

□ Procedure No.: PS/00417/2020

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/0417/2020, before the entity, CERTIME, S.A. with CIF.: A48158422, (hereinafter, "the claimed entity"), by virtue of a complaint filed presented by Ms. A.A.A., (hereinafter, "the claimant"), and based on the following you:

### BACKGROUND:

FIRST: Dated 07/11/19, has entry in this Agency, complaint filed by the claimant, through the Basque Data Protection Agency, in which it indicates includes, among others, the following:

"In 2009 I renewed my driving license through the company CERTIME. In the In 2018 I changed my address and in 2019 I received postal advertising in my name and to my new new CERTIME address. I talk to them and they tell me that they take out the addresses from their databases, but when I tell them that I have changed my address, They answer that they update it with the DGT".

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 investigative powers tion granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 08/29/19 and 09/09/19, two separate requests are addressed informative data to the claimed entity.

According to a certificate from the Electronic Notifications and Electronic Address Service, the request sent to the claimed entity, on 08/29/19, through the service of NOTIFIC@ notifications, was rejected at destination on 09/09/19.

According to a certificate from the State Post and Telegraph Society, the request sent to the claimed entity, on 09/09/19, through the SICER service, it was delivered ga-do at destination on 09/11/19.

THIRD: On 10/10/19, this Agency received a written response to the requirement, which indicates, among others, that:

“1.- The data collected based on our activity is obtained by the inter-paid once a contractual service provision relationship begins with it. cios (attached card with date and signature). 2.- The data obtained by of CERTIME S.A. are obtained with its consent and based on the regulations data protection law in force at that time. 3.- All data obtained two and modified by CERTIME S.A. they are the object of the databases of the DGT. Any modification is made with a commercial purpose of continuity of provision of services and file updating. 4.- Your rights have not been exercised at any time. ARCO rights, and specifically your right to Data Portability or Cancellation of the themselves. Therefore, and based on all of this, I am attaching the documentation and file of the claim. ment for the resolution of this matter in the best possible way.”

FOURTH: On 10/10/19, by the Director of the Spanish Agency for Data Protection, an agreement is issued for the admission of the complaint filed. given by the claimant, in accordance with article 65 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights [www.aepd.es](http://www.aepd.es)

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them (LPDGDD), considering that the response given by the respondent to this Agency

In relation to the claimed facts, it does not prove its legitimacy for the treatment of the claimant's data for commercial or advertising purposes.

FIFTH: In view of the facts set forth in the claim and the documents provided by the claimant, the Data Inspection SG proceeded to carry out tions for clarification, in accordance with article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights digital data (hereinafter LOPDGDD). Thus, dated 06/22/20 and 07/17/20, and number of reference E/08069/2020, a written request for information was addressed to the entity claimed on: "the data that were in their systems or files related to the complainant, current or former; information on data protection provided to the claimant at the time of data collection and details how to act yields to the traffic information, to which register and for what purpose".

SIXTH: On 07/29/20, this Agency received a written response to the request request, in which it is indicated, among others, that:

"1.- That the data contained in the company's systems or files relating to the denouncer are those indicated in the attached file, being the only change that of the portal number, a change facilitated by the traffic database. 2.- That in the

At the time of collecting the initial data of the claimant, there was no model of Pro-Protection of Data such as the current one, in which consent would have to be requested in a format similar to the current one, so the requested information cannot be provided. I know

Attached to this letter is the current model on data protection that is provided ta to customers. 3.- In relation to how to access traffic information,

like all medical centers that are dedicated to the processing of certificates for the extension of driving licences, CERTIME, S.A. has access to the application telematics of the General Directorate of Traffic, through which it is verified in situ with the client who comes to renew his permit that his data is correct, so

that can be updated otherwise. This application informs us about the upcoming expiration of driving licenses, and we send communication to clients to inform them about that next expiration date, trying to avoid the inconvenient that derive from circulating with the expired permit”.

SEVENTH: On 10/08/20, a written request for information is sent to the Di- General Directorate of Traffic, under the investigative powers granted to the control authorities in article 57.1 of the RGPD, in which said Organization is requested so that it reports on: “if the driver recognition centers (CRC) have access, through some telematic or web application, to the contact data of your customers that appear in the systems or databases of the General Directorate of Traffic ficio and, where appropriate, agreement, regulations, or convention that enables them to do so”

EIGHTH: On 11/16/20, this Agency received a letter from the Managing Director General Traffic, in response to the request made, in which it indicates that:

“It is reported that driver recognition centers cannot access the Registration of drivers or medical reports, so from this body no personal data is transferred to them. However, when they are making a report doctor to a client, after introducing the DOI (official identification document) of the customer and their date of birth, they can view their address to verify if it is correct and, at the request of the interested party, if they renew the driving license, they can modify it, to

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that the permit arrives at the updated address of the interested party. This activity is carried out in accordance with article 3.2 of Royal Decree 170/2010, of February 19, by which

the Regulation of recognition centers destined to verify the psychophysical attitudes of drivers, which establishes: When so requested by the interested party, these centers may manage on their behalf before the Provincial Headquarters of Traffic, the extension of validity of driving permits or licenses, for which they must provide the documents required for such purposes by current regulations.

NINTH: On 11/27/20, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the entity claimed, by virtue of the established powers, for failing to comply with the provisions of article 5.1.b) of the RGPD, by treating the personal data of the claimant for a different and incompatible purpose with the initial purpose for which they were obtained.

TENTH: After the notification of the initiation of the file, it has not been received in this Agency, no brief of allegations to said initiation, in the period granted to the 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

1º.- In the present case, the claimant denounces that, in 2009, she renewed her driver's license through the entity CERTIME SA., providing them with her personal data for it. In 2018 he changed his address and some time later he received, in his new address, an advertising letter from the entity CERTIME SA., advising it of the expiration date of your driver's license, without having given them your consent for this fact, nor having indicated the data of his new address.

2º.- The entity claimed alleges that the data of the new address had been obtained from the database of the DGT, with which it has a signed agreement for it and they have sent the communication to the claimant, based on the existing contractual legitimate interest

among them.

3º.- According to the DGT, knowing the new address of the interested parties is only possible when, in the presence of them, the medical report is being made and after introduce the DOI (official identification document) you can check the new do-my office, and to be able to verify if it is correct or not and, after the consent of the interested party, der to modify it, so that the permit arrives at the new address.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (RGPD) recognizes each Control Authority and, as established in arts. 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), [www.aepd.es](http://www.aepd.es)

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The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

In the present case, the claimant denounces that, in 2009, she renewed her drive through the entity CERTIME SA., providing them with your data personal for it. In 2018 he changed his address and some time later he received, at her new address, an advertising letter from the entity CERTIME SA., advising her

of the next expiry date of your driving licence, without having provided them with your consent for this fact, nor having indicated the details of their new address.

The respondent entity alleges that the information on the new address has been obtained from the database data of the DGT, with which it has a signed agreement for it and has sent the communication based on the legitimate contractual interest between the claimant and they.

However, the DGT informs this Agency that, only in the presence of the interested and, "(...) when they are making a medical report to a client, after enter the DOI (official identification document) of the client and its date of birth, they can see your address to verify if it is correct and, at the request of the interested, if they renew the driving license, they can modify it, so that the permission arrives at the updated address of the interested party (...)".

On the other hand, it is not valid to argue that, at the time of collecting the data initials of the complainant, (in 2009) there was not "a model of protection of data", to obtain your consent to use them for purposes other than those initially planned, since the new regulations on data protection (RGPD), establishes, in its article 99, that the entry into force and application of the new RGPD was as of 05/25/18, repealing the L.O. 15/1999, (LOPD).

Therefore, all communication with former users of the center, carried out with after that date, (05/25/18), which had another purpose other than the initially granted, as in this case, "notify the interested party of the next expiration of your driving license and offer you the services of the center again to process your renewal", you should have obtained it at the time or in case contrary, having made the necessary arrangements to obtain it later and thus adapt it to the new regulations in force.

In this context, article 5.1.b) of the GDPR establishes that personal data

will be: “collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; (...) (limitation of the purpose)”.

On the other hand, Article 12 of the RGPD, referring to the "transparency of information, communication and modalities of exercising the rights of the interested party", in its section 1, establishes that: “1. The data controller will take the necessary measures appropriate to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to treatment, in a concise, transparent, intelligible and easily accessible manner, with a clear and simple language, (...)”.

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Article 14.2.f) of the RGPD, determines that: “the data controller will provide to the interested party the source from which the personal data comes and, where appropriate, if come from publicly accessible sources.

In accordance with the available evidence, the exposed facts are constituting an infringement of the principle of purpose limitation, for which collect the personal data of users, regulated in the RGPD (5.1.b.).

For its part, article 72.1.a) of the LOPDGDD considers it very serious, for the purposes of prescription, “The processing of personal data violating the principles and guarantees established in article 5 of the RGPD”.

This infraction can be sanctioned with a maximum fine of €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

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

In accordance with the precepts indicated, in order to set the amount of the penalty to

impose in the present case, it is considered appropriate to graduate the sanction to be imposed

in accordance with the following aggravating criteria established in article 83.2 of the

GDPR: the category of personal data affected by the infringement,

(section g) and the way in which the supervisory authority became aware of the

infraction, that is, through a complaint filed by the claimant, (section h).

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.b)

allows to set a penalty of 5,000 euros, (five thousand euros).

In accordance with the foregoing, by the Director of the Spanish Agency for

Data Protection,

:

RESOLVE

FIRST: IMPOSE the entity, the entity CERTIME, S.A. with CIF.: A48158422,

a penalty of 5,000 euros (five thousand euros), for infraction of article 5.1.b) of the

RGPD, when treating the personal data of the claimant with a different purpose and in-

compatible with the initial purpose for which they were collected.

SECOND: NOTIFY this resolution to the entity CERTIME, S.A. and INFO-

MAR to the claimant the result of this procedure.

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

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

Article 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

Public Administrations (LPACAP), within the voluntary payment period that

points out article 68 of the General Collection Regulations, approved by Royal De-

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 the executable period.

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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

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 article 82 of Law 62/2003, of December 30,

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned legal text.

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 interested party do states its intention to file a contentious-administrative appeal. Of being In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to 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-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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