 File No.: EXP202105372

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party) on October 18,

2021 filed a claim with the Spanish Data Protection Agency. The

claim is directed against Rapido Finance, S.L. with NIF B93366862 (hereinafter, the

claimed party). The reasons on which the claim is based are the following:

The claimant states that MintServices is claiming a debt from the party

claimed, on which he obtained a favorable resolution from the Court of 1st Instance and

Instruction No. 3 of Antequera and its party dated June 28, 2021.

And, provide the following relevant documentation:

- Judgment of the Court of First Instance and Instruction No. 3 of Antequera and its party

dated June 28, 2021, on whose Third Law Basis

declare the debt paid and pay the claimant XXX euros plus the

legal interest from the date of filing the claim

counterclaim.

- Email addressed to legal@mintservices.es dated July 14,

2021 in which the claimant sends a copy of the aforementioned sentence, as well as

communicates that they cease in debt claims

- Email from MintService, representing RapidoFinance, dated 8

October 2021, demanding payment of the debt.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was made to both MintService and the defendant in accordance with the

norms established in Law 39/2015, of October 1, on the Procedure

Common Administrative Office of Public Administrations (hereinafter, LPACAP), was

collected by Mint Services on December 16, 2021 and by the one claimed on December 10

December 2021 as stated in the acknowledgments of receipt that work in the

proceedings.

No response has been received to this letter of transfer.

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), when the Spanish Agency for the Protection of

Data (hereinafter AEPD) a claim, it must assess its admissibility to

procedure, having to notify the claimant of the decision on the admission or

inadmissibility for processing, within a period of three months from the date the claim was entered

in this agency. If, after this period, said notification does not take place,

It will be understood that the processing of the claim continues in accordance with the provisions of

Title VIII of the Law.

Said provision is also applicable to the procedures that the AEPD

would have to process in exercise of the powers attributed to it by other

laws.

In this case, taking into account the foregoing and that the claim is

filed with this Agency, on October 18, 2021. Therefore, the

claim dated January 18, 2022 has been admitted for processing having

Three months have elapsed since it entered the AEPD.

FOURTH: On June 16, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of Article 6.1 of the GDPR, typified in Article 83.5 of the

GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

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

Public Administrations (hereinafter, LPACAP) and after the period granted

for the formulation of allegations, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement of

beginning of the disciplinary file determined the facts in which the

imputation, the infringement of the GDPR attributed to the defendant and the sanction that could

impose. Therefore, taking into consideration that the claimed party has not

made allegations to the agreement to start the file and in attention to what

established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is

considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The claimant states that MintServices is claiming a debt

of the claimed party, on which a favorable resolution was obtained from the 1st Court

Instance and Instruction No. 3 of Antequera and its party dated June 28, 2021.

SECOND: Judgment of the First Instance and Instruction Court No. 3 of Antequera and its

party dated June 28, 2021, on whose Third Law Basis

declare the debt paid and pay the claimant XXX euros plus interest

legal from the filing date of the counterclaim.

THIRD: Email addressed to legal@mintservices.es dated July 14,

2021 in which the claimant sends a copy of the aforementioned sentence, as well as

communicates that they cease in the claims of the debt.

FOURTH: Email from MintService, representing RapidoFinance, from

dated October 8, 2021, claiming payment of the debt.

FIFTH: On June 22 and July 18, 2022, the claimed party is notified

the agreement to start this procedure, turning said agreement into a proposal

resolution in accordance with articles 64.2.f) and 85 of Law 39/2015, of 1 December

October, of the Common Administrative Procedure of Public Administrations

(LPACAP), since the defendant did not make allegations within the indicated period.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, 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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

The defendant is accused of committing an infraction for violation of article 6

of the RGPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which

that the processing of data by third parties is considered lawful:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

a) the interested party gave his consent for the processing of his 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 part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not outweigh the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested is a child. The provisions of letter f) of the first paragraph shall not apply. application to processing carried out by public authorities in the exercise of their functions".

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"5. Violations of the following provisions will be penalized, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent in accordance with articles 5,6,7 and 9."

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infractions considered very serious" provides:

"1. Based on what is established in article 83.5 of Regulation (U.E.) 2016/679,

are considered very serious and will prescribe after three years the infractions that

a substantial violation of the articles mentioned therein and, in particular, the

following:

(…)

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

a) The processing of personal data without the fulfillment of any of the conditions of

legality of the treatment established in article 6 of Regulation (EU) 2016/679."

II

In the present case, it is proven that the claimed party continued to claim the

amount of the debt already paid, as provided in the Legal Basis

Third of judgment no. 80/2021 issued on June 28, 2021 by the 1st Court

Instance and instruction No. 3 of Antequera, which states: <<taking into account the total number of

received by the lender, it is evident that they exceed the capital lent XXX

euros, which the claimed entity must return to the claimant>>.

Despite the favorable resolution of the aforementioned Court of June 28, 2021, the party

Claimant received an email from MintService, in which it is stated:

<<We are writing to you from MintService, representing RapidoFinance, with whom

you maintain a debt in relation to the LunaCredit product>>, dated October 8,

2021. Hence, the absence of legitimizing basis for the treatment is confirmed

of data, since the Judgment declares the debt paid. Thus, the defendant, not

he took the necessary precautions so that these events did not occur.

It must be taken into account that the documentation in the file offers

evidence that the claimed party violated article 6.1 of the GDPR, since

processed the personal data of the claimant without legitimacy to do so.

The lack of diligence displayed by the entity in the fulfillment of the obligations

imposed by the personal data protection regulations is, therefore,

evident. Diligent compliance with the principle of legality in data processing

of third parties requires that the controller be in a position to

prove it (principle of proactive responsibility).

In accordance with the available evidence, it is estimated that the conduct

of the claimed party violates article 6.1 of the RGPD being constitutive of the

infringement typified in article 83.5.a) of the aforementioned Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

"(40) For processing to be lawful, personal data must be processed with the

consent of the interested party or on some other legitimate basis established in accordance

a Law, either in this Regulation or under other Union law

or of the Member States referred to in this Regulation, including the

the need to comply with the legal obligation applicable to the data controller or the

need to execute a contract to which the interested party is a party or for the purpose of

take measures at the request of the interested party prior to the conclusion of a

contract."

IV.

The determination of the sanction that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,

respectively, provide the following:

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

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 9 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 in lieu of 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 shall 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

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the person in charge or in charge of the treatment to

settle 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, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

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

infringement and mitigate the possible adverse effects of the infringement;

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 whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

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

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

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

fications 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 obtained or losses avoided, directly or

indirectly, through the infringement."

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio-

and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of 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 data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

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

commission of the offence.

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

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679."

In accordance with the precepts transcribed for the purpose of setting the amount of the sanction of

fine to be imposed on the entity claimed as responsible for a classified offense

in article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD.

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of €2,000

for violation of article 83.5 a) GDPR.

Likewise, the person responsible is required to adopt appropriate measures to adjust

its performance to the regulations mentioned in this act, in accordance with the provisions

in the aforementioned article 58.2 d) of the GDPR, according to which each control authority may

"order the person in charge or person in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period of time.

Evidence of having proceeded to stop requiring the payment of a debt canceled by

court sentence.

It is noted that not meeting the requirements of this body may be

considered as an administrative offense in accordance with the provisions of the GDPR,

classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE RAPIDO FINANCE, S.L., with NIF B93366862, for a

violation of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR, a fine

of 2,000 euros (two thousand euros).

SECOND: REQUEST RAPIDO FINANCE, S.L., with NIF B93366862, under

of the provisions of article 58.2 d) of the GDPR, to adopt the necessary measures

for:

 Evidence of having proceeded to stop requiring the payment of a debt canceled by

court sentence.

These measures must be adopted within one month from the date on which

which is notified of this sanctioning resolution, and must provide the means of

proof of compliance.

THIRD: NOTIFY this resolution to RAPIDO FINANCE, S.L.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

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

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary established in art. 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, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

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

referred Law.

Finally, it is noted 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 through

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

of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-

web/], or through any of the other registries provided for in art. 16.4 of the

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

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency