 Procedure No.: PS/00467/2020

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00467/2020, instructed by the Spanish Agency for Data Protection, to the entity, entity PRA IBERIA, S.L. with CIF.: B80568769, (in hereinafter, "the entity claimed), for alleged infringement 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); Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights, (LOPDGDD) and in based on the following:

BACKGROUND

FIRST On 08/07/19, he had entry to this Agency in writing, submitted by Mrs. A.A.A. (hereinafter, "the complaining party"), among others, the following:

“PRA IBERIA, is claiming a debt from me for a contract that I am not aware of. Until the year 2013 third parties have been making bank transfers to my Name. I have requested in writing, by telephone and certified mail to PRA IBERIA information about this incident, but to date, I have not received a response by no way, and they keep claiming the debt with interest.“

The following documentation was provided to the written claim:

- Copy of letter dated 06/12/19 addressed to the claimant and sent by PRA IBERIA, S.L. where the debt that it maintains with them is reported as consequence of the acquisition of a debtor portfolio from SANTANDER CONSUMER FINANCE. The letter states that the date of assignment was 04/30/08, and that the date of the first default was 02/01/06.

- Letter dated 06/24/19 sent by the claimant to PRA IBERIA SL, where

The right of access to the documentation held by the entity was requested.

her, in relation to the alleged debt. Certificate of delivery is provided.

SECOND: On 09/17/19, this Agency sent a request

information to the entity PRA IBERICA, SL. and the entity SANTANDER CONSUMER

FINANCE, in accordance with the provisions of 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, (“LOPDGDD”).

THIRD: On 10/09/19, the entity SANTANDER CONSUMER FINANCE, S.A.

send this Agency the following information:

- That the existence of a contractual relationship with the

claimant relating to a credit card marketed jointly with

GAS NATURAL FENOSA, which was marketed by telephone on the day

04/10/2000.

- A copy of the: "XXXXXXX CARD REQUEST", dated

04/10/2000, where the details of the claimant and her address are stated, but without

claimant's signature. In the direct debit data, the entity appears

“XXXX C.A. FROM MADRID and account number: ****XXXX” crossed out by hand and

overwritten in handwritten text the number “XXXX” as the text: “CTA

WRONG”.

- Printing of existing data in the entity's database is provided

SANTANDER CONSUMER, of the “XXXX-UNION FENOSA CARD”, where

The identification of the claimant is recorded. In the address data

bank, there is an account number of the bank, IBERCAJA:

****XXXX). In the section of origin of the account, it is indicated “Captura

phone”.

- Printing of the charges on the credit card made from

09/09/2002 (card activation date), until 12/13/2004.

-

The entity certifies that the credit card receipts were returned

credit for the months of February to December of the year 2006, for an amount

Total face value of 452.59 euros.

- Indicates that they sold the non-payment portfolio, dated 04/30/08, to the company

AKTIV KAPITAL INVESTMENT PORTFOLIO A.G. fiscally represented in

Spain by PRA IBERIA SL, whose former name was: TREYM

CONSULTING AND SERVICES TO COMPANIES, S.L.U.

- Indicates that the claimant was informed of the transfer of credits mentioned

in the previous point, on 05/28/08. A copy of the letter is provided where it is communicated

the transfer of credit to AKTIV CAPITAL INVESTMENTS PORTFOLIO A.G.

- It indicates that, "given the age of the file, the remaining documentation

relating to the claimant could not be located, since the

Claims derived from it are, to date, prescribed.

FOURTH: On 10/17/19, PRA IBERIA, S.L.U. sends this Agency the following

information and demonstrations:

- A copy of the letter dated 05/28/08 addressed to the claimant at the

address indicated in the credit card application document, where

the purchase of the credit portfolio by the entity AKTIV is reported

CAPITAL INVESTMENTS PORTFOLIO A.G. to the entity SANTANDER

CONSUMER FINANCE as well as the information and personal data with the

due credit and the possibility of contacting the entity TREYM CONSULTING AND

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SERVICES TO COMPANIES, S.L.U. for the access, cancellation or opposition of

said data.

- They provide a copy of the certificate signed by a notary public stating: “[…] the

01/12/18 the GLOBAL TRANSFER OF ASSETS AND

LIABILITIES of the portfolios acquired in Spain by the company "AKTIV

KAPITAL PORTFOLIO AS, OSLO, BRANCH IN ZUG", broadcasting in

block all the portfolios acquired in Spain by universal succession of the

first entity in favor of "PRA IBERIA, S.L UNIPERSONAL", equity in

which includes, among others, the portfolio acquired by virtue of the deed of

ASSIGNMENT OF CREDIT indicated below and therefore the debt that

the corresponding to the claimant is hereby certified for the total amount

of XXX €.

- They provide a copy of the letter addressed to the claimant at the address indicated in the

card application sent by the entity PRA IBERIA, S.L.U., dated

01/21/15, where they state the acquisition of all the assets and

liabilities of AKTIV KAPITAL, through the global transfer of AKTIV's business

KAPITAL and as a consequence of the credit subscribed with in its day by Santander

Consumer.

- They provide a document from the provider of the sending service of requirements of

payment and transfer of credit of PRA IBERIA, S.L.U that certifies the generation and

printing on 02/10/15 of a request for payment in the name of the

claimant at the address indicated on the credit card application and your

made available to the distribution company Unipost, S.A. the day

02/13/15.

- They state that, on 05/17/19, the claimant contacted them,

informing them of a new address where they re-sent the

information.

- They provide screen printing of the data obtained from the contract

that were allegedly provided by the claimant. Bliss

data capture in the systems was printed and signed by a proxy of

Santander Consumer before registering the card.

- They state that: “The claimant contracted with Santander Consumer a credit card

credit from Unión Fenosa by telephone on 10/4/2000. As a result of said

hiring, was sent to the address provided by the claimant, both the

card such as its conditions and the instructions for its activation. So

on 09/09/2002 the claimant activated the card through a payment at a station

of service for €39 and continues to use the card until the entity

assignor writes it off due to non-payment”.

- They state that: “Since 05/17/19 they have been in contact with the claimant to

solve your doubts. That is why they understood that it was not necessary to answer

formally to the request for access and that they have sent the complainant a

certified email with the movements of the card and where they clarify their payments".

- A copy of the MRW Bureaufax is provided with the subject "Answer to claim"

dated 10/17/19, where there is an attached file named

"answer claim_e_08673_20193.pdf". A copy of the content is provided

of the file, this being a letter addressed to the claimant, dated 10/16/19,

where they inform her, among other aspects, that: - "On September 9, 2002

The credit card was activated in your name. - They received two transfers

whose origin was an account of the assignor Santander Consumer for the

payments made but that cannot indicate the origin of said transfer

because they were not produced directly in their accounts".

- They provide a certificate from SANTANDER CONSUMER where the charges are stated in

the credit card from the year 2002 to the year 2005.

FIFTH: On 11/21/19, the claimant sent this Agency a second written

reporting the following:

- Send a copy of the documentation received from the PRA IBÉRICA entity, the

10/22/19 in response to the access request sent to them on 06/24/19.

- Complaint that the entity claimed affirms that it made two transfers

to pay the card debt from a third checking account to the

entity SANTANDER CONSUMER, but they do not show that they are made

by her or the account number from which they were made: On 06/16/2008

of €XXX and on 06/28/2011 of €XXX,

- That they send you some bank details from the financial institution IBERCAJA, but

that he appeared in this entity and they told him that there was nothing in his name.

- That they send you information about purchases that you do not know and that you still do not

be able to verify anything, since it is not provided by the bank's contract, nor by the

bills, or transfers that justify that she is the cardholder and

therefore the debtor of what they claim.

SIXTH: On 06/01/20, an information request is sent to the financial entity

IBERCAJA BANCO, to identify the holders and authorized persons of the account

banking ***XXXX, as of October 4, 2000, the changes produced in these

data, and the temporary period in which said account remained open, in the event that

has been closed.

SEVENTH: On 06/16/20, IBERCAJA BANCO, S.A. sends to this Agency the

following information and statements:

-

Account No. ****XXXX remained open from June 29, 2000 until

on December 21, 2001, where it appeared as the only owner in that period,

that is, from June/2000 to 12/21/01, the claimant.

EIGHTH: On 06/18/20, PRA IBERIA, S.L.U. sends this Agency the following

information and manifestations, requirement of this Agency:

- That the stipulations that regulated the assignment of the debt between

SANTANDER CONSUMER FINANCE and AKTIV CAPITAL, today PRA IBERIA;

S.L.U. They provide a document of "PUBLIC RAISING OF THE CONTRACT OF

ASSIGNMENT OF CREDITS" of the Notary Mr. ALBERTO BRAVO OLACIREGUI

dated 04/30/2008 where it appears: - SANTANDER CONSUMER FINANCE,

S.A., among others, as assignor. - AKTIV CAPITAL PORTFOLIO

INVESTMENTS, A.G. as assignee, being its tax representative is

TREYM CONSULTING AND SERVICES TO COMPANIES; SL – […] for which the

ASSIGNORS sell and transfer to the ASSIGNEE, who buys and acquires, the

LOAN PORTFOLIO, as defined in Exhibit II of the aforementioned

Contract.[…]"

- They provide a copy of the contract copy of the stipulations that regulated the assignment

of the debt between Santander Consumer Finance and Aktiv capital, today PRA

IBERIA S.L.U., signed and dated 04/30/2008 where it is stated, among others, what

Next:

“[…] V. That the volume of the Loan Portfolio, the heterogeneity of the

Credits that make it up and, in many cases, their age and/or their

origin of any of the credit entities merged with the

Assignors make it impossible for them to guarantee that the Credit Data

always be complete or correct. In particular, the Sellers do not rule out

that some of the Loans that appear in the Loan Portfolio are not in

actually existing credits or legally enforceable by the Sellers or not

are transmissible, so all of them must be considered at all

effects such as doubtful credits. For the same reasons, the documentation

Physical information related to the Credits that the Assignors have does not

is not necessarily complete or exhaustive, and there may be no documentation

physical with respect to some of the Credits. The Assignee knows and accepts these

Characteristics of the Credits, the Data of the Credits and the

physical documentation related to the Credits.

[…] VII. That, within the framework of a prior negotiation for the possible

transmission of the Loan Portfolio, the Assignors and the Assignee have

held various meetings in which the Assignee has been able to find out

completely and to your satisfaction about the characteristics of the Portfolio of

Credits, the procedures for registration and conservation of the Credits of the

Assignors, the mechanisms for the collection of the Credits used by the

Sellers,[…] […]

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1 .2. Exclusion of liability of the Sellers: The Parties acknowledge that

the object of the Contract is the purchase and sale of the Loan Portfolio in its

globally, without individualized consideration of each of the Credits that

compose it and that are transferred. Additionally, after meetings between the

Parties and the due diligence process carried out by the Assignee, the Assignee knows and

accepts that the Assignors do not guarantee that the Data of the Credits are

complete and accurate, and that some of the Credits may not exist for

any cause (including prior payment), not be legally enforceable by the

Sellers or have their transferability restricted. Therefore, all and each

one of the Credits that the Assignee acquires are sold as doubtful

in accordance with the provisions of art. 1529 of the Civil Code, acquiring the

Assignee of the Loan Portfolio at its entire risk (...)".

NINTH: On 01/18/21, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of

the established powers, for failing to comply with the provisions of articles 6.1) of the RGPD,

regarding the illicit treatment of the personal data of the claimant and for infringement

tion of article 15 of the RGPD, regarding the lack of diligence in facilitating the

access to information on the personal data of the claimant with a sanction

total of 60,000 euros (sixty thousand euros), 30,000 euros for the infringement of article

6.1 and 30,000 euros for the infringement of article 15 of the RGPD.

TENTH

dated 02/01/21, made, in summary, the following allegations:

: Notification of the start agreement to the claimed entity, the latter in writing

1.- Expiration of previous actions.

The previous actions on which this sanctioning procedure is based

have expired as provided in article 67.2 of the LOPDGDD.

In this sense, it indicates the second fact of the agreement to start the sanctioning procedure.

tioner that: “In view of the facts set forth in the claim and the documents

data provided by the claimant, the Subdirectorate General for Data Inspection pro-

yielded to carry out actions for its clarification, under the protection of the powers of in-

investigation granted to the control authorities in article 57.1 of the RGPD. So with

date 09/17/19, information requests are directed to the entity PRA IBERICA, SL.

and to the entity SANTANDER CONSUMER FINANCE.”

In its article 67 LOPDGDD, it indicates in section 2 that: “2. The previous performances

investigation shall be subject to the provisions of Section 2 of Chapter I of Title

VII of this organic law and may not have a duration of more than twelve months

from the date of the agreement for admission to processing or the date of the agreement by the

that its initiation be decided when the Spanish Agency for Data Protection acts

on its own initiative or as a consequence of the communication that would have been

issued by the supervisory authority of another Member State of the European Union,

conform to article 64.3 of this organic law.”

Although the specific date of the agreement for admission to processing of the actions is unknown,

previous research situations, and for which we must wait to know the experience

complete tooth of this procedure, which we can affirm emphatically,

the view of the second fact of this initial agreement is that said agreement took place

prior to 09/17/2019, since it is on this date that the first

following actions after the General Subdirectorate for Data Inspection, in

depending on the powers granted by law, the beginning of the same is agreed upon.

However, in the Resolution of the procedure No.: PS/00418/2019, as the only reference

found on the criteria of the Agency itself regarding the start of the computation

of the term of the previous performances of the inspection of article 67.2 LOPDGDD,

establishes that: "This admission for processing was agreed upon, which was notified to the claimants-

tes, and not to IZENPE, in accordance with the provisions of article 65.5 of the LOPDGDD,

initiated previous investigation actions indicated with the number E/00995/2019.

Within the framework of these actions, on 02/04/2019, the inspection services

of this Agency sent IZENPE a request for information, which includes di-

reference number and it is expressly indicated that said request is made

“Within the framework of the actions carried out by the General Subdirectorate of Ins-

data collection in order to clarify the terms of some facts that may be

possible infringement of current Data Protection regulations and of which you have had

knowledge of this Spanish Agency for Data Protection” and in use of the fa-

culties conferred by article 58.1 of the RGPD and article 67 of the LOPDGDD.”

The expiration of the previous actions was already included in article 122.4 of the Real

Decree 1720/2007, of December 21, which approves the Regulation of de-

Development of Organic Law 15/1999, of December 13, on data protection of

personal character (RDLOPD) establishing that the computation of the beginning or "dies ad quo"

from the date of filing the complaint.

The wording of said article is very clarifying for interpretive purposes, since it

clearly ends the moment in which the admission agreement must be determined

processing of the preliminary investigation actions, which is none other than the beginning of the

inspection actions through the powers established by law: “4. These

Previous actions will have a maximum duration of twelve months from the

date on which the complaint or reasoned request referred to in section 2 hu-

should have entered the Spanish Agency for Data Protection or, if not

exist, since the Director of the Agency agreed to carry out said

performances. The expiration of the term without an agreement having been issued and notified

initiation of the sanctioning procedure will produce the expiration of the preliminary actions

ways.”

Said article reflects the importance of the expiration of previous actions as

response to the adequacy of the administrative principles and especially to article

42.2 of Law 30/1992, of November 26, on the Legal Regime of the Administrations

Public and Common Administrative Procedure (LRJPAC) and because if not

If this limit did not exist, the inspection actions could not be prolonged in such a way

that would violate the principle of legal certainty that our Constitution proclaims.

This criterion is reflected in different jurisprudence, among which the following stand out:

Due to its clarity, we appreciate the Judgment of the Contentious-Administrative Chamber of the

National Court number 2696/2006 of October 17, 2007 (Recourse No.

180/2006), (…).

We consider for all these reasons, and according to what has been reasoned up to now, that the plaintiff insofar as there has been a fraudulent use of the institution of the preliminary proceedings. Consequently, we are faced with a case of fraud of Law contemplated in article 6.4 of the Civil Code, since it is intended to circumvent the application of article 42.2 of Law 30/1992 using the request for information to, with it, avoid the expiration of the sanctioning file."

We will say that it is not possible to claim that the actions come from the new number of inspection, which occurs on the same case, this is inspection E/01924/2020, of June 1, 2020 (follow-up to inspection E/08673/2019, of October 2019), and which was answered by this party dated 06/18/2020, which contains a single ca request: "Copy of the stipulations that regulated the assignment of the debt between Santander Consumer Finance and Aktiv capital, today PRA IBERIA S.L.U."

Although the existence of the assignment of the claimant's credit and its details (date of the transfer, intervening Notary, amount of the debt, etc.) is known by the Agency at the us from receipt of the claimant's waiver. In this sense, in the agreement initiation of the sanctioning procedure is indicated:

1) First Event: "Dated 08/07/19, you have entered this Agency, a pre- sitting by the claimant in which she indicated, among others, the following: (...)

2) Event Three: "On 10/09/19, the entity, SANTANDER CONSUMER FI- NANCE, S.A. sends this Agency the following information and statements: (...)

3) Fact four: "On 10/17/19, PRA IBERIA, S.L.U. sends to this Agency the following following information and statements: (...)

The period of time in which the Agency investigates new indi- vidual facts is noteworthy.

claimed by the claimant, specifically the current account that appears in the contract.

Specifically, the complainant informs the Agency on 11/21/19 that Ibercaja has not

given information, but the Agency does not send any type of information to said entity

until June 2020, that is, 7 months after knowing this new information.

mation by the claimant, also taking into account that the actions

of inspection go back, as we have commented previously, at least since

on 09/17/19.

Even considering that said new information would have been sufficient to initiate

a new investigation, the Agency would have had 3 months from when they learned

to have acted against my principal, if he had considered it so, as indicated in the

Agency itself in Resolution PS/00418/19 cited above: "(…) the decision on

the admission or non-admission for processing must be notified to the claimant within three

months since the claim was received by the Agency…". These 3 months ha-

would have ended on 02/21/20, although it should be noted that it is not a new information.

investigation but the continuation of the actions that were initiated before the

09/17/19

Thus, it is relevant to highlight the following facts of the initial agreement:

"FIFTH: On 11/21/19, the claimant sends this Agency the following information:

information and demonstrations: (...) - That they send you some bank details from IBERCAJA

but that was personified."

SIXTH: On 06/16/20, IBERCAJA BANCO, S.A. sends to this Agency the following

following information and statements, at the request of this Agency: (...).

SEVENTH: On 06/18/20, PRA IBERIA, S.L.U. sends this Agency the following

information and manifestations, requirement of this Agency: (...)

Thus, the complete or necessary information, in the opinion of the Agency, to complete the actions

inspection procedures, obtains them on 06/18/2020, as indicated in the foundation of

seventh right and it is not until 01/18/2021 where this party is notified of this

agreement.

Taking into account the interruption of the prescription and expiration periods due to the

alarm status, that is 81 days, counted from 04/14/2020 to 06/3/20201 or, even

counting them by periods in months, that is 3 months, it turns out that:

1 Administrative deadlines 1.- Suspension of deadlines: Royal Decree 463/2020 of 14

March, Third Additional Provision. Terms are suspended and services are interrupted

deadlines for processing the procedures of public sector entities. The

computation of the terms will be resumed at the moment in which the Real

Decree 463/2020 or, where appropriate, its extensions. Therefore, the deadlines are suspended

pending on 03/14/2020.

2.-Lifting the suspension of deadlines: Article 9 of Royal Decree 537/2020,

of May 22, which extends the state of alarm declared by the Royal Decree

decree 463/2020, of March 14. With effect from June 1, 2020, the computation

of the administrative deadlines that had been suspended will be resumed, or restarted

will be declared, if it had been foreseen in a norm with the force of law approved during the vi-

agency of the state of alarm and its extensions. Administrative deadlines are resumed

will be on June 1, 2020. These deadlines, in general, will be resumed, including

putting therefore the days that would have been exhausted before Royal Decree 463/20,

of March 14.

However, these terms will be restarted, recalculating the full term, if

this would have been foreseen in a norm with the rank of law approved during the term

of the state of alarm and its extensions. Substantive terms: prescription and expiration 1.-

Suspension of prescription and expiration periods: Royal Decree 463/2020 of 14

March, Fourth Additional Provision. The statute of limitations and expiration of

any shares and rights remain

1) Previous performances would expire, regardless of state interruption

alarm, at least on 09/17/20, 1 year after the start of the actions. Without

However, the sanctioning procedure agreement is received 1 year and 4 more months

afternoon.

2) The Agency knows new information on 11/21/2019 provided by the claimant-

te, however, it is not until June 2020 when it completes its inspection activity.

The Agency should have resumed the inspection, if it had considered so in a

within 3 months, that is, on 02/21/2020 (and, in any case, before the state decree)

alarm clock), although it is not until June 2020 that he restarts his investigation.

3) The Agency compiles the complete information of its investigation on 06/18/2020, it is

That is, you still have 3 months before the previous actions expire.

4) Taking into account the suspension of the alarm state (From March 14 to December 4,

June) said period could be extended until 12/17/2020, taking into account

even though we count whole months (3 months instead of 81 days), so the

Agency would have had a period of 6 additional months to see notified the

initiation of this agreement to my client.

5) The agreement to initiate the sanctioning procedure has been notified, at least 1 month after the expiration of the previous actions occurred, that is, the 01/18/2021, including the periods of suspension of the state of alarm. For the an- interior, this part understands that the previous actions that give rise to the present sanctioning procedure have expired due to the expiration of the period established Based on article 67.2 of the LOPDGDD.

Even understanding this part that the previous actions of this initial agreement sanctioning procedure have expired, my client will proceed to send try to assess the facts of the infractions for which my command is held responsible. te, distinguishing between them, that is, the infringement of article 6.1. of the Rule- Document (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of data personal and suspended coughs during the period of validity of the state of alarm and, where appropriate, of the extensions that are adopted.

2.- Lifting of the suspension of the prescription and expiration periods: Article 10 of Royal Decree 537/2020, of May 22, which extends the state of alarm declared by Royal Decree 463/2020. With effect from June 4, 2020, will lift the suspension of the statute of limitations and expiration of rights and actions nes. the free movement of these data and repealing Directive 95/46/EC -General Data Protection Regulation- (RGPD) and the infringement of article 15 GDPR.

2.- Of the Infringement of article 6.1.RGPD. Of the legality of the treatment.

Of the assignment of credits and the legality of the treatment. From the facts of the present pro- transfer. Of the diligent performance of my client. From the lack of evidence due to error in the assessment of the evidence by the Agency. of compliance of the criteria established by the AEPD.

As evidenced in the documentation of the administrative procedure:

1) On 04/30/2008, the assignment of certain credits in-

tre Santander Consumer Finance, E.F.C., S.A. (Santander Consumer) and Aktiv Capital

Portfolio Investments, A.G. (Aktiv Kapital) before a notary public. Among these credits

found that of the claimant.

2) Subsequently and through different commercial operations of global assignment of

assets and liabilities, said credit is acquired by my principal PRA Iberia, S.L.U.

(PRA)

3) Both in the declaration before a notary public and in the inspection, Santander Consumer

affirms that the claimant acquired a Union Fenosa credit card by telephone

ca on 10/4/2000 under applicable law. Said telephone operation, effectuated

tuated under the applicable regulations at that time, it was reviewed and signed by

a proxy of Santander Consumer before registering the card.

4) It is also credited in the movements that prove the use of said card,

that it is activated on September 9, 2002 by means of a payment at the station

of service of XXXXXXXXX–Cedip. For XX€ and the card continues to be used until

canceled due to non-payment.

5) A certificate from Santander Consumer is also attached, accrediting

receipts pending payment, that is, receipts numbers 41 to 51 for an amount

total nominal value of XXX euros, the first of them being on 02/01/2006 and the last on

them on 12/01/2006. That is, the card has been active from 09/09/2002 to

01/12/2006 in which the cancellation of the same occurs due to non-payment.

When the card is activated, it is observed that there has been a change in the account

current, thus in the movements that prove the existence of the debt the co-account

The current in which the charges are made is: “Account Number: ***ACCOUNT.1” (the data

These are not complete for reasons of confidentiality of the assigning company) although

when the card is registered, almost 2 years before (on 10/04/2000) the account that was

reflects is *XXXX, which clearly demonstrates that the claimant changed the number

checking account number to activate the card and start using it.

7) Both the claimant and the Agency pay attention to the account in which the

requested the card on 10/04/2000 (account that according to Ibercaja's declaration was closed

gives on 12/21/2001), although this account does not coincide with the activation account of the

card on 09/09/2002, and where the card charges occurred, that is, the number

number of account that appears in the movements that accredit the use of the card, the

checking account “Account Number: ****XXXX”.

8) Interestingly, neither the claimant nor the Agency ask about this checking account

neither my principal nor Santander Consumer, and this taking into account that the Agency is

addresses my client for the second time in June 2020 but says nothing about the de-

statement from the complainant or about its extension of the investigation to Ibercaja (not to

Santander Consumer) with what there is, there is no equal application of the law, since

does not understand this party why the Agency did not communicate this party in a second

occasion (so that it could ask the transferor entity) or go directly to

directly to the assigning entity to clarify the account in which the events occurred.

credit card charges and payments.

9) The extracts of said card from 09/01/2002 to 02/08/2006 prove

the use of the card up to 56 times for consumption for an amount greater than 1,500

euros, in the period of more than 3 years in which it has been active, although the ce-

dente only certifies the debit balance of receipts from 02/01/2006 for an amount

principal (without interest) of XXX euros, with which there have clearly been payments

on the card charge account.

10) Finally, it is not found either in the agreement of the beginning of the procedure

sanctioning party that the inspection has asked the entity Santander Consumer the

detail of the transfers received in your account for amounts of €150

(06/16/2008) and €250 (06/28/2011) since the claimant made the payment in the accounts

of Santander Consumer.

11) My client provides the concept that you can consult in your accounts about this

last transfer, by virtue of the detail provided by the transferor, being this:

“TRANSFER OF: ***TRANSFER.1”.

Thus, the issuing entity of the transfer is entity 2096, belonging to the entity

entity Caja de España, today Unicaja Banco2, although none of this is under investigation.

tion by the Agency and what is being investigated is partial and without my client

have the opportunity to contribute or add to the resolution of this case, being

thus at the discretion of the partial information provided in the inspection.

What has been reported so far is that my client, regardless of the analysis

the Agency's information on the contract signed by the assigning entity in April 2008 and at

that we will refer to later, has proven its diligence in complying with

the law and has submitted evidence of the debt in the name of the claimant, apparently

is certain and enforceable, and the Agency does not reason how my client can prove

Greater diligence in compliance with data protection regulations.

Yes, it should be mentioned in advance that the claimant at no time

has denied the debt, nor has it provided the documentation provided to the police to

the filing of the appropriate complaint for identity theft, if it is the

case, since they would be the competent bodies to carry out investigation work that

exceed the competence of my client.

Also mention that the most important proof of charge of the Agency in this

case (Ibercaja's reply) allows it to affirm that the processing of data from the

complainant does not comply with the principles that must govern the processing of personal data

(article 5 RGPD), although what the Agency forgets is that:

1) The charge and credit account of the card is not the same as the one consulted by the

Agency, nor the one that accredits the existence of the debt.

2) The information obtained by the Agency is carried out in the use of the attributes

tions conferred by law.

3) My principal cannot, by itself, carry out this investigative work that

the Agency, nor obtain confirmation from Ibercaja or any other bank.

You only have, based on the RGPD, the possibility of accessing said information whenever

that: a. Is provided by the interested party (in this case, the claimant who has not

contacted my client nor has he shown interest in clarifying his case). b.

Of the administrative bodies with investigative powers: Protection Agency

Data tion, police, judges and courts, etc.

All of the foregoing implies that my client has acted with the utmost diligence

can demand in the treatment of the claimant's information, likewise, my maintenance

dante, in compliance with the criteria established by this Agency, has proceeded to annul

the debt in its files and make it available to public authorities and bodies

and security forces, judges and courts - for the submission of any information and

documentation required to clarify the facts once the claim

Please file the appropriate complaint for impersonation of responsibility. To this

In this regard, it is accredited by copying the situation in the systems of my command.

te, the current status of the claimant's file:

The Agency's criteria are established in different resolutions, among which are the following:

tar: 1) file No.: E/01202/2016 RESOLUTION OF FILE OF ACTION-

NES; 2) the also RESOLUTION OF FILE OF ACTIONS of the procedure

to No.: E/01178/2020 and, 3) file No.: E/00712/2019 (...); For its part, it stands out

procedure No.: E/01462/2019, (...).

3.- Of the assignment of credits and the legality of the treatment. Of balloon contracts and

its regulation in the Civil Code (CC). Of the drafting of the contractual clauses and

of the competition for its interpretation. Of the responsibility of the existence and legis-

timacy of credits in the CC. Of the nullity derived from article 1203 CC and the

TS doctrine. Of the non-retroactivity of the application of the law.

The Agency both in the Seventh fact and in the Legal Basis II, 3rd analysis

part of the contract entered into between Aktiv Kapital and Santander Consumer in April

2008, specifically provisions V, and clause 1.2. to conclude that:

1) That my client knew or, in the words of the Agency "assumed" from the beginning

as more probable the existence that the credits were not real or correct and

that even some of the credits might not exist.

2) That my principal does not certify that he has adopted the measures required by compliance

diligent compliance with the obligation imposed by the RGPD, both in the collection of the

personal data as in the subsequent treatment of the same, so that, from the re-

daction of the clauses signed in 2008, there is a serious lack of diligence

of the entity claimed in compliance with the obligations imposed by the regulation

protection of personal data. Diligent compliance with

principle of legality in the treatment of third party data would require that the person in charge

of the treatment is in a position to prove it, (principle of proactive responsibility)

goes).

3) The foregoing could imply the violation of article 6.1 of the

RGPD, whenever the claimed entity could have processed the personal data

of the claimant without any legitimation.

Being the related facts analyzed under the current regulations with in-

reliance on the prohibition of the retroactive application of the law, by virtue of

constitutional fact, we must specify at this time that the interpretation of the

Agency of the signed contract responds previously to a wording of 2008, in which

that there was a different culture in terms of data protection and the transfer of

credits of individuals and above all, to a partial interpretation of the Agency, since

does not take into consideration the system of application of these contracts under the

Applicable regulations: Civil Code and the jurisprudence of the Supreme Court. Must

also add the following clauses to the information extracted by the Agency:

1) Stipulation IX. “That, in view of the foregoing, the Sellers are interested in

sell and transmit at a premium and as doubtful, and the Assignee is interested in

buy and acquire, the Credit Portfolio (...) In particular, the object of this contract

is the balloon sale for a lump sum price of the entire Loan Portfolio in

its status as a financial asset, without individualized consideration of each of the

the Credits that compose it and taking into account, in particular, the doubtful nature

of each and every one of the Credits."

2) Clause 1.2. "(…). The price is fixed and is not subject to any modification

as a consequence of non-existence, those that amount to intransmissibility or negligence

ity of any of the Credits, due to the lack of solvency of the debtors, due to the

content of the Credit Data, nor for any other assumption regarding the

that the responsibility of the Assignors has been expressly excluded"

3) Clause 2: "The Assignee, in its capacity as legitimate owner of the Credit Portfolio

ditos by virtue of this deed, assumes any type of responsibility derived or

that may derive from such ownership as of the date hereof, releasing

the Sellers of any liability arising from said ownership from said

date."

4) Clause 10. JURISDICTION. "For any litigation, discrepancy, question or claim-

tion that could derive from the execution or interpretation of this Contract the Parties,

waiving any other jurisdiction, submit to the exclusive jurisdiction of the Courts

gados and Courts of Madrid capital (Spain)."

As can be clearly verified, the operation signed between Santander Consu-

mer and Aktiv Kapial is a transfer of credits of article 1526 and ss of the Civil Code that

is defined as a transfer of ownership of a credit between a former creditor

dor and a new one – assignor and assignee-, produced as a legal effect of a counter-

celebrated between them. In the assignment of receivables, there is no entire assignment of the property.

contractual position, which would require the consent of the debtor, as in the

transfer of contracts, but only of active ownership, so that they will be dismembered

the positions relative to the creditor and debtor of one of the parties.

As a reflection of the Assignor's responsibility, not towards the Assignee but towards the

debtor with respect to the assigned right, there is numerous jurisprudence of the Supreme Court

mo, that different Provincial Courts apply: 1) The Sentence of the AP Navarra,

sec. 3rd, S 12-19-2011, No. 289/2011 (…); 2) The Judgment of the Second Section 2 of

the Provincial Court of León dated June 19, 2007 (…)".

Being clear about the assignor's responsibility for the object of sale (do not forget

let us say that what is sold is a right to payment, not an obligation to pay),

that the transferor, Santander Consumer, intends with the inclusion of said clauses is

the complete exoneration of responsibility against the Assignee, that is, Aktiv Kapi-

such. In other words, Aktiv Kapital accepts that the sale takes place in a balloon and with credits

doubtful, which implies that it will not request any type of compensation from the Assignor,

that is, to Santander Consumer. It does not have any additional application in terms of

data protection, although, surely if the contract were drawn up today,

its clause would be more appropriate to the RGPD (...):

It is not possible, just as the Agency indicates that the fact that an Assignor sells credits

ditos as doubtful, implies that it transmits its responsibility to the Assignee, since this

It goes against both the applicable legislation and the jurisprudence of the Supreme Court.

in fact, recent judgments of the Supreme Court such as Judgment number

ro 2816/2019, of September 18, 2019 (from procedure 509/2017)

and the STS November 20, 2008 STS 1127/2008, Appeal number: 2280/2002, (...).

Thus, the non-existence of the contract in the framework of an assignment of credit implies the vacuum of the figure of the subjective novation due to change of creditor collected in the article 1203 of the CC, consequently becoming a "derived nullity" of the legal business of assignment of credit between the assignor and the assignee. Therefore, following the conclusion TS on derivative nullity and thus the application of 1203 CC the only consequence sequence that can be applied to my client is to bear the consequences of the loss of his right, but in no case can the burden of responsibility be reversed. liability established in the CC, so the assignee cannot incur liability any contractual relationship with the debtor assigned by the lack of compliance with their duties contractual by the assignor.

In any case, as the Agency has already established in its different Resolutions, the interpretation of the clauses in the contracts between the parties is exclusive competence of the civil courts, exceeding the competences attributed by Law to the Agency. In this regard, clause 10 of the contract signed between the Assignor (Santander Consumer) and the Assignee (Aktiv Kapital) (...)

For its part, it is noteworthy that the necessary application of the principle of non-retroactivity validity of the Law, both in the regulations in force in distance contracting and in the application of the principle of proactive responsibility of the RGPD.

Thus, the Agency has established the application of the principle of retroactive liability of the RGPD, published in April 2016, to a contract signed in April 2008. Appli- tion of the RGPD to a contract signed 8 years before the publication of the Regulation General Data Protection and 10 years before its entry into force.

Non-retroactivity is a consequence of the criminal principle of typicity and legality that, like other informative principles of Criminal Law, is applicable, muta- tis mutandis to sanctioning law.

The art. 9.3 of the Spanish Constitution states that the Constitution is guaranteed by the irre-

troactivity of the sanctioning provisions that are not favorable or restrictive of rights

individual rights and art. 25 CE establishes that no one can be convicted or punished

committed by actions or omissions that at the time they occur do not constitute a crime.

to, fault or administrative infraction, according to the legislation in force at that time. The

Chapter III of the Preliminary Title (arts. 25 to 31) of Law 40/2015, of October 1, of

Legal Regime of the Public Sector contains the constitutional precepts that regulate

lan the sanctioning power of the Administration (...)

4.- The result of the inspection actions. From the principle of objective responsibility

tive. Of the principle of culpability that should govern administrative law

As we reported in the first fact of this writing, my principal cannot

be subject to a sanction for fault, since this would be to hold them accountable objectively,

which is proscribed by both legislation and jurisprudence.

In this sense, we highlight the arguments of the following Resolutions of

the Spanish Data Protection Agency:

1) File No.: E/02304/2018 (...): in light of this precept, the sanction

cionadora can be demanded by way of intent or guilt, being sufficient in the latter

case the mere non-observance of the duty of care. In the Judgment of 10/17/2007”

The doctrine of the National High Court on this matter is to require those entities

in which the development of its activity entails a continuous processing of personal data.

clients and third parties who observe an adequate level of diligence. In the SAN of

10/17/2007; SAN of 04/29/2010

2) File No.: E/02157/2018: Also the SAN of 04/29/2010, in its Basis

Juridical sixth, regarding a fraudulent hiring, indicated that “The question does not

is to elucidate whether the appellant processed the personal data of the complainant without

your consent, such as whether or not you used reasonable care in trying to

identify the person with whom the contract was signed.

5.- Of the absence of application of article 58 RGPD as an alternative measure. Of the

lack of transparency of the Agency before the start of this procedure

sanctioning Principle of Equality before the Law.

From this understanding of things, constitutional jurisprudence holds that

the principles of legal security and interdiction of the arbitrariness of powers

public authorities prevent judicial bodies from arbitrarily departing from precedent

own. Consequently, the principle of equality is violated, in its aspect of rights.

right to equality in application of the Law, when the same body, existing identity

substantiality of the supposed fact prosecuted, departs from the criterion maintained in

previous cases, without a sufficient and reasonable justification to justify

than the new position in the interpretation and application of the same legality.

In this sense, as we have commented, the Agency has known since 11/21/2019

that the claimant is unaware of the transfers made in her name and is unaware of the

purchases made with your card, in addition to not remembering the current account

go and payment of said dispositions (fact five), also collects information from a

bank entity (albeit erroneous) on the checking account at the time of the confirmation.

treatment (which was subsequently modified) in which it is indicated that the

Claimant's account was canceled prior to card activation (made sex-

to).

Although the Agency, contrary to what it has done on other occasions, decides not to transfer
give this information to my principal. However, in other procedures, the Agency
decides to use its competences in the area of cooperation with those responsible, who
non-sanctioning, thus it is worth mentioning as an example the procedure No.: E/02620/2019 and
No.: E/07245/2019 (…)".

6.- Of the diabolical test. From the principle of presumption of innocence (in dubio pro reo)

Thus treated the facts that occurred in the present procedure, it is possible to apply to the pre-
In this case, the principle of presumption of innocence of article 130.1 of the Law
30/1992.

As stated by the Supreme Court (STS 10/26/98) of the right to the presumption of
innocence (...) and the judgment of the Constitutional Court of 02/20/1989 (...).

These same arguments are applied by the Spanish Agency for the Protection of
Data in its Resolutions, citing Resolution No. R/01191/2009 (...) and the experience
tooth No.: E/04128/2017 (...).

In any case, it is mandatory to review in relation to the principle of presumption of innocence
which, due to its specialty, are applicable to Sanctioning Administrative Law.
cation, with some qualification, but without exceptions, the inspiring principles of the or-
criminal offense, the full virtuality of this principle of presumption of innocence being clear.
cence. In this sense, the Constitutional Court, in Judgment 76/1990 (...).

According to this approach, it must be borne in mind that they can only be saints
tioned for facts constituting an administrative infraction, natural persons and
legal entities that are responsible for them by way of fraud or negligence. Likewise,

It must be taken into account, in relation to this principle of presumption of innocence,

that article 53.2.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Policy of Public Administrations, includes this principle, saying that the in-

interested in an administrative procedure of a punitive nature have rights

cha a: “To the presumption of non-existence of administrative responsibility while

the contrary is proven”.

In short, the application of the principle of presumption of innocence prevents imputing a

administrative infraction when the existence of

supporting evidence of the facts that motivate this imputation. (…)”

7.- Of the principle of legitimate expectations. Criteria applied by the AEPD in previous re-

solutions

From this understanding of things, constitutional jurisprudence holds that

the principles of legal security and interdiction of the arbitrariness of powers

public authorities prevent judicial bodies from arbitrarily departing from precedent

own. Consequently, the principle of equality is violated, in its aspect of rights.

right to equality in application of the Law, when the same judicial body, existing

substantial identity of the supposed fact prosecuted, departs from the criterion maintained

in previous cases, without a sufficient and reasonable justification that

justify the new position in the interpretation and application of the same legality.

Likewise, the principle of protection of the legitimate expectations of individuals in the

scope of public law limits the activity of public power, to prevent it from

destroy without sufficient reason the confidence that its action may have created in the

citizens about the stability of a certain legal situation. Therefore, there is

violation of said principle when the Tax Agency initiates this procedure.

lie, given the exposed antecedents. In this regard we bring up the

Grant No.: E/01818/2019, (...).

8.- In relation to the infringement of article 15 RGPD. Of the right of access.

In the basis of law III of the agreement to initiate this procedure, the

Agency details what are the facts that give rise to the violation of article 15

RGPD and that, in summary, are: 1) The claimant on 06/24/19 sends a letter

certificate where you request access to information about your personal data.2)

On 09/17/19, this Agency notifies the entity claimed of the international complaint

posted by the claimant. 3) My client provides one of the conversations held

you give on 05/17/2019 with the claimant who … "?" 4) In this sense, also my re-

submitted provides a burofax sent on 10/17/2019 and a certified email with all the

information and documentation held by my principal.

The Agency concludes that "In the present case, the claimant, by means of a certified letter

date dated 06/24/19, requested the respondent entity to inform, in writing, the

postal address indicated, (not verbally or by electronic means), of all the information

information regarding your personal data, making use of the right of access that

attended. However, the claimed entity did not proceed to send the interested party the information

training requested until 10/17/19 (3 and a half months after requesting it)

do), and after receiving, from this Agency the notification of the claim."

Consequently, the Agency understands that my client has infringed article 15

RGPD and is sanctioned with article 72.1.k) of the LOPDGDD, considers

very serious, for purposes of prescription, "The impediment or obstruction or failure to

reiterated attention to the exercise of the rights established in articles 15 to 22

of the Regulation".

From the wording of article 72.1.k) of the LOPDGDD, it is inferred that the infraction is the impediment or obstruction (what my client has not been able to carry out because in fact has answered the claimant) or for the repeated non-attention of the exercise of law. "Reiteration" is defined in the dictionary of the Royal Academy of Language What: (…)

Although, as evidenced by the facts established in the agreement to start the sanctioning procedure, the occasions in which my client has been delayed in the response to the claimant, it has been only 1, there has been no repetition.

It can thus be deduced, in relation to the facts proven by the inspection and supported by the documents attached here, that the opening of this sanction procedure tioner breaks the principles of typicity and legality and that, therefore, given the evidence submitted, this administrative act must be archived due to absence responsibility of my client.

The principle of typicity is a guarantee of the legal certainty to which the citizen, to know at all times and with certainty, the behaviors that constitute yen an administrative infraction, and at the same time, the sanction that they carry. For his part, in accordance with the principle of general legality of Law, expressly recognized by the CE (arts. 9.1 and 103.1), which implies the full submission of the Administration the law and the Law, the subjection of the Administration to the normative block, the This sanctioning procedure lacks any normative justification. (STC

145/2013)

The performance of my client does not conform at all to the typified element because: 1)
It has not prevented the claimant from exercising her rights. 2) Nor has it
has hindered, it is more maintains telephone contact with it to clarify
your doubts and advise you on the appropriate processes to solve it. 3) Nor has he left
to answer your exercise of right, even if it is later than the indicated period, nor
much less has it reiterated any behavior of non-response.

9.- Of the prescription of the infraction

Being thus the facts previously related, in the hypothetical case that my man-
would have committed an infraction, it would be the one established in article 74.c) In-
fractions considered minor of the LOPDGDD, which indicates that: “c) Not responding to requests
conditions of exercise of the rights established in articles 15 to 22 of the RGPD,
unless the provisions of article 72.1.k) of this law were applicable”

Although, taking into account that the prescription of minor sanctions is within the term
of 1 year and that my client answered on 10/17/2019, the present infraction that, insist-
mos my principal has not committed, it would have prescribed on 10/17/2020 or with the extension of the
state of alarm, on 05/12/2020.

The appropriate procedure for the lack of response to an exercise of the right of
according to article 63 LOPDGDD is a Tutela procedure, at least to give
the possibility to my client to correct any error, which he did as soon as he had
knowledge that the claimant is complaining about her lack of formal response.

And we emphasize that the infraction that the agency imposes on my client is the lack of a
formal requirement to the attention of their right, since the Agency itself indicates it to the in-
to state in legal basis III that: “In the present case, the claimant, me-
By means of a certified letter dated 06/24/19, he requested the entity claimed to inform him
mara, in writing to the postal address indicated, (not verbally or by electronic means)

unique), of all the information related to your personal data, making use of the right

access cho that assisted him. However, the claimed entity did not proceed to send

to the interested party the requested information until 10/17/19 (3 and a half months after

having requested it), and after receiving, from this Agency, the notification of the claim-

tion."

Although, neither the RGPD nor the LOPDGDD says anything about the formality in the lack of answer.

neither the Agency (nor the claimant itself) indicates anything about the accreditation

of my client to the conversations held with the aforementioned claimant for the

resolution of your case.

10.-Of the lack of motivation. From the principle of proportionality

This party must state that, at the opening of this proceeding, it does not find

any motivation on the part of the Administration in which it can prove or

argue their defense, which leads to being framed in a situation of indepen- dence

fension. In this way, this party understands, saying this with all due respect and only

in terms of defence, that the Administration's action violates article 9.3.

CE due to the lack of reasons or causes on which it is based when applying the standard.

The art. 9.3 of the CE enshrines the principle of interdiction of the arbitrariness of the

public duties. An action can be considered arbitrary when it lacks justification.

cation. The Constitution therefore requires that all actions by public authorities be

present supported by justifying reasons that serve as its foundation. From it I know

At least two important consequences follow:

11.- Subsidiary request. Reduction of penalty amounts. Application of the principle

point of proportionality. Attention to the circumstances of the case.

Subsidiarily and despite the fact that this party does not agree with the infringements

and sanctions indicated by the Agency, requests the reduction to the minimum degree of the

sanctions and corrective measures established in article 76.2 of the LOPDGDD, of

in accordance with the provisions of article 83.2 k) RGPD, in addition to the indications

given by the Agency the following:

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

violation. Well, there is no police report, nor has the claimant put

contact my represented to be able to know your doubts or to be able to request

further explanatory information.

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

infringement, which cannot be attributed to the absorbing entity. And so it has happened with the

transfer of credits from Aktiv Kapital to PRA Iberia.

3) g) Have, when not mandatory, a data protection delegate. Y

so my client has a data protection officer whom the Agency doesn't even

ra has addressed.

On the other hand, and as we have indicated previously and based on the principle of equality

before the law, we request the application of article 58.2.a) RGPD by the Agency

consisting of warning my principal, as he has done in proceedings

sos previous that we have detailed in this writing:

"two. Each supervisory authority will have all of the following corrective powers

indicated below: a) sanction any person responsible or in charge of the treatment

with a warning when the planned processing operations may infringe

the provisions of this Regulation". To the above facts are applicable the

following GROUNDS OF LAW (...)

12.- WITNESS request:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

21/47

Written responses by legal persons (article 381 LEC). that under cover

of article 381 of the Law of Civil Procedure that requires commercial companies:

A) Santander Consumer, to rule on the following issues: 1.

That they provide the current account in which the amounts related to the

tion to this case. 2. That they provide the current account and the details of the transfers

of € XXX and € XXX which were subsequently transferred to my principal.

B) To the banking entity(ies) resulting from the previous test, so that they can rule on

cie on the following questions: 1. If you know the current account(s) contribute(s) and

that identify their ownership. 2. If credit card payments and charges occurred

credit of this case. 3. Ownership and concepts of the transfers of XXX and

XXX euros reported in the facts of this proceeding.

ELEVEN: On 06/01/21, the respondent entity was notified of the proposed

resolution, in which it is proposed that, by the Director of the Spanish Agency for Pro-

Protection of Data proceed to sanction the entity PRA IBÉRICA, for infraction of

article 6.1) of the RGPD, regarding the lack of diligence in the processing of data

of the claimant with a fine of 30,000 euros (thirty thousand euros) and for in-

section of article 15 of the RGPD, regarding the lack of diligence when facilitating

restrict access to information on the personal data of the claimant, with a fine

of 30,000 euros (thirty thousand euros).

TWELFTH: On 06/15/21, the respondent entity sends this Agency a written

of allegations to the proposed resolution, in which it indicates, among others:

“FIRST.- Ratification of the first pleadings brief: State that my representative

sitting is ratified in everything indicated in the first brief of allegations of the expert

reference tooth, reiterating its content.

SECOND.- Of the Infraction of article 6.1.RGPD: Of the legality of the treatment. I-

new guys. Of the current account in which the payments were debited and of the proof

of the payment made by the complainant.

More evidence has been requested and attempted than has been presented, but to date

At this time he has not been able to contribute, although he has been able to collect them and contributes them in the

present writing. In this sense, it is provided as DOCUMENT No. 1, certificate of

the assigning entity, Santander Consumer, which proves that the complainant changed the

current account to the entity Caixabank.

This new information proves that the checking account charged to the receipts was not

Ibercaja, but a Caixabank current account, so the evidence collected is

complete and therefore it is necessary to complete it with this new information.

For his part, my client has been able to obtain the transfer receipt for €250

made by the complainant herself. As proven in DOCUMENT No. 2 in di-

supporting document appears as "ORDERER" of the transfer, the claimant itself

and the current account from which the transfer comes is from an account with

Unicaja current (previously Caja de España de Inversiones).

In this sense, it should be clarified that the fact that the complainant appears as

THE ORDERING PARTY of the transfer necessarily implies that he has had to identify

be made in the bank from which the transfer was issued, that is, from

Unibox. Most likely, the complainant herself went to the bank

to, once identified with your DNI, order the transfer from your account

Unicaja to my client's account.

Thus, it is not a cash deposit or a card payment, but rather a transfer.

difference between checking accounts which means that THE ORDERING PARTY HAS TO IDENTIFY

TIFY. This Agency rejects the version indicating, among other reasons, that: “No

it is true, as the entity complained against affirms that, “(…) the complainant in no way

ment has denied the debt (...)”, since the claim brief begins with the following

following statement: “PRA IBERIA, is claiming a debt from me for a contract that

I don't know Until 2013 third parties have been making transfers

bank accounts in my name (…)”. It should be clarified that my principal was maintaining

conversations with the complainant to resolve her doubts and at no time

denied the debt and in relation to bank transfers made by third parties, it is

document No. 2 attached, which reliably proves that the ordering party

of the transfer of XXX € made to my client's account, was made by the pro-

whistleblower.

This new evidence provided is of vital importance to prove the veracity of the

allegations of this party and being information that concerns the complainant and

your bank, it is thus necessary to extend the trial period to be able to

may request information from CaixaBank to confirm that the purchases and dispositions

transactions made with the Unión Fenosa credit card from 09/09/02 to

1/12/06 have been charged to the account ***XXXX and that the entity Uni-

box that it was the complainant herself who ordered the transfer from her co-

Current to my client's account (***XXXX) on 06/27/201.

THIRD.- Of the legality of the treatment and the diligent action of my client.

Compliance with the criteria established by the AEPD.

My principal has accredited with the documentation that he has provided in the file

that he has acted diligently because, although he cannot provide the contract signed

by the complainant, as the Agency insists, since it was carried out by telephone.

nica, in accordance with current legislation, what it does provide is:

1) Notarial certificate that certifies the assignment of the credit signed with the assignor (San-

Tandem Consumer).

2) Confirmation from a Santander Consumer representative that the telephone operation

nica was contracted correctly, thus signing the approval of the concession of the

card.

3) Movements that prove the use of said card, that it is activated on the 9th of

September 2002 by means of a payment at the Navalcarnero service station –

Cedip. For €39 and the card continues to be used until it is canceled due to non-payment.

4) The extracts of the aforementioned card from 01/09/2002 to 08/02/2006 prove

the use of the card up to 56 times for consumption for an amount greater than XXXX

euros, in the period of more than 3 years in which it has been active, although the ce-

dente only certifies the debit balance of receipts from 02/01/2006 for an amount

principal (without interest) of XXX euros, with which there have clearly been payments

on the card charge account.

5) The Santander Consumer certificate accredits the receipts pending payment, this

are, receipts numbers 41 to 51 for a total nominal amount of XXX euros, being the

the first of them on 02/01/2006 and the last of them on 12/01/2006. That is, they paid

the receipts for the use of the credit card from 1 to 40 without any type of incident.

6) With the new evidence provided, it is proven that the account charged to consumers

The card's account was a CaixaBank current account and not an Ibercaja account.

7) That the complainant has made transfers from a checking account to her

name of the Unicaja entity.

Given the above evidence provided, this party understands that the employer has accredited

use of reasonable diligence in the accreditation of the credit in the name of the complaint

and, especially, in document No. 2 provided together with this document, it is

proves that the complainant knew of the debt because on 06/28/2011 she ordered a transfer

from your Caja de España de Inversiones (today UNICAJA) account.

Therefore, this party understands that the documentation presented proves that my maintenance

danante has diligently complied with the data protection regulations and likewise

document 2 proves that the complainant's knowledge of the existence

of the debt was earlier, in 2011, since it ordered the transfer of the amount of €XXX

to the account of my principal, thus said document contradicts what is indicated in the pro-

resolution that states that: “In the case at hand, the claimant, when

Do you know that the entity PRA IBERICA is claiming a debt

that it does not recognize as its own, it gets in touch, on 06/24/19, with the entity requesting

having access to your personal data and denouncing that the debt is yours and this,

as responsible for the processing of personal data,…”

It should be clarified that the complainant NEVER filed a complaint at the police station of the sub-

put “impersonation” that he suggests in his writings and also my maintenance

Dante was clarifying with her the doubts that he raised precisely trying to

clarify the use of the card, the paid and unpaid fees, the deposits made,

etc., although at no time did he indicate that there was an alleged "impersonation of

personality" or fraudulent use of your data by third parties.

Even so, to the best of my client's knowledge, the complainant has not presented the opportunity

a complaint to the police station so that it can be clarified if indeed third persons hi-

received income in his name and this despite the fact that all the documentation was sent to him

crediting the debt. It is essential for this part to prove the veracity of what happened.

ordered and this to demonstrate his diligence because as far as my client knows, the de-

advertiser made a transfer from his account by previously identifying himself in

his bank, thus knew of the existence of the debt and did not deny it in the

conversations held to clarify them. Despite the above, my man-

dante unilaterally decides to annul the file following the criteria established

by the Agency in its resolutions No.: E/01202/2016 FILE RESOLUTION

OF PERFORMANCES; RESOLUTION OF FILE OF ACTIONS of the No.:

E/01178/2020 and, file No.: E/00712/2019 with its also FILE resolution

OF PERFORMANCES.

In these cases, the investigative actions are archived because those responsible

of treatment acted in the belief that the person hiring was who he said he was. Ade-

Moreover, in these cases, the complainants filed a complaint with the Police for su-

identity planting using your personal data, although in this case it did not happen.

thus, although my client prefers to make the decision to close the file so as not to

worsen their situation because being affected by partial tests supposes a serious

break to the position of this part. Fortunately and despite the antiquity my

principal has been able to gather evidence that exonerates it from liability in the pre-

feel procedure. But also in procedure No.: E/01462/2019, with results

FILE RESOLUTION, in which the same previous criterion is applied even

when the entity under inspection could not provide a copy of the signed contract,

however, this Agency considered its action adequate in the cancellation of the debt.

da, as my client has done when he learned of the alleged identity theft.

identity of the claimant and without, until the moment of the agreement of the beginning of the procedure

sanctioning procedure in which this Agency reveals it, could have done so

because he didn't know.

This part does not share the judgment made by this Agency on the Foundation of Right

II, section 2 by indicating that: “Secondly, a clear lack of due diligence

demonstrated by the claimed entity, in breach of the principle of accuracy

tude (article 5.1d.), since reasonable measures have not been adopted to ensure that

prioritize or rectify without delay the personal data that are inaccurate with respect to

for the purposes for which they are processed, and this is so, because when the entity received the letter

of the claimant on 06/26/19, requesting access to information and putting in

doubt the veracity of the debt, the entity, far from showing due diligence, did

ignoring said request, continues to demand payment of the debt and it is not until

After receiving the request from this Agency, on 09/17/19, when the entity, me-

via burofax sends, dated 10/16/19, the information that the claimant was requesting.

citing from 3 months and 20 days ago.” There is no evidence to confirm

this body imputes to my client. Since the complainant raises

doubts about the existence of his debt, my client has conversations with

the same to clarify your doubts, not to claim the debt, nor is it true that my

client "ignore" your request, quite the opposite, my client

takes your complaint seriously and gave it a personalized treatment.

Therefore, this part does not understand why the Agency claims without any evidence that the

support that my principal claimed the debt and ignored the claim of

the complainant when it is not true, although it is convenient to argue a

lack of diligence that did not occur on the part of my client and thus without any proof

The Agency can state categorically that "…it cannot and should not be taken into

consideration the allegations made by the entity complained about its presumed actions

diligent action in this case.", which ultimately and in the absence of evidence what he wants to de-

say is that "my client's version is not believed" although not all the actions are weighted.

acts carried out by my principal, such as the remission of the documentation in the mo-

moment in which he perceives his error and the annulment of the debt in the moment in which he knows

ce that the complainant affirms that they have presumably supplanted her identity in the

payment of its debt and this even taking into account that the complainant does not provide the pre-

accepted police report.

FOURTH.- Of the prescription of the alleged infringement of article 6.1.RGPD in light

of the new evidence provided.

The new evidence presented, that is, the proof provided as document No. 2

in which the complainant orders a transfer of XXX € to the accounts of my representative.

sitting, shows that: 1) At least since 06/28/2011 the complainant knew the

debt and its claim by my client, so he orders the transfer from his account

from Unicaja to my client's account.

2) In the concept of the transfer, the complainant indicates: "*** CONCEPT.1" that corresponds to the numbering of the file that is being claimed and the five first digits of your ID.

3) As previously explained, to carry out a transfer order from an account to a third party, it is essential that the payer identify himself with his DNI.

Being the infraction classified as very serious by article 72.1.b) of the LOPDGDD ("The processing of personal data without the concurrence of any of the conditions of license treatment established in article 6 of the RGPD") and being the term of prescription of 3 years, by virtue of what is established in article 83.5, it is accredited with the new documentation provided that the infraction has prescribed.

FIFTH.- Of the principle of presumption of innocence (in dubio pro reo) in the assessment of the evidence already presented and the new evidence provided. The tests above provided are completed with the present ones and from all of these they certify that the Complainant changed his current account for the activation of his account card from Ibercaja to that of CaixaBank.

Likewise, it is proven that the complainant herself identified herself and made a transfer payment to my client's account from the Unicaja entity. This is how the facts were treated occurred in this proceeding, the principle of presumption of innocence of article 130.1 of Law 30/1992 establishes that "Only will be sanctioned for acts constituting an administrative infraction the persons physical and legal entities that are responsible for them even by way of simple non-observance."

The Sentence of the Constitutional Court of 02/20/1989 indicates that "Our doctrine and criminal jurisprudence have been maintaining that, although both can be considered as manifestations of a generic favor rei, there is a substantial difference between the right to the presumption of innocence, which develops its effectiveness when there is

an absolute lack of evidence or when the tests performed do not meet the procedural guarantees
sales and the jurisprudential principle in dubio pro reo that belongs to the moment of va-
appraisal or appraisal of evidence, and who has to judge when that activity concurs
indispensable evidentiality, there is a rational doubt about the real concurrence of
the objective and subjective elements that make up the criminal type in question.”

These same arguments are applied by the Spanish Agency for the Protection of
Data in its Resolutions, citing as an example, Resolution No.
R/01191/2009, of May 25, 2009, in which applying the previous sentences
resolved: “Ultimately, those principles prevent imputing an administrative infraction
goes when proof of charge accrediting the
facts (...) applying the principle "in dubio pro reo" in case of doubt regarding a
concrete and determining fact, which obliges in any case to resolve said doubt of the
most favorable to the interested party “In file No.: E/04128/2017, RESOLUTION
TION OF FILE OF ACTIONS, the Agency itself applies this criterion indicating-
do: In any case, it is mandatory to review in relation to the principle of presumption of
innocence that the Sanctioning Administrative Law, due to its specialty, is of
application, with some nuance but without exception, the inspiring principles or-
criminal offense, the full virtuality of this principle of presumption of innocence being clear.
cence.

The Constitutional Court, in Judgment 76/1990, considers that the right to pre-
the assumption of innocence entails “that the sanction be based on acts or means of proof

charges or incriminators of the alleged conduct; that the burden of proof
corresponds to the person who accuses, without anyone being obliged to prove their own innocence;
and that any insufficiency in the results of the tests carried out, freely va-
approved by the sanctioning body, it must be translated into an acquittal pronouncement."
According to this approach, it must be borne in mind that they can only be saints
tioned for facts constituting an administrative infraction, natural persons and
legal entities that are responsible for them by way of fraud or negligence.
Likewise, it must be taken into account, in relation to this principle of presumption of
innocence, that article 53.2.b) of Law 39/2015, of October 1, of the Procedure
Common Administrative Law of Public Administrations, includes this principle, saying
that those interested in an administrative procedure of a punitive nature
have the right to: "To the presumption of non-existence of administrative responsibility
Until the contrary is proven".
In short, the application of the principle of presumption of innocence prevents imputing a
administrative infraction when the existence of
supporting evidence of the facts that motivate this imputation.
SIXTH.- Of the bankruptcy of the principle of typicity.
Violation of article 15 classified as serious for not responding in writing to the claim.
mation of the complainant. In the basis of law III of the agreement to start the
In this procedure, the Agency details the facts that give rise to the in-
fraction of article 15 RGPD and that, in summary, are: 1) The claimant dated
06/24/19 sends a certified letter requesting access to the information that is
about your personal data. 2) On 09/17/19, this Agency notifies the entity re-
claimed the complaint filed by the claimant through a transfer file
do of claim and request of information. 3) My client provides one of the con-
conversations held on 05/17/2019 with the claimant that demonstrates that she is

clarifying the complainant's doubts, that is, before she sent the certified letter

each. 4) Likewise, my principal sends an informative letter dated June 12, 2019

as evidenced on page 4 and 16 of the administrative file. In said letter,

identifies the origin of the debt and its breakdown. 5) In this sense, also my re-

submitted provides a burofax sent on 10/17/2019 and a certified email with all the

information and documentation held by my principal.

This Agency considers, assessing the evidence, that: "Well, in this case, the

entity complained against did not proceed to provide the complainant with the requested information until

ta 3 and a half months after requesting it with the aggravating circumstance that it was made,

even a month later, knowing that the claimant had put the facts in

knowledge of this Agency. “That is why, it is considered that the performance

of the entity in this process is in accordance with the typified element established in the

article 72.1.k of the LOPDGDD therefore, has avoided contesting the exercise of rights

claimant's right and therefore has prevented the claimant from knowing, for

written, all the information that the entity had about your personal data, answer

only after learning that the facts had been brought to light.

of this AEPD. “It should be noted that the point: “3) My principal provides one of the

conversations held on 05/17/2019 with the claimant who … “, is in-

complete in the pleadings brief so it is impossible to take it into consideration

for a correct answer. And it is true, my client answers late to the claim-

tion of the complainant when understanding BY ERROR that it was already being clarified

through telephone conversations but it cannot be judged that this error im-

per se implies an IMPEDIMENT or OBSTACULIZATION conduct, since it must clarify

It should be noted that there has been no requirement from the Agency nor has the complainant requested

altered your request, my principal simply perceives his error in the request letter.

amount of information sent by this Agency as it is the first news received

after the request of the complainant and by which he realizes the error made.

From the wording of article 72.1k) of the LOPDGDD, it is inferred that the infraction is the

impediment or hindrance -what my client has not been able to carry out because

in fact, it has answered the complainant and has proceeded to answer as soon as it has

received his error- or by the repeated non-attention of the exercise of right -not mediating in

In this case neither reiteration by the complainant nor requirement by the Agency.

"Reiteration" is defined in the dictionary of the Royal Academy of Language as: "1.

F. Action and effect of reiterate." For its part, reiterate, according to the dictionary, is defined

like: "1. tr. Say or do something again. U.t. c. prnl." "Impediment" is defined in the

dictionary of the Royal Academy of Language as: "1. tr. Obstacle, pregnancy or es-

nuisance for something." For its part, "Hindering" is defined as the action and effect of

block. Which, in turn, is defined as "1. Prevent or hinder the achievement of

a purpose."

The fact is that my principal realizes the error in the absence of a reply

when it receives the request for information from the Agency, for this reason it proceeds to collect the

documentation of the debt and answers both the Agency and the complainant, in-

seeing all the documentation in order to correct your error and without the need for me to

request or reproach and this cannot be classified as aggravating, since the

request of the Agency is the first time that my principal has knowledge

the error committed, an error that he recognizes in his own reply to the complaint.

and apologizes for it, it does not seem that this way of proceeding implies

neither hindrance nor hindrance.

My principal understands that the aggravating circumstance would be in any case if he persisted in not re-
send you the documentation or if you receive a new request from the complainant or a
request of the Agency, but it was not like that, there was no request or repro-
che, my principal proceeds to answer the complainant on the first occasion in which
that you are aware of your mistake and as soon as you collect the documentation of the debt,
apologizing for the mistake made.

This party understands that there is no evidence whatsoever that proves that it has been hindered or
prevented the exercise of rights of the complainant and thus considers that the qualification
of very serious of the Agency breaks the principles of criminality and legality. The beginning
typicity is a guarantee of the legal certainty to which the citizen is entitled,
to know at all times and with certainty, the behaviors that constitute an in-
administrative fraction, and at the same time, the sanction that they carry. Attending to the principle
principle of general legality of Law, expressly recognized by the Constitution
(arts. 9.1 and 103.1), which implies the full submission of the Administration to the law and the
Law, the subjection of the Administration to the normative block, the present procedure
sanctioning action lacks any normative justification.

SEVENTH.- Of the typification of the infraction and its prescription.

The facts previously reported, the only thing they show is that my client in
in the event that he had committed an infraction (because there is a tuition procedure)
fabric of rights that the Agency may have initiated in this case), would be the

established in article 74.c) Infractions considered minor of the LOPDGDD, which indicate

ca that: “c) Failure to respond to requests to exercise the rights established in the

Articles 15 to 22 of Regulation (EU) 2016/679, unless applicable

provided in article 72.1.k) of this organic law.” Although, taking into account that

the prescriptions of minor sanctions are within 1 year and that my principal

answered on 10/17/2019, the present infraction that, we insist, my principal has not co-

entered, it would have prescribed on 10/17/2020 or with the extension of the state of alarm, the

07/01/2021. In any case, the appropriate procedure for the lack of response to

an exercise of right in accordance with article 63 LOPDGDD is a procedure

Protection of Rights, at least to give my client the possibility to remedy

fix any errors. As we indicated in the previous pleadings brief, the sanctions

administrative acts are restrictive administrative acts of rights, since they are limited

individual liberty (as expressed by the STC 42/87, of April 9) for this reason it is

It is essential that the Administration proves whether the behavior of my client deserves

more reproach than the typified in the norm in attention to the security principles

legal and freedom (art. 25.1 CE).

EIGHTH.- Subsidiary petition.

Reduction of penalty amounts. Application of the principle of proportionality.

Attention to the circumstances of the case and the new evidence presented. Subsidy-

and despite the fact that this party does not agree with the infractions and sanctions

indicated by the Agency, requests the reduction to the minimum degree of sanctions and

corrective measures established in article 76.2 of the LOPDGDD, in accordance with

the provisions of article 83.2 k) RGPD. For its part, and based on the principle of equality

before the law, we request the application of article 58.2.a) RGPD by the Agency

consisting of warning my principal, as he has done in proceedings

previous ones that we have detailed in this writing: “2. Each control authority

troll will have all of the following corrective powers listed below:

a) sanction any person responsible or in charge of the treatment with a warning

when the planned treatment operations may infringe the provisions of the

this Regulation” For all the above, I PRAY THE INSTRUCTOR to have

do by presenting this pleadings brief admits him and taking into account what is in it

exposed, after the corresponding procedures, raise the Director of the Spanish Agency

Data Protection Law Resolution declaring non-responsibility

ity of my represented in relation to the facts that are imputed to him or, subsidia-

strictly the application of article 58.2.a) RGPD. FIRST ANOTHER I SAY that being

of interest of this party the clarification of the facts of the present procedure,

requests the extension of the trial period based on the new evidence provided by

this part and thus in accordance with what is specified in article 77 of the LPACAP, without

prejudice to subsequent expansion and provision of as many documents as deemed appropriate.

interest, the following are requested: PUBLIC AND PRIVATE DOCUMENTARY. Consistent

in which the documents of such nature are deemed to be reproduced and authentic.

you have on file.

WITNESS: Written responses by legal entities: A) CaixaBank, to

to rule on the following issues: To confirm the charges of the

purchases and withdrawals made with the Unión Fenosa credit card as

as stated on pages 48 and 49 of the administrative file in the name of the

complainant from September 9, 2002 to December 1, 2006. B) Uni-

box, to rule on the following issues: To confirm that it was the

complainant herself who ordered the transfer from her current account to the account

letter from my client on June 27, 2011, as evidenced in document No. 2 ad-

together with this letter. For this reason, I REQUEST THE INSTRUCTOR that by collecting

acknowledging and accepting the interest and request of this party in clarifying the facts,

the evidence presented is accepted and carried out if the Agency so judges in a

new probationary period ordering what is necessary for its realization.

THIRTEENTH: Of the actions carried out in this procedure, of

the information and documentation submitted by the parties, have been accredited

the following facts:

PROVEN FACTS

1º.- In the present case, from the process followed up to now, two

Suspected GDPR violations:

- On the one hand, the respondent entity is demanding the payment of a debt by the

use of a credit card, which the claimant denies having contracted,

Therefore, the entity could be carrying out an illicit treatment of the data

claimant's personal

- On the other hand, the claimant alleges that, having contacted

the entity that is now demanding the payment of the debt, (PRA IBERICA),

requesting to exercise their right of access to the information they possess about it,

has not received any type of official response in this regard, and they continue to demand

the payment of the debt that denies being yours, so the entity could have

committed an infringement of the RGPD by not allowing access to the claimant.

2º.- At the request of this Agency, the entity SANTANDER CONSUMER FINANCE,

S.A. stated that, on 10/04/2000, the claimant contracted, by telephone, a credit card

credit marketed jointly with the entity GAS NATURAL FENOSA, contributing

the contract sheet, which contains the personal data of the claimant and her

address, as well as the direct debit details, in an account belonging to

the IBERCAJA entity, but no other documentation is provided, such as

example, the contract signed by the claimant, a copy of the DNI, or the recording itself

phone, which could corroborate that the contracting of the credit card was

truly carried out by the claimant and not by a third party outside

that not even the contract sheet is signed by or authenticated by any

responsible.

This entity alleges in this regard that: "(…) given the age of the file, the

remaining documentation relating to the claimant could not be located (...)",

but it does provide several documents that, when compared to each other, are

contradictory:

-

-

Printout of credit card charges made since 09/09/2002

(card activation date), until 12/13/2004. There are no charges

after said date.

The banking entity certifies that the return of the receipts of

the credit card passed to collection, from the months of February to December of

year 2006 (one year later), for a total nominal amount of XXX euros, but

does not certify or send a printout of the charges made on the card in this

period, justifying only that: “that, in the contractual relationship of the

credit card there were several non-payments of the debts which originated

various recovery processes to the claimant”. Not existing, therefore,

evidence that charges were made on the credit card, nor in the year 2005

nor in the year 2006. Nor is it certified when the credit card was canceled.

credit.

- The subsequent sale of said non-payment is certified, on 04/30/08, to the company

AKITV KAPITAL INVESTMENT PORTFOLIO A.G.

3º.- In the debt assignment agreement between SANTANDER CONSUMER FINANCE and

AKTIV CAPITAL, made public on 04/30/08, contains, among other provisions, the

following clause, to take into account:

“[…] V. That the volume of the Loan Portfolio, the heterogeneity of the

Credits that make it up and, in many cases, their age and/or their

origin of any of the credit entities merged with the

Assignors make it impossible for them to guarantee that the Credit Data

always be complete or correct. In particular, the Sellers do not rule out

that some of the Loans that appear in the Loan Portfolio are not in

actually existing credits or legally enforceable by the Sellers or not

are transmissible, so all of them must be considered at all

effects such as doubtful credits. For the same reasons, the documentation

Physical information related to the Credits that the Assignors have does not

is not necessarily complete or exhaustive, and there may be no documentation

physical with respect to some of the Credits. The Assignee knows and accepts these

Characteristics of the Credits, the Data of the Credits and the

physical documentation related to the Credits.

1.2. Exclusion of liability of the Assignors: (...) Additionally, after

the meetings between the Parties and the due diligence process carried out by the

Assignee, he knows and accepts that the Assignors do not guarantee that the

Data of the Credits are complete and exact, and that some of the Credits

may not exist for any reason (including prior payment), not be

legally enforceable by the Sellers or have their transferability restricted

(…)".

4º.- On 01/12/15 the global transfer of assets and liabilities from the company was formalized

AKTIV KAPITAL PORTFOLIO AS, OSLO, BRANCH IN ZUG", broadcasting on

block all the portfolios acquired in Spain by universal succession of the first

entity in favor of "PRA IBERIA, S.L UNIPERSONAL".

5º.- The claimant received a letter dated 06/12/19, sent by PRA IBERIA,

SL where they inform her of the "debt she had with them as a consequence of the

acquisition of a debt portfolio from SANTANDER CONSUMER

FINANCE through AKTIV KAPITAL PORTFOLIO AS. The letter states that the

date of the first non-payment and that they claim it, was 02/01/06.

6º.- Given this information, on 06/24/19 the claimant sends a certified letter to PRA

IBERIA SL, requesting to exercise its right of access to the documentation held by the

entity, in relation to the alleged debt, since he denies that it is his.

7º.- On 08/07/19, the claimant submitted a document to this Agency where

informs that, "PRA IBERIA, is claiming a debt from me for a contract that

unknown. That until 2013 third parties have been doing

bank transfers in your name. That you have requested in writing, by telephone and

certified mail to PRA IBERIA information about this incident, but today,

I have not received an answer in any way, and they continue to claim the debt with

interests."

8º.- In view of the facts set forth in the claim and the documents

provided by the claimant, dated 09/17/19, this Agency directed requests

information to the entity PRA IBERICA, SL. and the entity SANTANDER CONSUMER

FINANCE.

9º.- On 10/17/19, the claimed entity sent a Burofax to the claimant

informing her, among other things, that: - “On September 9, 2002, the

credit card in your name. - That they received two transfers whose origin

was a Santander Consumer account for payments made but that cannot be

indicate the origin of said transfer because they did not occur directly in their

accounts”.

10º.- Required from the entity IBERCAJA BANCO, S.A. to identify the owner of the

checking account where the credit card expenses were charged, it certifies

that said account remained open from 06/29/2000 to 12/21/2001,

claimant's name.

11º.- Of all the documentation and information compiled in this file,

The following circumstances stand out:

a).- The current account opened in IBERCAJA, where the receipts were uploaded

of the credit card was open only from 06/26/2000 to

12/21/2001, in the name of the claimant.

b).- On 09/09/2002 (9 months after the account was canceled in

IBERCAJA) the credit card was activated at the SANTANDER bank

CONSUMER, in the name of the claimant, including in the direct debit

bank the account opened at the time in IBERCAJA, which was already closed and

therefore out of use.

c).- The banking entity SANTANDER CONSUMER, only justify

charges on the credit card since 09/09/2002 (date of activation of the

card), until 12/13/2004. It does not justify charges after that date,

Nor does it justify when he proceeded to cancel the credit card.

d).- Notwithstanding the foregoing, SANTANDER CONSUMER affirms that the date of

first default was 02/01/2006 and the date of the last default was 12/10/2006,

but it does not justify the charges made in this period of time. These

Non-payments are produced 5 years after the account has been canceled

current in IBERCAJA.

e).- The claimed entity (PRA IBÉRICA) affirms that it received two transfers

of SANTANDER CONSUMES, which indicated having received them in the name of the

claimant, (dated 06/16/2008 for XXX € and dated 06/28/2011 for XXX

€.) but cannot justify their initial origin since they were produced

from the entity SANTANDER CONSUMER. For its part, the entity

SANTANDER CONSUMER affirms that: “given the age of the file, the

remaining documentation relating to the claimant could not be located,

since the claims derived from it are found, at the

date, prescribed”, therefore, it cannot be ensured that the transfers

made to pay the charges on the credit card were made

truly by the claimant as it denies.

12º Of the documentation provided in the period of allegations to the proposal of

resolution follows:

a).- In the period of allegations to the proposed resolution, the entity claimed,

(PRA IBERICA) presents a certificate issued by the entity SANTANDER CONSUMER

FINANCE, in which the following is stated verbatim:

“That, on April 30, 2008 and before the Madrid Notary Public, D. B.B.B.,

under protocol number XXX, the aforementioned credit right was assigned with

the operation number ***OPERATION.1 in favor of Aktiv Kapital Portfolio In-

clothing, A.G. (subsequently AKTIV KAPITAL PORTFOLIO AS, OSLO, SU-

CURSAL EN ZUG and currently PRA IBERIA, S.L.U.); company that holds the

current right as legitimate creditor of the assigned debt.

SECOND.- That, according to information contained in our systems, in the

credit operation number ***OPERATION.1, whose personal data consists

so currently anonymized, they appear as the latest address data

bank the following: Bank ***BANCO.1 Agency...: XXXX MOSTOLES -

***ADDRESS.1: ****XXXX. These data were provided by the client

by phone to activate your card.

Previously, at the time of hiring, that is, on 4/10/2000, the

current account provided by the client was the following: ***7095 corre-

relative to the entity Ibercaja.

THIRD.- That there is a payment from the client of the number of operations

***OPERATION.1 dated 05/27/2008 for an amount of XXX € which was

transferred to PRA IBERIA, S.L.U.

And for the record for the appropriate purposes, I issue this certificate in

Madrid on June 11, 2021".

It also presents a transfer receipt received at the SANTANDER entity

whose outstanding data are: Date: 06/28/2011; Originator: A.A.A.; Entity Order-

nante: CAJA ESPAÑA DE INVERSIONES,C.A; Concept: NUM.REF. ***REFERENCE-

CIA.1 ;Amount: XXX euros; Beneficiary of the transfer: B. Santander

In this transfer receipt, there are several important data to take into account:

ta in this case:

a).- The references indicated in the "concept" section do not agree: for

one part, the credit reference that was transferred from SANTNADER FINANCE

CONSUMER to the entity AKTIV KAPITAL PORTFOLIO is identified with the

code "XXXXXXXX", while the reference indicated in the concept of the

transfer made by the claimant to Banco de Santander is, "XXXXXXXX",

differing both references in the digit "Q" and "K".

b).- Neither in the certificate presented by the claimed entity, of the entity

SANTANDER FINACE CONSUMER, nor in the receipt of the transfer made

by the claimant to the entity Banco Santander, nothing is indicated that corroborates

that the claimant is the debtor of the non-payments made on the credit card

credit in 2006.

c).- As indicated in the transfer receipt, the claimant made it to fa-

favor of the entity B. Santander and not the entity SANTANDER CONSUMER FI-

NANCE (entity that issued the credit card) nor to the entity AKTIV KAPI-

SUCH PORTFOLIO.

FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

34/47

I- Competition.

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

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in

the art. 47 of LOPDGDD.

II- Response to the allegations to the Resolution Proposal.

The joint assessment of the documentary evidence in the procedure brings to

knowledge of the AEPD, a vision of the denounced action that has been re-

reflected in the facts declared proven above reported. However, about the

allegations presented by the claimed entity, the following must be indicated:

"Of the legality of the treatment. New facts. From account

A.- Second point:

current in which payments were debited and proof of payment made

by the complainant":

In order to fully respond to this allegation, it should be remembered that, throughout

of the procedure it has been established that:

1º.- The entity SANTANDER CONSUMER FINANCE, S.A. stated that, on 04/10/2000,

the claimant contracted, by telephone, a credit card marketed jointly

with the entity GAS NATURAL FENOSA, providing, at the request of this Agency,

the contract sheet of said card, which contains the personal data of the

claimant and his address, as well as the direct debit details, in an account

belonging to the entity IBERCAJA, but without the signature of the claimant who value the document. Nor is any other documentation provided, such as, example, a copy of the DNI, or the telephone recording of said hiring, which could corroborate that the contracting of the credit card was effectively carried out by the claimant.

2º.- As justification for the above, the entity SANTANDER CONSUMER FINANCE alleged to this Agency that: "(…) given the age of the file, the remaining documentation relating to the claimant could not be located (...)", although if provides a list of the charges made on the credit card, in the period from 09/09/2002 (card activation date), until 12/13/2004.

3º.- The entity SANTANDER CONSUMER FINANCE states later that, there was the return of credit card receipts passed to collection, of the months of February to December 2006, for a total nominal amount of XXX euros, but not certifies or sends a printout of the list of charges made on the card in said period, that is, from 02/01/2006 to 12/31/2006.

The entity SANTANDER CONSUMER FINANCE did not provide any proof that charges will be made on the credit card (listed with the date of charge, the amount and the commercial establishment), of the year 2006, where it affirms that the unpaid, as it proves that charges were made during the years 2002 to 2004.

4.- SANTANDER CONSUMER FINANCE sold the card debt, the 452.59

euros, on 04/30/08, to the company AKITV KAPITAL INVESTMENT PORTFOLIO A.G.,

currently PRA IBËRICA SLU.

5.- In the period of allegations to the proposed resolution, the entity claimed,

(PRA IBERICA), presents a certificate issued by the entity SANTANDER

CONSUMER FINANCE, the text of which is indicated above.

From this last documentation provided by the claimed entity, data

to take into account for the resolution of the procedure:

a).- The certificate issued by the entity SANTANDER FINANCE CONSUMER,

textually indicates: “(…) credit operation number ***OPERATION.1,

whose personal data is currently anonymized (...)”, without identifying,

therefore, with name, surnames and DNI, in favor of the person who was granted the

indicated credit operation.

b).- The references indicated in the “concept” section do not agree: for

one part, the credit reference that was transferred from SANTNADER FINANCE

CONSUMER to the entity AKTIV KAPITAL PORTFOLIO is identified with the

code "XXXXXXXX", while the reference indicated in the concept of the

transfer made by the claimant to Banco de Santander, not to Santander.

der Finance Consumer, is, "XXXXXXX", differing both references in

the digit “Q” and “K”.

c).- Neither in the certificate signed by the entity SANTANDER FINACE CONSU-

MER, nor in the receipt of the transfer made by the claimant to the entity

Banco Santander, no reference is included to the claimant being the

debtor of the non-payments made on the credit card in 2006.

d).- As indicated in the transfer receipt, the claimant made it to fa-

favor of the entity B. Santander and not the entity SANTANDER CONSUMER FI-

NANCE (entity that issued the credit card) nor to the entity AKTIV KAPI-

SUCH PORTFOLIO.

Therefore, it is not possible, based on the documentation provided by the entity claiming

da, identify the claimant with the ownership of the credit card during the year

2006.

B).- Third Point: “

my principal. Compliance with the criteria established by the

Of the legality of the treatment and the diligent action of

AEPD.

In this section, the following points should be clarified:

- If it is true that there is a "notarial certificate that proves the transfer of credit

signed with the assignor (Santander Consumer)”.

- It is not true that “an agent of Santander Consumer certifies that the operation

telephone service was contracted correctly, thus signing the approval of

the granting of the card” because in the issued certificate it appears verbatim:

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“(…) Said data was provided by the client by telephone for the

activation of your card (…)”.

- Only the use of the card is accredited from the year 2002 to the

12/13/2004, and not until 02/08/2006 as alleged by the entity claimed, therefore

that it is not possible to affirm that there was use of the card during the year 2006,

as such and as defended by the claimed entity.

-

-

The entity does not certify any charge on the card for the years 2005 and 2006, only
mind certifies receipts pending payment (numbers 41 to 51) for an amount
total nominal value of XXX euros for the months of February to December of the year 2006.
Furthermore, if this were true, that the last certified payment on the card was the
02/08/2006, as stated by the claimed entity, it is not logical that they claim
then receipts returned from said date until 12/01/2006.
The Santander Consumer entity states that there are receipts pending
payment, that is, receipt numbers 41 to 51 for a total nominal amount of
452.59 euros, the first of them being on 02/01/2006 and the last one on
01/12/2006, but does not provide a list of the charges made on the card (fe-
date, amount and commercial establishment) just as it does in the charges made
tuated during the years 2002 to 2004.
Regarding the fact that the claimant now indicates that, “(…) Therefore, she understands this
party that the documentation presented proves that my client has complied with diligence
people with the data protection regulations (...) ", you must disagree with this
affirmation then, keeping in mind that, it is up to the claimed entity the burden of
prove that you have obtained the consent of the owner of the data subject to processing
or that, at least, it has adopted the necessary measures required in the
diligent compliance, both in the collection of personal data and in the
subsequent treatment of the same, (considering (42) of the RGPD), the facts here
brought verify a serious lack of due diligence of the entity claimed in the
compliance with its obligations in terms of data protection, since a compliance
Diligent behavior in the management of the processing of personal data would be to demonstrate
that the principles relating to the processing of data collected in article

ass 5 of the RGPD. Circumstance that in this case has not occurred.

Well, in the case at hand, not enough evidence has been provided to confirm

prove that the claimant was the one who actually signed the credit card contract.

nor by the entity SANTANDER CONSUMER FINANCE, which alleged at the time that:

“Given the age of the file, the remaining documentation related to the claimant

could not be located, since the claims derived from it are

are, to date, prescribed", nor by the entity PRA IBERIA, which alleges that the

The only data it has on the claimant are those provided by the entity SANTA-

NER CONSUMER FINANCE.

On the other hand, there is a clear lack of due diligence demonstrated by the regulatory entity.

claimed, in breach of the principle of accuracy (article 5.1d.), since no

have taken reasonable steps to promptly remove or rectify

Personal data that is inaccurate with respect to the purposes for which it is processed.

so, and this is so, because when the entity received the letter from the claimant on 06/26/19,

requesting access to information and questioning the veracity of the debt, the

entity, far from showing due diligence, ignored said request, followed

demanding payment of the debt and it was not until he received a request for this

Agency, on 09/17/19, when, by burofax, he sent the claimant the information

that she had been requesting it for 3 months and 20 days.

The entity claimed defends itself by indicating that: “(…) they have been in

contact with the claimant to solve her doubts (...)”. However, it does not provide

proof concludes of having agreed to what was requested by the claimant before receiving the

requirement of this Agency.

C).- Fourth point:

About the statute of limitations

These allegations cannot be taken into consideration because, as has been stated,

above, it has not been verified that the transfer made by the claim

on 06/28/2011 to the entity BANCO SANTNADER, outside for the payment of the debt

da in the credit card in question, because, first, the card is contracted

in a different entity, that is, in the entity SANTANDER CONSUMER FINANCE

and not in BANCO SANTANDER, together with the fact that the references indicated in the two do-

documents do not match. On the one hand, the credit reference that was transferred from

SANTNADER FINANCE CONSUMER to AKTIV KAPITAL PORTFOLIO the code appears

“XXXXXXXX”, while the reference indicated in the concept of the transfer that

made by the claimant to BANCO SANTANDER appears: "XXXXXXXX", differentiating

both references in the digit “Q” and “K”

On the other hand, according to the information and documentation in the file,

The first news that the claimant has of the doubt that they are claiming her is on 06/12/19,

when he received a letter sent by PRA IBERIA, S.L. where they inform her of the

presumed debt that he had with them as a result of the acquisition of a

debt portfolio from SANTANDER CONSUMER FINANCE through

AKTIV KAPITAL PORTFOLIO AS, filing a claim with this Agency on

08/07/19, so, in this case, the prescription of the infraction does not fit as alleged

the claimed entity.

D).- Fifth point,

“On the presumption of innocence of the claimed entity”,

Specify at this point that the extensive jurisprudence of the Supreme Court, as

to this fundamental principle, reaffirm to the claimed entity that said principle

imposes on the administration an action that could be summarized in, in the first place,

gar, in not pursuing generic complaints and avoiding investigations that, because they are sus-

tempted by claims lacking a minimum circumstantial support, could lead

I get unnecessary actions.

Therefore, the effectiveness of this principle unfolds when there is an absolute lack of

evidence or when those obtained are not charged or do not meet the due guarantees.

That is, in case of doubt, due to insufficient evidence, the accused will be favored,

(STC. 44/89, of February 20).

STS 1218/2004 of November 2 makes the following distinction between Presumption of

Innocence and the "in dubio pro reo" (Foundation of Law First):

(...) 1º A first of an objective nature that could be described as a verification of the existence

presence or not of true evidence, a phase in which in turn it would be necessary to differentiate two

different operations: a) specify whether, in carrying out the evidentiary proceedings,

have adopted and observed the basic procedural guarantees and b) specify whether, in addition,

Such evidentiary proceedings objectively suppose or contribute incriminating elements.

rivers or cargo.

2º A second phase of a predominantly subjective nature, for which it would be necessary to re-

to serve “strictu sensu”, the usual denomination of “assessment of the result or content

integral part of the evidence”, weighing conscientiously the various evidentiary elements,

on the basis of which the conscience of the Court is freely formed.

In the first phase the presumption of innocence would operate and in the second the principle “in dubio pro inmate”. Thus, the presumption of innocence unfolds within the framework of the charge evidence and supposes (STC. 31.5.85) that it is not the accused who corresponds to demonstrate pretend that he is innocent in the face of the accusation against him, but that it is who maintains it, who is responsible for accrediting the imputation through the corresponding evidence, (...) that can objectively be considered as evidence for the prosecution: (...)

For its part, the “in dubio pro reo” principle, presupposing the prior existence of the presumption of innocence, operates in the field of strict assessment of the evidence, of the appraisal of the demonstrative effectiveness by the Court of instance to who is responsible for his assessment to form his conviction about the truth of the facts (art. 741 LECr.). In this same sense, we find the SsTS 277/2013 of February 13, February, 936/2006 of October 10 and 346/2009 of April 2”.

This does not occur in the present case, because of the proven facts, indicated above-Mind, it follows the existence of conclusive evidence that proves the existence of infractions to the RGPD by the claimed party and, on the other hand, of the documentation information provided by the parties involved in the process gather sufficient information that enables a probative assessment of the infringement.

E).- Sixth point, “

On the bankruptcy of the principle of typicity”.

At this point, the respondent entity acknowledges that "(...) my client answers late to the claim of the complainant when understanding BY ERROR that it was already being clarifying through telephone conversations (...)", but alleges that "(...) but it cannot be judged that this error per se implies an IMPEDIMENT conduct or, OBSTACULIZATION because it must be clarified that there has been no requirement of the Agency nor has the complainant reiterated her request, simply my client perceives its error in the information request letter sent by this Agency

because it is the first news that he receives after the request of the complainant and for the

who realizes the mistake made (…)".

Well, the facts that occurred in the present case must be re-exposed:

1º.- On 06/24/19 the claimant sent a certified letter to the claimed entity where

requested to exercise the right of access recognized in article 15 of the RGPD. In

Said request indicated the following: "I beg you to give me a written answer as

as soon as possible at the following postal address: …"

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2º.- On 08/07/19, the claimant submits a document to this Agency indicating in the

same, among others, that "(...) I have requested in writing, by telephone and mail

certified to PRA IBERIA information on this incident, but to date, I have not

received an answer in any way, and they continue to claim the debt with

interests."

3º.- On 09/17/19, informs the claimed entity of the complaint

filed by the claimant in this Agency and requires her to report on

a number of aspects relating to the claim.

4º.- On 10/17/19 the claimed entity sends a burofax to the claimant with the matter

"Answer claim", where they indicate, among others: "Dear Mrs. Our:

We have received the claim with the reference indicated above from the Agency

Spanish Data Protection and, in response to it, we will detail

the information you request from us. We apologize in advance for not answering

formally because we mistakenly understood that both your claim and the

requested information was clarified in our telephone conversations (…)".

5º.- The allegations put forward by the claimed entity to justify the delay in the

The answer to the request for access made by the claimant is that: "From the

05/17/2019 we are in contact with the claimant to resolve her doubts about the

card and payments made from it, this being the main reason for your

claim. Specifically, we bet as document number SEVEN one of the

conversations held with the claimant that, being diverted to her manager, did not

the recording continued, although it does prove that we are informing and clarifying

telephone with the claimant what she requests, for this reason, we understood

erroneously that we were answering all your questions personally and it was not

necessary to answer formally (…)"

According to article 12 of the RGPD, the data controller is obliged

to provide the interested party with all the information requested in accordance, in this case, with art.

article 15 of the RGPD. The information will be provided in writing or by other means, including

If applicable, by electronic means and only, when requested by the interested party,

The information may be provided verbally and as long as the identity is proven.

of the interested party by other means.

In the case that does not occupy, in the letter sent by the claimant, it was literally specified-

mind: "I beg you to give me a written answer as soon as possible in the following

postal address: …". Situation that did not occur until the claimed entity

received notification from this Agency that the claimant had put in

knowledge of this Agency the facts.

Article 12.3 continues to indicate that: "The data controller shall provide the interested party with

information regarding their actions within a maximum period of one month from

receipt of the request.

Therefore, in this case, the respondent entity did not proceed to provide the claimant with

Keep the requested information up to 3 and a half months after requesting it

with the aggravating circumstance that it was made, even a month after knowing that the claim

had previously brought the facts to the attention of this Agency.

For all these reasons, it is considered that the performance of the entity in this process is

in accordance with the typified element established in article 72.1.k of the LOPDGDD

therefore, it has avoided contesting the exercise of the claimant's right and therefore has

prevented the claimant from knowing, in writing, all the information that she understood.

information about your personal data, answered only after knowing that

the facts had been made known to this AEPD.

It should be noted that the claimed entity still has not completed the point where it alleges

that: “3) My client provides one of the conversations held on 05/17/2019 with

the claimant that … ", so it remains impossible to take it into consideration

as claimed by the entity claimed.

F).- Seventh point:

"Of the typification of the infraction and its prescription".

According to article 74 of the LOPDGDD, a minor infraction is considered to be prescribed after one year:

“The remaining infractions of a merely formal nature of the articles mentioned

in sections 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular,

the following: (...) c) Failure to respond to requests to exercise the rights established

two in articles 15 to 22 of Regulation (EU) 2016/679, unless it resulted from

application of the provisions of article 72.1.k) of this organic law.

According to article 72 of the LOPDGDD, it is considered very serious infractions and prescribed

will expire after three years, the infractions that suppose a substantial violation of the

articles mentioned therein and, in particular, the following: (...) k) The impediment

or the hindrance or repeated non-attention to the exercise of the rights established

two in articles 15 to 22 of Regulation (EU) 2016/679.

Therefore, and based on what has already been stated in the previous section, the actions of the entity

claimed property must be considered included in the typified element established in the

Article 72.1.k of the LOPDGDD by preventing access to the claimant's information,

until he became aware that there was a claim filed with this Agency.

cia, thereby demonstrating a total lack of due diligence in the entity.

Therefore, it is not possible to take into consideration the arguments of the entity in the

which defends that the infraction committed is prescribed based on the application of article

ass 74 of the LOPDGDD, since the application of this article does not fit, but the application

of article 72.1.k) how this has been demonstrated.

G) Eighth point: “On the reduction of penalty amounts. application of the

the new

principle of proportionality. Attention to the circumstances of the case and

You present evidence. subsidiarily

a).- Regarding: “the possibility that the conduct of the affected party could have led to the

commission of the infraction, since there is no record of a police complaint, nor has the claimant

put in contact to be able to know your doubts or to be able to request more information”,

cannot be taken into consideration as it is proved that the claimant did try

contact the entity to have access to the existing information in the

entity, without responding to said request.

b).- Regarding: “the existence of a merger process by absorption subsequent to the commission

of the infringement, which cannot be attributed to the absorbing entity. And so it has happened

with the assignment of credits from Aktiv Kapital to PRA Iberia”, cannot be considered

ration this allegation, since the claim is not filed before the merger

against AKTIV KAPITAL, but against the action carried out by PRA IBERICA.

c).- About: “the fact of having, when it is not compulsory, a pro-

data protection”, cannot be taken into consideration since the infractions committed

das have nothing to do with the existence or not of a DPD in the entity, even

could be considered as an aggravating circumstance to the extent that the

lack of due diligence of the entity in terms of data protection and one of the

essential functions of DPOs in companies is precisely to avoid this lack of

diligence.

d).- About: “the application of article 58.2.a) RGPD by the Agency consisting

in the warning, based on the principle of proportionality of sanctions”, not

can be taken into consideration, since the infractions committed by the entity together

with the aggravating circumstances applied, of the same relevance as other sanctions imposed.

by this Agency to other offenders with which the administrative precedent would be broken.

treatment.

On the new evidence presented, re-emphasise here, what was stated above-

tea

It has been verified, throughout the entire procedure, that:

the entity SANTANDER CONSUMER FINANCE, S.A. stated that, on 04/10/2000, the

The claimant contracted, via telephone, a credit card marketed jointly

with the entity GAS NATURAL FENOSA, providing, at the request of this Agency, the contract sheet of said card, which contains the personal data of the claimant and his address, as well as the direct debit details, in an account belonging to the IBERCAJA entity, but without the signature of the claimant. Either provide any documentation, such as, for example, a copy of the DNI, or the recording telephone contracting, which could corroborate that the contracting of the card of credit was actually made by the claimant.

As justification for the above, the entity SANTANDER CONSUMER FINANCE alleged to this Agency that: "(…) given the age of the file, the remaining documentation relating to the claimant could not be located (...)", although if provides a list of the charges made on the credit card in the period between 09/09/2002 (card activation date) and 12/13/2004.

SANTANDER CONSUMER FINANCE affirms that the return of the credit card bills passed for collection, from the months of February to December of the year 2006, for a total nominal amount of XXX euros, but does not certify or send printing of the list of charges made on the card in that period, that is, from 02/01/2006 to 12/31/2006.

The entity SANTANDER CONSUMER FINANCE does not provide evidence that charged to the credit card (listed with the date of charge, the amount and the commercial establishment), from the year 2006 that he affirms were unpaid, as he did with the years 2002 to 2004. Nor is it certified when the card was canceled

credit.

In this transfer receipt, there are several important data to take into account:

ta in this case:

a).- The references indicated in the “concept” section do not agree: for one

part, the reference of the credit that was transferred from SANTNADER FINANCE CONSU-

MER to the entity AKTIV KAPITAL PORTFOLIO is identified with the code “XXXX-

XXXX”, while the reference indicated in the concept of the transfer made by the

claimant to Banco de Santander is, "XXXXXXXX", differentiating both references

cias in the digit “Q” and “K”.

b).- Neither in the certificate presented by the claimed entity, of the entity SANTAN-

DER FINACE CONSUMER, nor in the receipt of the transfer made by the claimant

to the Banco Santander entity, nothing is indicated that corroborates that the claimant is the

debtor of the non-payments made on the credit card in 2006.

c).- As indicated in the transfer receipt, the claimant made it in favor of

the entity B. Santander and not the entity SANTANDER CONSUMER FINANCE (entity

entity that issued the credit card) nor to the entity AKTIV KAPITAL PORTFOLIO.

H).- About the testimonial requested,

It is considered that the documentation provided by the parties, including fiduciary entities,

is sufficient to be able to elucidate whether or not there is an infringement of the regulations

people in terms of data protection and this has been demonstrated throughout

this resolution proposal, based on the acts carried out by the entity claiming

in its lack of due diligence and in the evidence provided by the parties.

tes, incriminating the conduct reproached the entity. This is so because the pre

This sanctioning administrative procedure is initiated after having carried out the AEPD

an intense inspection work, which has been documented incorporated into the experience

tooth and which substitutes sufficient evidence for this instruction.

Notwithstanding, the foregoing, the already mentioned so many times, article 24.2 of the CE, applied

also in this case, it recognizes the right of the claimed entity “to use all

two means of evidence pertinent to his defense”, leaving it to his discretion to be able to

Present as many means of evidence as it deems pertinent throughout the procedure.

Therefore, the testimonial evidence requested by the claimed entity is considered not

is necessary in this case, rejecting the request for the practice of evidence by inne-

Cesaria, under the provisions of article 77.3 of the LPACAP.

In the present case, two violations of the RGPD are being claimed. On the one hand, it

denounced that the entity claimed has been demanding the payment of a debt by the

use of a credit card, which the claimant denies having contracted. For another

III

hand, it was also denounced that, having contacted the entity

claimed to exercise their rights of access to the information they possess about it

because he did not recognize the debt that was being claimed, he did not receive any type of

response in this regard until he filed a claim with this Agency.

Well, in this sense, the RGPD deals in its article 5 with the principles that

shall govern the processing of personal data and mentions among them that of "license"

tude, loyalty and transparency”. The precept provides that: “1. The personal data will be:

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

For its part, article 6 of the RGPD, details in section 1 the cases in which

the processing of third party data is considered lawful: “1. The treatment will only be

I quote if it meets at least one of the following conditions: a) the interested party gave his consent

sentiment for the processing of your personal data for one or more specific purposes.

cifics; b) the treatment is necessary for the execution of a contract in which the

third party is a party or for the application at the request of the latter of pre-contractual measures;

(…)"

Bearing in mind that the burden of proving that it has

Obtained the unequivocal consent of the owner of the data object of treatment or

that, at least, it has adopted the measures required by diligent compliance with the

obligation imposed by the RGPD, both in the collection of personal data

as in the subsequent treatment of the same, a serious lack of diligence is confirmed.

ence of the entity claimed in the fulfillment of the obligations imposed by the

personal data protection regulations. Diligent compliance with

principle of legality in the treatment of third party data would require that the person in charge

of the treatment is in a position to prove it, (principle of proactive responsibility)

va), a situation that, until now, has not occurred, since the evidence presented

das, both by the entity SANTANDER CONSUMER FINANCE, and by PRA IBE-

RIA, are not conclusive that the claimant contracted the credit card and that

therefore, allow the processing of your personal data.

According to the evidence available at this time, the

The exposed facts suppose a violation of article 6.1 of the RGPD, having treated

the personal data of the claimant without legitimation.

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

legality of the treatment established in article 6 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, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction to be imposed 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 RGPD:

-

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

treatment operation in question, as well as the damages caused to the

interested, (section a).

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

of the claimed entity, (section b).

- Basic personal identifiers, personal data,

(paragraph g).

-

The obvious link between the business activity of the claimed entity

and the processing of personal data of customers or third parties, (section k).

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

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

of the sanction, the following:

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

-

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

personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with res-

Regarding the infraction committed by violating the provisions of article 6.1 of the RGPD,

allows to set a penalty of 30,000 euros, (thirty thousand euros).

IV

Regarding the complaint made by the claimant when indicating that they were not attended to, for

part of the entity claimed its access rights, indicate that, as established by the

Article 12 of the RGPD: 1.- The data controller will take the appropriate measures

nas to provide the interested party with all the information indicated in articles 13 and 14, as well as

as any communication under articles 15 to 22 and 34 relating to the treatment

information, in a concise, transparent, intelligible and easily accessible way, with a language

clear and simple, 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 media. When requested by the interested party, the information may be provided

verbally provided that the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the interested party in the exercise of their rights in

under articles 15 to 22. In the cases referred to in article 11, paragraph 2,

The person in charge will not refuse to act at the request of the interested party in order to exercise their

rights under articles 15 to 22, unless you can show that you are not in

conditions to identify the interested party.

3. The data controller shall provide the interested party with information regarding their ac-

situations on the basis of a request under Articles 15 to 22, and, in any

In any case, within one month from receipt of the request. Said term

may be extended for another two months if necessary, taking into account the complexity

ity and number of requests. The person in charge will inform the interested party of any

of said extensions within a period of one month from receipt of the request, indicating

when the reasons for the delay. When the interested party submits the request by

electronic, the information will be provided by electronic means whenever possible, to

unless the interested party requests that it be provided in another way.

On the other hand, sections 1 and 3 of article 15 of the RGPD, on the right of ac-

process of the interested party, establish respectively that: 1. The interested party shall have the right

to obtain confirmation from the data controller as to whether they are being processed or not

personal data that concerns you and, in such case, right of access to personal data

and to the following information: a) the purposes of the treatment; b) the categories of

personal data in question; c) recipients or categories of recipients

to whom the personal data were or will be disclosed, in particular

recipients in third parties or international organizations; d) if possible, the term

foreseen for the conservation of personal data or, if this is not possible, the criteria used

lysed to determine this term; e) the existence of the right to request from the

know the rectification or deletion of personal data or the limitation of the treatment of

personal data related to the interested party, or to oppose such treatment; f) the right

Cho to file a claim with a control authority; g) when the data

data have not been obtained from the interested party, any information available on

about its origin; h) the existence of automated decisions, including the preparation of

profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, in-

significant training in applied logic, as well as the importance and consequences

foreseen consequences of said treatment for the interested party.(...),

3. The data controller will provide a copy of the personal data subject to

treatment. The person in charge may receive for any other copy requested by the

charged a reasonable fee based on administrative costs. When the interest

the applicant submits the application electronically, and unless the applicant requests that

otherwise provided, the information will be provided in an electronic format for general use.

bad

In accordance with the available evidence, the exposed facts suppose

nen the violation of article 15 of the RGPD, in application of article 12 of the aforementioned

Regulation, since the entity did not act diligently by preventing access

to the information requested about your personal data, in a timely manner.

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

prescription, “The impediment or the obstruction or the repeated non-attention of the

exercise of the rights established in articles 15 to 22 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 according to

with the following aggravating criteria established in article 83.2 of the RGPD:

-

-

The duration of the violation, taking into account the scope or purpose of the
treatment operation in question, as well as the damages caused to the
interested, (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).

-

The obvious link between the business activity of the claimed entity
and the processing of personal data of customers or third parties, (section k).

For its part, article 76.2 of the LOPDGDD establishes that, in accordance with the
provided for in article 83.2.k) of the RGPD, it will be taken into account, as factors
aggravating circumstances of the sanction, the following:

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

-

The link between the activity of the offender and the performance of treatment of
personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with
Regarding the infraction committed by violating the provisions of article 15 of the
RGPD, allows you to set an initial penalty of 30,000 euros, (thirty thousand euros).

Therefore, in accordance with the above criteria, it is considered appropriate to impose on the entity
claimed a total sanction of 60,000 euros (sixty thousand euros), for the infractions
tions of article 6.1) of the RGPD (30,000 euros) and 15 of the RGPD (30,000 euros).

v

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

data protection law,

:

RESOLVE

FIRST: IMPOSE the entity, PRA IBERIA, S.L. with CIF.: B80568769, a san-

30,000 euros (thirty thousand euros), for infringement of article 6.1) of the RGPD, res-

aspect of the illicit treatment of the personal data of the claimant and 30,000 euros

(thirty thousand euros) for violation of article 15 of the RGPD, regarding the lack of dili-

agency when facilitating access to information about the personal data of the

claimant.

SECOND: NOTIFY this resolution to the entity PRA IBERIA, S.L. and IN-

TRAIN the claimant on the outcome of the claim.

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 Nº 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 periods

do executive

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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