☐ Procedure No.: PS/00123/2021

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00123/2021, instructed by the Spanish Agency for

Data Protection, to the entity, ALLIANZ COMPAÑIA DE SEGUROS Y

REASEGUROS, S.A., with CIF.: A28007748, (hereinafter, "the entity claimed"), in

by virtue of a complaint filed by Dª. A.A.A., (hereinafter, "the claimant"),

and based on the following:

BACKGROUND

FIRST: On 10/29/19, you have entered this Agency, a document presented by

the claimant, in which she indicated, among others, the following:

"I have been charged for motorcycle insurance. Neither am I the holder nor the taker nor of course

I have given permission for my data to be used.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a

mechanism prior to the admission to processing of the claims that are formulated before

the AEPD, consisting of transferring them to the Data Protection Delegates designated

ned by those responsible or in charge of the treatment, for the purposes provided in the

Article 37 of the aforementioned rule, or to these when they were not designated, was transferred

side of the claim to the claimed entity so that it proceeded to its analysis and

ra response to the complaining party and this Agency within a month. So with

dated 12/10/19, and 06/12/20, briefs requesting information were sent to the

claimed entity.

THIRD: On 07/02/20, the claimed entity sends a reply to the

requirement made by this Agency, in which, among others, it indicates:

Attached to this document as Document No. 1, response transferred to the

claimant giving an answer to the reasons that motivated his claim filed

before this Regulatory Body:

According to the internal files of this Company, the claimant is informed that there is

as a holder of a motorcycle policy issued in 2016 through an intermediary of

insurance, PERIS CORREDORIA DE SEGUROS, S.A. and, annulled by herself in

2017.

After investigating the facts that gave rise to the claim, the insurance intermediary

informs us that the receipt charged to the claimant's account was due to a

Clear computer error. The claimant is informed that the facts described in the

intermediary are:

- The claimant proceeded to sell the motorcycle, previously insured

in ALLIANZ, to another person, who, in turn, contracted a new policy with this

Company in 2019, through another insurance intermediary, exclusive agent.

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- The error occurred at the time of formalizing the contract. By entering the

registration number to be able to issue the new policy, the internal system, for some

reason, dragged the current account number owned by the claimant and, as a result of

As a result, his account was inadvertently debited for the insurance premium

corresponding to the policy contracted by the new owner of the motorcycle.

- Precisely, that it was a computer error is clear from the

proof of the charge that was presented to the Spanish Agency for the Protection of

Data, where another person and not the claimant appears as the holder of the receipt.

- When the receipt is passed to the claimant, the claimant orders the Bank to return the

same. - Likewise, we are aware that the claimant filed an internal claim against

this Company about said improper charge and, that the Department of Defense of the

Client, replied on December 9, 2019 admitting the error (…)".

FOURTH: In view of the reported facts and the evidence observed in the

website, the Director of the Spanish Data Protection Agency, dated

03/24/21, agreed to initiate a sanctioning procedure against the entity claimed, by virtue of

of the powers established for violation of article 6 of the RGPD, regarding the lack

of diligence when removing the personal data of the claimant from its databases

of data, with an initial fine of 30,000 euros.

SIXTH: Notification of the initiation agreement to the entity claimed on 03/28/21, no

received in this Agency, no type of allegations to the beginning of file, in

the term granted to the effect that ended on 04/12/21.

PROVEN FACTS

1.- As stated in the claim, the claimant indicated that she had been co-

purchased motorcycle insurance without being the owner or policyholder, so there was no

lawful processing of personal data.

2.- According to the allegations of the entity claimed, the claimant was the holder of a

motorcycle policy issued in 2016 and canceled by herself in 2017. After investigating the

facts that gave rise to the claim, the insurance intermediary informed the insurer

that the receipt that was charged to the claimant's account was due to an error

computerized.

FOUNDATIONS OF LAW

Is competent to resolve this Sanctioning Procedure, the Director of the Agency

Spanish Data Protection Agency, by virtue of the powers that article 58.2 of the Re-

Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding

to the Protection of Natural Persons with regard to Data Processing

Personal and the Free Circulation of these Data (RGPD) recognizes each Authority

of Control and, as established in arts. 47, 64.2 and 68.1 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD).

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Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, of October 2, 2015, onwards

LPACAP provides that:

"The initiation agreement must contain at least: (…)

f) Indication of the right to make allegations and to be heard in the procedure and

of the deadlines for its exercise, as well as an indication that, in case of not carrying out

allegations within the stipulated period on the content of the initiation agreement, it may

may be considered a resolution proposal when it contains a pronouncement

accurate about the imputed responsibility."

In the present case, such requirements have been observed, since in the agreement of

At the beginning, it was warned of the provisions of article 64.2.f) of the LPACAP, it was specified

the presumed infraction committed together with its corresponding typification, is determined

the amount of the sanction according to the graduation criteria taken into account

based on the evidence obtained to that date, also informing of the

planned reductions on the amount fixed by virtue of the provisions of article

85 of the LPACAP.

In consideration of the foregoing and in accordance with the provisions of article

64.2.f) of the LPACAP, the initiation agreement is considered a Resolution Proposal,

since it contained a precise pronouncement about the imputed responsibility

tada and, after its notification in the form described in the antecedent of the fourth fact, the

claimed has not made allegations to the same within the period granted for such purposes.

cough.

In the present case, the claimant indicates that the insurer has charged a

motorcycle insurance receipt, dated 10/02/19, where she is not the owner, nor policyholder

of the policy, nor has he given authorization for the use of his personal data.

III

The insurance company affirms that the claimant was recorded as a policyholder of a

motorcycle policy, issued in 2016, which was canceled by herself in 2017. The

charge of the receipt in your account, in the year 2019, was due to a computer error

involuntary, occurred when the purchase-sale of the motorcycle was made and the owner was changed

in the policy.

The RGPD deals, in its article 5, with the principles that must govern the treatment

of personal data and mentions among them that of legality, loyalty and transparency,

noted: "1. Personal data will be: a) processed lawfully, loyally and

transparent in relation to the data subject ("lawfulness, loyalty and transparency");

IV

In turn, section 2 states that: 2. The data controller will be

responsible for compliance with the provisions of paragraph 1 and able to demonstrate it

("proactive responsibility").

In turn, article 6 of the RGPD, on the legality of the processing of personal data,

establishes that: "1. The treatment will only be lawful if at least one of the

following conditions: a) the interested party gave his consent for the treatment of

your personal data 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 pre-contractual measures; (…)"

In the present case, even if the respondent entity had the right to treatment of

the personal data of the claimant, as he/she has subscribed a policy of

insurance in 2016 with the company, when canceling the policy in the

In 2017, the insurer lost the right to continue processing your data. Therefore, the

processing of personal data carried out in 2019, (account number

bank), by the insurer, when passing the receipt to the collection, could suppose the

violation of article 6 of the RGPD.

For its part, article 72.1.b) of the LOPDGDD considers it very serious, for the purposes of

prescription, "The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the Regulation".

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 by art. 83.2 of the

GDPR:

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The duration of the violation, taking into account the scope or purpose of the

treatment operation, (section a).

The facts object of the claim are attributable to a lack of diligence

on the part of the claimed entity, (paragraph b).

- Basic personal identifiers, personal data,

(paragraph g).

For its part, article 76.2 of the LOPDGDD establishes that, in accordance with the provisions

in article 83.2.k) of the RGPD, it will be taken into account, as aggravating factors of the

penalty, the following:

- The continuing nature of the offence, (section a).

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The link between the activity of the offender and the performance of treatment of

personal data, (section b).

The balance of the circumstances contemplated, with respect to the infraction committed

by the entity, by violating the provisions of its article 6 of the RGPD, allows to set a

sanction of 30,000 euros, (thirty thousand euros), for the lack of due diligence to the

entity, by continuing to process the personal data of the claimant

without legitimate cause after canceling the insurance policy.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency

data protection law,

 :

RESOLVE

FIRST:

TO IMPOSE, on the entity, ALLIANZ COMPAÑIA DE SEGUROS AND

REASEGUROS, S.A., with CIF.: A28007748, a penalty of 30,000 euros (thirty thousand

euros), for violation of article 6 of the RGPD, by carrying out an illegitimate treatment of

the personal data of the claimant.

SECOND: NOTIFY this resolution to the entity ALLIANZ COMPAÑIA DE

SEGUROS Y REASEGUROS, S.A., and the claimant about the result of the claim.

tion.

Warn the sanctioned party that the sanction imposed must be made effective once it is

enforce this resolution, in accordance with the provisions of article 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-

Public Administrations (LPACAP), within the voluntary payment period indicated in 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 December 17, me-

upon deposit in the restricted account number ES00 0000 0000 0000 0000 0000, opened

on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank,

S.A. or otherwise, it will be collected in the 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

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.

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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 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 Agency for Data Protection.

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