

Procedure No.: PS/00330/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

SISTEMAS FINANCIEROS MOVILES SL, by virtue of a claim filed by A.A.A.

(hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 9

May 2018 at the Spanish Data Protection Agency. The claim is directed

against SISTEMAS FINANCIEROS MOVILES SL with NIF B11892668 (hereinafter, the reclaimed).

The grounds on which the claim is based on the alleged violation of the principle of

data quality, by including your personal data in the asset solvency file

ASNEF, for a debt that is not true, due or payable.

SECOND: In view of the known data, the General Subdirectorate of Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, in accordance with the power recognized in

the art. 58.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27

April 2016 on the protection of natural persons with regard to the

treatment of personal data and the free circulation of these data and by which

repeals Directive 95/46/EC (General Data Protection Regulation) (hereinafter, GDPR).

As a result of the inspection actions carried out, there has been

knowledge of the following extremes:

The claimant receives a letter from EQUIFAX on 04/28/2018, informing him of the inclusion

of your data in the ASNEF file since 04/27/2018, at the request of SISTEMAS

FINANCIAL MOBILE S.L. despite having been notified to said entity on 04/18/2018,

the legal claim filed by the claimant regarding the existence of the debt.

It has been verified through documentation required from EQUIFAX-ASNEF, that the

The claimant is registered in the ASNEF file, at the request of SISTEMAS FINANCIEROS

MÓVILES S.L., with a registration and cancellation date of 04/27/2018 and 07/28/2018 respectively.

THIRD: On November 19, 2018, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 5.1 d), of the RGPD, infringement typified in article 83.5 of the

GDPR.

FOURTH: After the period stipulated to make allegations, without receiving

any manifestation on the part of SISTEMAS FINANCIEROS MOVILES SL the agreement of

start will be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP).

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Inclusion of the claimant in the ASNEF asset solvency file, with a

registration and cancellation date of 04/27/2018 and 07/28/2018 respectively.

SECOND: The claimant receives a letter from EQUIFAX on 04/28/2018, informing him of the

inclusion of your data in the ASNEF file from 04/27/2018, at the request of SISTEMAS

FINANCIAL MOBILE S.L. despite having been notified to said entity on 04/18/2018, the legal action filed by the claimant questioning the existence of the debt causing the inclusion in the aforementioned asset solvency file.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Furthermore, art. 5.1 d) of the RGPD establishes that personal data will be “accurate and, if necessary, updated; all reasonable steps will be taken to have inaccurate personal data deleted or rectified without delay with respect to the purposes for which they are processed (“accuracy”).”

The art. 12 of the RGPD regulates the right to information, communication and modalities of exercising the rights of the interested party, establishing that “the responsible for the treatment will take the appropriate measures to provide the interested party with all information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 regarding the treatment, in a concise, transparent, intelligible and easily accessible, in clear and simple language, in particular any information directed specifically at a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by interested, the information may be provided verbally as long as the

identity of the interested party by other means.

So specifically the art. 14 of the RGPD, states that “the data controller will provide the interested party with the necessary information to guarantee data processing fair and transparent with respect to the interested party” and “when the data controller projects the further processing of personal data for a purpose other than that for which were obtained, will provide the interested party, before said subsequent treatment, information about that other purpose and any other pertinent information.”

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III

According to the evidence currently available,

It is considered that the known facts are constitutive of an infraction, attributable to the claimed, for violation of the principle of accuracy regulated in art. 5.1 d) of the RGPD, by improperly including the personal data of the claimant in the ASNEF file

IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

The art. 83.5 of the RGPD establishes that infractions that affect:

“a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22.”

v

In the present case, it is a situation that affects the claimant because it is included in the ASNEF file since 04/27/2018, at the request of SISTEMAS FINANCIAL MOBILE S.L. despite the fact that on 04/18/2018 he notified said entity of the legal action filed by the claimant questioning the existence of the debt subject to inclusion in the ASNEF file.

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in your art 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction A warning may be imposed by means of a fine. However, special attention must be paid attention to the nature, seriousness and duration of the infraction, to its intentional nature, to the measures taken to alleviate the damages suffered, to the degree of

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liability or any relevant prior violation, to the manner in which the authority of control has been aware of the infraction, to the fulfillment of measures ordered against the person in charge or person in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

SAW

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN SISTEMAS FINANCIEROS MOVILES SL, in accordance with the provisions of article 58.2º letter b) RGPD, in relation to the complaint for violation of article 5.1 d) in relation to articles 12 and 14 of the RGPD, typified as serious in article 83.5 of the aforementioned Organic Law.

2.- REQUEST SISTEMAS FINANCIEROS MOVILES SL, so that within a period of month from this act of notification:

2.1.- COMPLY with the provisions of article 5.1 d) RGPD. Specifically, it is urged to withdraw the personal data of the complainant of the financial solvency file ASNEF, until a judicial resolution is issued on the existence or not of debt.

2.2.- REPORT to the Spanish Agency for Data Protection of compliance with the required, providing the documentation or supporting evidence of said circumstance, including the exact date of your withdrawal.

3.- NOTIFY this Agreement to SISTEMAS FINANCIEROS MOVILES SL.

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 October 1, of the Common Administrative Procedure of the Administrations Public, the interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from from the day following the notification of this resolution, or, directly appeal contentious-administrative before the Contentious-administrative Chamber of the High Court National, in accordance with the provisions of article 25 and section 5 of the provision additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction Contentious-Administrative, 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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Director of the Spanish Data Protection Agency

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