

938-0419

Procedure No.: PS/00121/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00121/2019, instructed by the Spanish Agency for Data Protection, to the entity GESTIÓN DE COBROS, YO COBRO SL., (in hereinafter, "claimed entity"), having regard to the complaint filed by Ms. A.A.A., (in hereinafter, "the claimant"), and based on the following,

BACKGROUND

FIRST: On 11/21/18, you entered this Agency in writing sent by the claimant, in which he states, among others, the following: "Three months ago I ordered a mini Internet loan to a company called "María Dinero, link <http://mariadinero.com/>", they asked me for my personal data, place of work, etc. all online. I provided these data, my bank account and they made me an income of 300, after having repaid said debt they are claiming continuously the amount, but by a company called "YO COBRO", the email addresses, they are all .com, the problem is that I never I have provided the Company "Maria Dinero", the institutional address of my company, I only provided them with my personal email, and the staff in the company, but never the Institutional, since it is not allowed to be used for private purposes, as is normal. They have found this in the directory of the Autonomous University of Barcelona, which it's my place of work, and this company is sending daily emails like the one attached, in which they accuse me of being delinquent, to the institutional management of the University, ***EMAIL.1. and to which co-workers have access". It provides, among others, the following documentation:

- Dated 08/13/18, email from the entity "YO COCOBRO" ***EMAIL.2 to the

address ***EMAIL.3 claiming the debt.

- Dated 09/02/18, email from the address ***EMAIL.2 to

address ***EMAIL.3 claiming the debt.

- On 09/03/18, several email exchanges between the two accounts.

- Dated 09/04/18, Forwarding an email from the address

***EMAIL.1 to the address ***EMAIL.4. The forwarded mail has as subject

“RIBA- MOROSA” and attached to it, documentation on the debt in

Pdf format.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of

investigation granted to the control authorities in article 57.1 of the Regulation

(EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD):

1º On 01/10/19 the Data Inspection of the AEPD directs a

informative request to the entities OLAXA MOMORE SL. (MARIA MONEY) and

to GESTIÓN DE COBROS, YO COBRO, S.L, the Service Certificate of the “Support

of the Electronic Notifications and Authorized Electronic Address service”, leaves

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proof that the letter of requirement was sent by the AEPD to the entities

indicated being the date of availability, 01/10/19, at 11:20 a.m. and the

date of acceptance by OLAXA MOMORE SL. (MARIA MONEY), on 01/10/19 at

12:10 p.m. and 01/10/19, at 11:20 a.m. and the date of “AUTOMATIC REJECTION”,

by COLLECTION MANAGEMENT, YO COBRO, S.L, on 01/21/19 at 00:00.

2º The entity GESTIÓN DE COBROS, YO COBRO, S.L., did not respond to the requirement, so the AEPD reiterated it in order to analyze the claim made by the claimant and inform her of the decision adopted in this regard. East second information requirement was sent by certified mail, (SICER) on 01/23/19 and it appears returned by "UNKNOWN", being the shipping address of the requirement, the same that appears in the Central Mercantile Registry: "Pº de la Habana 9; 28036-Madrid".

THIRD: In view of the reported facts, in the preliminary proceedings phase, and requirement of this Agency, the entity OLAXA MOMORE SL. (MARIA MONEY), dated 02/05/19, sends, among others, the following information:

"a).- Indicates that the claimant accepted the general contracting conditions of microcredit, where in its article 11 collection practices it says: "The borrower authorizes the lender to that, in case of non-payment, his file is transferred to a Company of Collection of Debtors that would be in charge of its resolution". Said general conditions are included on our website. We sent the data that we possessed to the Debt Collection Company I COLLECT DEFAULTS, email rojo@yocobro.es to carry out the appropriate legal steps to recover the amount.

The Debt Collection Company carried out the claim procedures, without our intervention or supervision. We will request the collection company defaulters that in future claims refrain from using these practices and stick to exclusively to claim the debt through practices that do not violate the Law.

b).- Submits a copy of the document addressed to the claimant, dated 01/15/19, in the that indicate, among others: "We have received from the Spanish Agency for the protection of Data transfer of a claim made by you regarding the practices of collection made by the collection company I COLLECT DEFAULTS.

We are sorry if the aforementioned claim may have violated your right to privacy, telling you that at the time, we send your file to the Delinquent Collection Company to proceed with the claim, but this file, it only included the data that you provided us and those that you authorized us that we give them By accepting the loan, you accepted the general conditions of hiring. However, we have indicated to the Delinquent Collection Company that cease immediately in the use of these practices to avoid that neither with you nor with other People will never repeat themselves."

: On 03/21/19, the Director of the Spanish Agency for the Protection of

FOURTH

Data agreed to initiate a sanctioning procedure against the claimed entity, for alleged infringement of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, typified in article 83.5.a) of the RGPD, and qualified as "very serious" in the article 72.1.i) of the LOPDGDD and granting a hearing period of ten business days to to formulate the allegations and present the evidence that it considers convenient.

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FIFTH: According to a certificate issued by the "Notifications Support" service Electronic Addresses and Enabled Electronic Address", it is verified that the writing of initiation of disciplinary proceedings was sent by the AEPD to the entity claimed being the date of availability, 03/25/19, at 12:41 p.m. and the date of "AUTOMATIC REJECTION", by the claimed entity, on 04/05/19 at 00:00 hours.

SIXTH: Notified the initiation of the file to the entity claimed, it is NOT presents any type of allegations in this regard, within the period granted to effect.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts.

PROVEN FACTS

1st. The claimant requested, in the month of August 2018, a microcredit of 300 euros, to the entity OLAXA MOMORE S.L.U., through its website, <http://mariadinero.com>

2º The entity OLAXA MOMORE SLU. indicates in its pleadings that, by not having been returned the credit, within the term granted for it, the debt was transferred to the collection entity GESTIÓN DE COBROS, YO COBRO, S.L., all this, based on the provisions of point 11, of the general conditions, accepted by the claimant at the time of requesting the credit.

3º.- As of September 2018, the claimant receives emails of the company GESTIÓN DE COBROS, YO COBRO, SL, claiming the debt related to the requested loan.

4º.- The email addresses to which the entity MANAGEMENT OF CHARGES, I CHARGE, S.L. directs the claim of the debt, are, apart from the provided by the claimant when requesting the credit: (***EMAIL.3 and ***EMAIL.4), also the institutional email address of the claimant's place of work, ***EMAIL.1, accessible by any co-worker. However, she denounces that, at no time did he provide this last address, nor to the entity OLAXA MOMORE SLU, nor to the recovery company GESTION DE COBROS, YO COBRO SL.

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 art. 47 of the LOPDGDD, the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

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The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the performance of the claimed entity, which has reflected in the facts declared proven.

II

The entity MANAGEMENT OF COLLECTIONS; I CHARGE SL. is the legal person responsible for these events. Circumscribed liability, for reasons of competence related to article 5.1.f) of the RGPD, where it is established that the personal data: "will be treated in such a way as to guarantee security adequate, including protection against unauthorized or unlawful processing and against its accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality)".

In the present case, it has been verified that the entity COLLECTION MANAGEMENT, I COBRO, S.L. addressed the claimant, through emails, addressed to the addresses of emails provided by it in the contracting of the microcredit, but also sent the debt claim email to the email address institution of your place of work, in this case, the Autonomous University of Barcelona, this email address being accessible to other people other than the claimant.

III

Thus, the known facts are constitutive of the infraction, attributable to the claimed, for violation of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD and typified as "very serious" in its article 72.1.i).

On the other hand, and after the evidence obtained in the preliminary investigation phase and

throughout the instruction of the procedure, it is appropriate in this case to attend to what stipulated in article 83.2 of the RGPD, in order to set the amount of the sanction to impose in the present case:

As aggravating criteria:

A) Due to the seriousness and duration of the infraction, taking into account the nature, scope or purpose of the treatment operation, as well as the damages and damages suffered by the claimant (section a).

B) Due to intentionality or negligence in the infringement (section b).

C) Due to the non-cooperation with the control authority in order to put remedy or mitigate the possible adverse effects of the infringement (section f).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 5.1 f) allows setting a penalty of 60,000 euros (sixty thousand euros), considered as “very serious”, for prescription purposes, in 72.1.a) of the LOPDGDD

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

FIRST: IMPOSE on the entity MANAGEMENT OF COLLECTIONS, YO COBRO SL a sanction of 60,000 (sixty thousand euros), for the infringement of article 5.1.f) of the RGPD.

SECOND: NOTIFY this resolution to the COLLECTION MANAGEMENT entity, I CHARGE SL. and, according to art. 77.2 of the RGPD, and INFORM the claimant about the result of the claim.

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.

THIRD: Warn the sanctioned party that the sanction imposed must make it effective

Once this resolution is executed, in accordance with the provisions of the

Article 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, within the voluntary payment period indicated in the

Article 68 of the General Collection Regulations, approved by Royal Decree

939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17

December, by depositing it in the restricted account number ES00 0000 0000 0000

0000 0000, opened in the name of the Spanish Agency for Data Protection in the

Bank CAIXABANK, S.A. or otherwise, it will be collected in

executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of section 2 of article 37 of the LOPD, in the

wording given by article 82 of Law 62/2003, of December 30, on measures

fiscal, administrative and social order, this Resolution will be made public, once

Once it has been notified to the interested parties. The publication will be made in accordance with

provided for in Instruction 1/2004, of December 22, of the Spanish Agency for

Data Protection on the publication of its Resolutions and in accordance with the

provided in article 116 of the regulations for the development of the LOPD approved by the

Royal Decree 1720/2007, of December 21.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD),

and in accordance with the provisions of articles 112 and 123 of Law 39/2015, of

1/10, of the Common Administrative Procedure of the Public Administrations, the

Interested parties may optionally file an appeal for reconsideration before the

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 13/07, 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 legal text.

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Finally, it is pointed out 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>],

or through any of the other registers provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer to the Agency the documentation

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious appeal-

within a period of two months from the day following the notification of the

This resolution would terminate the precautionary suspension.

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Director of the Spanish Data Protection Agency