

□ File No.: PS/00478/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On January 17, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate disciplinary proceedings against SERVICES
FINANCIAL CARREFOUR, EFC., S.A. (hereinafter, the claimed party), through
the Agreement that is transcribed:

<<

File No.: PS/00478/2021

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: D.A.A.A. (hereinafter, the complaining party) dated June 4, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against SERVICIOS FINANCIEROS CARREFOUR, EFC., S.A.
with CIF A79456232 (hereinafter, the claimed party). The reasons on which the
claim are as follows: the claimant states that he had a debt with the
claimed entity that was settled in 2017, subsequently requesting the
08/31/2017, the deletion of your data; that has requested several times to said entity
the card they offer, their requests being rejected, so they put in

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

2/14

telephone contact with the same, they indicate that your DNI has a mark and that by said reason are denied; Likewise, it states that when going to different centers commercial, when you enter your DNI the file is still active, but your name appears as cancelled.

Provide a copy of the deletion request, invoice corresponding to the shipment by Correos, through digital certification and screenshot related to the delivery dated 08/31/2017.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), on 06/25/2021 said claim was transferred to the party claimed, so that it proceeded to its analysis and inform this Agency within the period of a month, of the actions carried out to adapt to the foreseen requirements in data protection regulations.

On 07/23/2021, this Agency received a written response from the claimant indicating that the PASS card applications made by the claimant are not rejected for not having proceeded to a correct deletion of their personal data, but due to objective criteria of solvency applied by the claimed party, in this case, because the alert of its inclusion in the asset solvency file went off, having been included in it by a different entity and that the consultation of these files was authorized by the claimant in their PASS card applications.

THIRD: On 09/22/2021 the Director of the Spanish Protection Agency Data agreed to admit the claim filed by the claimant for processing.

FOUNDATIONS OF LAW

Yo

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/14

II

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/14

The claimed facts may imply on the part of the claimed party the commission of an infringement of article 6.1 of the RGPD, in relation to article 20.1.f) of the LOPDGDD, which establishes the assumptions that allow the legalization of the treatment of personal data and that have materialized in the access to the solvency file without having informed the claimant of it.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

(...)"

Article 5 of the RGPD deals with the principles that must govern the treatment of personal data. The aforementioned provision provides that:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;

(...)"

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/14

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;

(...)"

As indicated in the Preamble of the LOPDGDD, "Title IV includes

"Provisions applicable to specific treatments", incorporating a series of assumptions that in no case should be considered exhaustive of all the

lawful treatment. Within them, it is worth appreciating, first of all, those regarding of which the legislator establishes a "iuris tantum" presumption of prevalence of legitimate interest of the person in charge when they are carried out with a series of requirements, which does not exclude the legality of this type of treatment when they are not met strictly the conditions provided for in the text, although in this case the person in charge must carry out the legally required weighing, since the prevalence of their legitimate interest."

In this sense, in its article 20, "Credit information systems", it states in section 1.f), that:

"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:

(...)

f) That, in the event that the request to conclude the contract is denied, or it was not held, as a result of the consultation carried out, whoever consulted the system informs the affected party of the result of said query.

(...)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/14

III

Article 83.5 a) of the RGPD, considers that the infringement of "the principles

basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned Regulation, “with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

On the other hand, the LOPDGDD in its article 72 indicates:

“Violations

considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

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

particularly the following:

(...)

b) The treatment of personal personal data without the concurrence of any of the

the conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.

(...)”

IV

The documentation in the file offers clear indications that

the defendant violated the regulations on data protection. The behavior of

claimed contrary to the principle of legality materialized in consulting the file of

arrears in order to assess the creditworthiness of the claimant without further reporting to the claimant

of the refusal to provide you with the Pass card due to its inclusion in the delinquency file.

C/ Jorge Juan, 6

28001 – Madrid

The respondent himself has indicated that the requests made by the claimant were rejected, motivated by objective criteria of solvency, consequence of its inclusion in the asset solvency file by another entity and that the query was authorized by the claimant in their card applications PASS.

However, it should be noted that according to article 21.1 of the LOPDGDD only

The processing of personal data related to the breach of monetary, financial or credit obligations by common information systems credit, due to a presumption of prevalence of legitimate interest, when meet, among others, the requirement of having informed the affected party of the result of the such consultation, in the event that the request to conclude the contract is denied or this will not be held, as a result of the consultation carried out.

v

In order to establish the administrative fine to be imposed, observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which point out:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/14

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

c) The profits obtained as a result of committing the offence.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/14

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

e) The existence of a merger by absorption process after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

data.

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case for the infringement typified in article 83.5 of the RGPD of which the defendant is held responsible in an initial assessment, are estimated concurrent the following factors:

There is no evidence that the entity had acted maliciously, although the activity carried out is negligent.

There is no evidence that the entity has adopted measures to avoid Incidents such as the one giving rise to the claim.

The link between the activity of the offender and the performance of treatment of Personal data.

The entity claimed is considered a large company.

Therefore, as stated,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/14

By the Director of the Spanish Data Protection Agency, SE

AGREE:

START SANCTION PROCEDURE

FIRST:

SERVICES

FINANCIEROS CARREFOUR, EFC., S.A., with CIF A79456232, for the alleged infringement of article 6.1.a) of the RGPD, in relation to article 20.1.f) of the LOPDGD, typified in article 83.5.b) of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/14

SECOND: APPOINT B.B.B. and Secretary to C.C.C., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the complaint filed by the complainant and her documentation, the documents obtained and generated by the Inspection Services during the investigation phase previous; all documents that make up the file.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP), and art. 127 letter b) of the RLOPD, the sanction that could correspond for the described infraction would be €20,000 (twenty thousand euros), without prejudice to what may result of instruction.

FIFTH: NOTIFY this Agreement to FINANCIAL SERVICES

CARREFOUR, EFC., S.A., with CIF A79456232, expressly indicating their right to the hearing in the procedure and granting a term of TEN WORKING DAYS to formulate the allegations and propose the evidence that it considers appropriate.

Likewise, in accordance with articles 64.2.f) and 85 of the LPACAP, informs that, if it does not make allegations within the term of this initial agreement, the same may be considered a resolution proposal.

You are also informed that, in accordance with the provisions of article 85.1 LPACAP, may acknowledge its responsibility within the term granted for the formulation of allegations to this initial agreement which will entail a reduction of 20% of the sanction to be imposed in the present procedure, equivalent in this case to 4,000 euros. With the application of this reduction, the sanction would be established at 16,000 euros, resolving the procedure with the imposition of this sanction.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/14

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, in accordance with the provisions of article 85.2 LPACAP, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 4,000 euros. With the application of this reduction, the sanction would be established at 16,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The payment of the amount referred to in the preceding paragraph may be made at any

time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be established at 12,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (16,000 or 12,000 euros), in accordance with the provided for in article 85.2 referred to, we indicate that you must make it effective by your deposit in the restricted account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement. Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/14

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Director of the Spanish Data Protection Agency

Sea Spain Marti

>>

SECOND: On January 22, 2022, the claimed party has proceeded to pay of the sanction in the amount of 12,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/14

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00478/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FINANCIAL SERVICES

CARREFOUR, EFC., S.A.

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.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

936-240122

www.aepd.es

sedeagpd.gob.es