 9, 2019 (i) your email is answered indicating that you

has deleted the email address and apologizes and (ii) is so-

bids that the email be deleted from the fines management file and

in its Car+ rental contract management program.

Despite the fact that the complaining party has received two emails, it is understood that

We believe that the fact that this situation has not occurred in

no other case, nor that the complaining party has raised any other claim

against HERTZ in connection with this matter.

Therefore, there has been no damage to the claiming party whose email address

e-mail appeared linked to Dª A.A.A., who would have provided it in 2019, better

years before the complaining party provided that same address in another con-

car rental deal that is not related in any way to the first one.

It is difficult to maintain with these new data that it was an error in the introduction of the di-

e-mail address in the contract (...), but the e-mail address

e-mail was provided to HERTZ, which would explain the uniqueness of the case.

Even admitting that it was (which is not done), we agree with the Agency that

It deals with a very minor case, which has not caused any damage and which

It was fixed almost immediately.

THIRD.- REGARDING WHAT IS REQUESTED BY THE CONTROL AUTHORITY OF BER-

LÍN IN HIS OBJECTIONS.

We understand that there is a disparity between what the Berlin Authority requests and what

which the Agency agrees.

The Agency itself expresses in its Resolution what the control authority requested

of Berlin in its pertinent and reasoned objections is that: (sic) "the case be analyzed

and a warning was issued" (Third Fact, page 5), not that a procedure be initiated.

sanction lien against HERTZ.

The authority in Berlin has filed an objection in a case which, as is known to

the Agency itself, would not be serious, and it is also necessary to remember that initially,

the Agency had proposed the filing of the proceedings.

If the control authority in Berlin did not request the opening of sanctions proceedings

it would be possible to consider that, with the investigative powers attributed to the

Agency, and having previously obtained from HERTZ "all the necessary information

for the exercise of their functions" (article 58.2.1) of the GDPR), could direct a warning

protection to HERTZ in accordance with the corrective power attributed to it by article

58.2.b) of the GDPR. However, we fully understand that the Agency has to

act through the mechanisms available in our legal system and

We also appreciate the fact that you are considering issuing a warning in the terms

indicated in the Commencement Agreement.

EIGHTH: On February 16, 2022, the instructor of the procedure formulated

resolution proposal, in which he proposed that the Director of the AEPD address

a warning to HERTZ DE ESPAÑA, S.L., with NIF B28121549, for an infraction

of article 32 of the GDPR and article 5.1.f) of the GDPR, typified, respectively,

in article 83.4 and 83.5 of the GDPR. And that HERTZ DE ESPAÑA, S.L., be ordered with

NIF B28121549, to adopt, within thirty days, the measures tending to guarantee

ensure that situations such as the one that is the object of this complaint do not occur again.

mation. Likewise, HERTZ was granted a period of allegations of TEN DAYS to

that he could allege whatever he considered in his defense and present the documents and

information that you consider pertinent.

Once the aforementioned resolution proposal has been notified and the term for this purpose has elapsed, the

verified that no claim has been received from HERTZ.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts

PROVEN FACTS

FIRST: On July 5, 2019 at 11:36 a.m. an email is received from

the address noreply@gesthispania.com to the address ***USER.1, with the subject

"Notification of traffic fine", addressed to A.A.A., address ***ADDRESS.1 and the si-

following text (in English):

“Madrid 05-07-2019

Dear Customer,

We are writing to you regarding your rental with Firefly in Spain (Matrícula

***NUMBER.1) from 05/21/2019 to 05/25/2019.

We have received a notification from a local authority ((REMITTANCE) SERVEI CATALA

DE TRANSIT TARRAGONA) about a traffic violation during his al-

rent. Please find attached a copy of the sanction (It is for information only)

and you will receive the official notification at your address).

Therefore, we inform you that in compliance with Article 11 of the Royal Legislative Decree

tive 6/2015, of October 30, which approves the revised text of the Law on

Traffic, Circulation of Motor Vehicles and Road Safety, we have identified you-

ted as the driver of the vehicle.

Therefore, we will proceed to charge your credit card for the sum of XX.XX euros

(plus VAT, total: XX euros) corresponding to Hertz's charges for identification

mentioned as indicated in the Terms and Conditions of the Rental Agreement.

read.

In the case of not charging this amount to your credit card, we will proceed formally.

mind to demand the amount of money mentioned above in the bank account

of Hertz de España, S. L in the account number: 0000-0000-00-0000000000 (IBAN

CODE: ES00 0000-0000-00-0000000000, SWIFT CODE: (…)XXX).

It is now at the discretion of the authorities whether to issue a notification for the payment of

the fine itself. We inform you that we are not in a position to review

or litigate about any aspect of these cases. Any potential dispute should be raised

directly to the competent authority, in case you contact

you directly. Thank you for choosing Firefly. Kind regards".

SECOND: On July 5, 2019 at 12:45 p.m., a response email is sent.

put from the email address of the complaining party to fireflycusto-

mercarespain@fireflycarrental.com with the following text (in English): “Excuse me, always

pre use the wrong email, please correct your data, this address

e-mail address is not from A.A.A. ***ADDRESS.1”.

THIRD: On May 21, 2019 Mrs. A.A.A. rented a car with Firefly Car Rental

(HERTZ DE ESPAÑA, S.L.), from 05/21/2019 to 07/25/2019, rental contract number

(...).

This contract was assigned in the HERTZ database, as email

contact, the email address ***USER.1, which belongs to the claiming party.

blanket.

FOURTH: On July 9, 2019 at 1:09 p.m. an email was sent from the

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address fireflycustomercarespain@fireflycarrentl.com to the address ***USER.1

with the following text (in English):

“Good morning, Mr. B.B.B.;

Thank you for contacting Firefly Spain.

We have removed your email address from the profile of Dª. A.A.A..

We don't know why it was added to it.

We apologize for any inconvenience.

Kind regards"

FIFTH: On July 9, 2019, the email address assigned to the file was deleted.

signed by the Customer Service to the contract (...), whose owner is Dª.

A.A.A., in which the email of D.B.B.B. was mistakenly linked.

That same day, July 9, a request was made by the Customer Service

for the deletion of the email in the fines management file and in the

Car+ rental contract management program.

The deletion of the e-mail from the sanctions file and from the management program

of Car+ contracts did not occur until July 30, 2019, which made the day

July 29, 2019 a second email was sent to the address ***USUA-

RIO.1, with a second sanction linked to the contract of Ms. A.A.A.. Also the

July 30, 2019, the email data was deleted from the management file

of the fines linked to the contract (...), at the time signed by Dª. A.A.A..

SIXTH: The email address ***USER.1 appears in the database

HERTZ contract cough on February 7, 2020, associated with D.C.C.C. against-

to (...), whose postal address, as indicated by this, is ***ADDRESS.2, having been

Provided by D.B.B.B. and that he was listed as an additional driver.

FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

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

General Data Protection Regulation, hereinafter GDPR), grants each authori-

quality of control and as established in articles 47 and 48.1 of the Organic Law

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

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this

procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures processed

by the Spanish Data Protection Agency will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulations

comments dictated in its development and, insofar as they do not contradict them, with a sub-

sisidario, by the general rules on administrative procedures.”

II

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is

the processing of personal data, since HERTZ performs, in-

among other treatments, the collection, conservation, consultation and deletion of personal data

names of your clients, such as: name and surname, address and email address

electronic.

HERTZ carries out this activity in its capacity as data controller, given

who is the one who determines the purposes and means of such activity, by virtue of article 4.7 of the

GDPR.

Within the principles of treatment provided for in article 5 of the GDPR, the integration

The quality and confidentiality of personal data is guaranteed in section 1.f) of article

article 5 of the RGPD, while the security of the treatment of these data comes re-

gulated in article 32 of the GDPR.

II

Allegations adduced

In relation to the allegations made in the agreement to initiate this proceeding,

disciplinary action, we proceed to respond to them according to the order set forth.

by HERTZ.

FIRST.- ON THE SUPPOSED ERROR IN THE DATABASE OF

CONTRACTS

HERTZ alleges that he doubts that there was an error on his part when recording the

email address of the claimant in the contract of Dª. A.A.A.,

given that this contract is dated May 21, 2019 and that the claiming party

appears as an additional driver in the contract (...), dated February 7, 2020. And

that, therefore, Dª A.A.A. would have provided the email address of the complaining party

of their own accord

In this regard, this Agency wishes to point out that it has not been verified in the present

procedure the reason why the mail of the complaining party was associated with the

contract of Mrs. A.A.A.. And that it has been proven that email in

matter belongs to the complaining party.

In any case, it is clear that two emails have been sent with data

personal data relating to a traffic violation to an email address

ownership of the complaining party. And one of these emails was sent with

after the complaining party had notified HERTZ of this situation.

SECOND.- ON THE SINGULARITY OF THE CASE. NON-EXISTENCE OF REITERA-

TION OF CONDUCT BY HERTZ ESPAÑA. ISOLATED FACT, SUB-

HEALED AND COMMUNICATED TO THE CLIENT

HERTZ alleges that it was a specific case and that it could be explained by the fact that

that Dª A.A.A. Please provide the aforementioned email address. No

However, this Agency wishes to highlight that this point has not been accredited and that it

It is irrelevant for the purposes of determining the existence or not of the infractions in

question.

In addition, HERTZ alleges that he proceeded to act immediately with the purpose of trying to

give a solution as soon as possible to the claim made by the claiming party. AND

that it is relevant that this situation would not have occurred in any other case,

nor that the complaining party has raised any other claim against HERTZ in

relation to this matter.

It affirms that there has been no damage to the complaining party. And that it is difficult to maintain

think there was a mistake in entering the email address in the con-

deal (...), but the email address was provided to HERTZ, which

That would explain the uniqueness of the case.

In this regard, this Agency wishes to point out once again that the reasons why the

e-mail address of the complaining party was associated with the contract (...),

has not been proven and that it is irrelevant for the purposes of determining the existence of

of the offenses in question.

HERTZ also alleges that, even admitting that it was (which is not done), he agrees

with this Agency that it is a matter of very minor importance, which has not

caused any damage and that was solved practically immediately.

In this regard, this Agency has nothing more to add.

THIRD.- REGARDING WHAT IS REQUESTED BY THE CONTROL AUTHORITY OF BER-

LÍN IN YOUR OBJECTIONS

HERTZ understands that there is a disparity between what the Berlin Authority requests

and what this Agency agrees to, given that the control authority of Berlin in its objec-

pertinent and reasoned statements requests that: (sic) "the case be analyzed and a

warning" (Third Fact, page 5), not that a sanctioning procedure be initiated.

dor against HERTZ.

And it alleges that, if the control authority of Berlin did not request the opening of proceedings,

disciplinary action, it could be considered that, with the investigative powers that it has attribu-

built this Agency, could direct a warning to HERTZ according to the power co-

corrective that is attributed by article 58.2.b) of the GDPR. However, it also adds

that he perfectly understands that the Agency has to act through the mechanisms

available in our legal system and is also grateful for the fact that

who considers issuing a warning in the terms indicated in the Initiation Agreement

dude.

In this regard, this Agency wishes to point out that, indeed, it must act through

the mechanisms available in our legal system (specifically, the LO-

PDGDD), reason for which it is processing the present disciplinary procedure, to the

there is no other procedure.

Integrity and confidentiality of personal data

IV.

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(…)

f) processed in such a way as to guarantee adequate security of personal data;

personal information, including protection against unauthorized or unlawful processing and against its

accidental loss, destruction or damage, through the application of technical or

appropriate organizational procedures (“integrity and confidentiality”).”

In accordance with the evidence available at the present time of

resolution of the disciplinary procedure, it is considered that the personal data of

one of the clients (Dª A.A.A.), registered in the HERTZ database, were independent

duly exposed to a third party (the complaining party), violating the principles of

integrity and confidentiality, on two occasions.

The known facts are considered constituting an infringement, attributable to HER-

TZ, for violation of article 5.1.f) of the GDPR.

Classification of the infringement of article 5.1.f) of the RPGD

V

The aforementioned infringement of article 5.1.f) of the GDPR supposes the commission of the infringements typified in article 83.5 of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of 20 000 000 EUR maximum or, treating- 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 lien under articles 5, 6, 7 and 9; (…)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to rias to the present organic law".

For the purposes of the limitation period, article 72 "Infringements considered very serious" you see" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established

two in article 5 of Regulation (EU) 2016/679. (…)”

SAW

Security measures

Article 32 "Security of treatment" of the GDPR establishes:

"1. Taking into account the state of the art, the application costs, and the nature of

nature, scope, context and purposes of processing, as well as probability risks

and variable severity for the rights and freedoms of natural persons, the responsibility

responsible and the person in charge of the treatment will apply appropriate technical and organizational measures.

measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include

yeah, among others:

a) the pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and resi-

permanent license of treatment systems and services;

c) the ability to restore the availability and access to the personal data of

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of

the technical and organizational measures to guarantee the security of the treatment.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence

of the destruction, loss or accidental or illegal alteration of personal data transmitted

collected, preserved or processed in another way, or the unauthorized communication or access

two to said data”.

In accordance with the evidence available at the present time of

resolution of the disciplinary procedure, it is considered that the decisive factor for

a breach of security obligations occurs is the lack of guarantee

aunts regarding the security of the data processed. This will always be assumed if not
implemented technical and organizational security measures or if the measures adopted
all are not considered sufficient. In the present case, the complaining party received a
second email, again including personal data of another client -
with information on sanctions- on July 29, 2019, almost three weeks later
that HERTZ had confirmed that his data had been rectified. Of
According to HERTZ, this was due to a misunderstanding between the departments of
Customer Service and sanctions and contract management. If they had been adopted
sufficient technical and organizational measures, it could be assumed at first

that the email would have been assigned to the corresponding customer in the database
data and that, in addition, the rectification of this email address in the database
of customer data and in all the relevant systems of the organization could make
been implemented in less time, so the complaining party would not have received
do a second email with additional information.
Therefore, the known facts are considered to constitute an infringement, imputed
ble to HERTZ, for violation of article 32 of the GDPR.
Classification of the infringement of article 32 of the GDPR
VII
The aforementioned infringement of article 32 of the RGPD supposes the commission of infringements ti-
classified in article 83.4 of the GDPR that under the heading "General conditions for
the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of 10,000,000 EUR or, in the case of

of a company, of an amount equivalent to a maximum of 2% of the volume of

overall annual total business of the previous financial year, opting for the one with the highest

amount:

a) the obligations of the person in charge and the person in charge according to articles 8,

11, 25 to 39, 42 and 43; (…)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that "Consti-

The acts and behaviors referred to in sections 4, 5 and 6 have infractions

of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to

the present organic law".

For the purposes of the limitation period, article 73 "Infractions considered serious"

of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, the

They are considered serious and will prescribe after two years the infractions that suppose a vulnerability.

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

(…)

f) The lack of adoption of those technical and organizational measures that result

have appropriate measures to guarantee a level of security appropriate to the risk of the

treatment, in the terms required by article 32.1 of the Regulation (EU)

2016/679". (…)

Penalty for violation of article 5.1.f) and article 32 of the GDPR

VIII

Without prejudice to the provisions of article 83 of the GDPR, the aforementioned Regulation provides

in section 2.b) of article 58 "Powers" the following:

"Each control authority will have all the following corrective powers indicated:

below:

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(…)

b) send a warning to any person in charge or person in charge of the treatment

when the processing operations have infringed the provisions of the pre-

send Regulation; (…)”

For its part, recital 148 of the GDPR indicates:

"In case of minor infraction, or if the fine that would probably be imposed constitutes-

be a disproportionate burden for a natural person, instead of a sanction through

fine, a warning may be imposed. However, special attention must be paid

tion to the nature, seriousness and duration of the infringement, to its intentional nature, to

the measures taken to alleviate the damages suffered, to the degree of responsibility

liability or any relevant prior infringement, to the manner in which the reporting authority

control has become aware of the infraction, to compliance with ordered measures

against the person in charge or in charge, adherence to codes of conduct and any

any other aggravating or mitigating circumstance.”

In accordance with the evidence available at the present time of re-

disciplinary procedure solution, it is considered that the offense in question is

slight for the purposes of article 83.2 of the GDPR given that in the present case, considering

due to the fact that it was a specific case, the consequence of a specific error (of which no

there are similar precedents in this Agency), and that it was corrected shortly, but

allows considering a reduction of guilt in the facts, for which reason it is considered

according to Law, not to impose a sanction consisting of an administrative fine and substitution

take her away for addressing a warning to HERTZ.

IX

imposition of measures

Among the corrective powers provided by article 58 "Powers" of the GDPR, in the

section 2.d) establishes that each supervisory authority may “order the person responsible

responsible or in charge of the treatment that the treatment operations comply with the

provisions of this Regulation, where applicable, in a certain way

and within a specified period…”.

In this sense, it is considered appropriate to issue a warning and with the corrective measure

of article 58.2.d) of the GDPR, so that within 30 days it proceeds to adopt measures

measures aimed at guaranteeing that situations such as that of the ob-

subject of this claim.

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who

fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS HERTZ DE ESPAÑA, S.L., with NIF B28121549, for an infraction
tion of article 32 of the GDPR and article 5.1.f) of the GDPR, typified,
respectively, in article 83.4 and 83.5 of the GDPR, a warning.

ORDER HERTZ DE ESPAÑA, S.L., with NIF B28121549, to adopt, in the
within thirty days, the measures tending to guarantee that they do not occur again
situations such as the one that is the subject of this claim.

SECOND: NOTIFY this resolution to HERTZ DE ESPAÑA, 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 in accordance with art. 48.6 of the
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties
Respondents may optionally file an appeal for reinstatement before the Director
of the Spanish Agency for Data Protection within a period of one month from the
the day following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National Court,
in accordance with the provisions of article 25 and section 5 of the additional provision
fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-
administration, within a period of two months from the day following the notification
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the interested party
do states its intention to file a contentious-administrative appeal. If it is-
As the case may be, the interested party must formally communicate this fact in writing
addressed to the Spanish Data Protection Agency, presenting it through the Re-

Electronic registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency