 Procedure No.: PS/00488/2020

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00488/2020, instructed by the Spanish Agency for Data Protection, to the entity, entity, PERSONAL MARK, S.L. (HOUSE AREA), with CIF.: B62920962, (hereinafter, "the claimed entity), for alleged violation of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, relating tive to the Protection of Natural Persons with regard to the Treatment of Data Personal data and the Free Circulation of these Data (RGPD); Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights such, (LOPDGDD) and based on the following:

FIRST: On 09/09/20, a written claim entered this Agency Presented by Ms. A.A.A. (hereinafter, "the claimant party"), in which, among others, indicated that:

“They have contacted me repeatedly on the mobile phone to advertise their services and I have repeatedly asked for my data to be erased to no avail.”

The following documentation is attached to the written claim:

1º.- Message sent to the claimant's mobile phone, on 08/28/18 with the message:

“- Good afternoon, I'm B.B.B. of Area House, I think you have worked with our another agency some time ago. I'll contact you again today to find out if you have- Do you have any property available for rent or sale and would you be interested in work with us once again. Thanks in advance. All the best".

2º.- Conversation between the claimant and the entity claimed, on the day 07/11/19:

Message sent by the claimed entity to the claimant:

- "Hello, I'm C.C.C., I'm talking about the Home Area, do I contact you to ask if

Do you have any real estate service in Barcelona that can help you? “.

Reply message from the claimant to the entity:

- "Do you have any document signed by me or with a check, in which I authorize

to contact me? Because if not, this is a violation of my rights. Where

I have to go to have my data deleted from their databases?”.

3º.- Conversation between the claimant and the entity claimed, on the day

06/29/20:

Message sent from the claimed entity to the claimant:

- “Good morning, I am from Area Casa. Contact you to find out if you have a

Property available to sell or rent as we have several interested clients.

interested in settling in the city, do not hesitate to contact us. That

Have a wonderful day, best regards."

Reply message from the claimant to the entity:

- "I am going to report them, it is the 3rd or 4th time that I ask them to delete my data". Beef-

put the entity:

Response of the entity claimed:

- "Sorry for the inconvenience, it will not happen again, best regards."

4º.- Conversation between the claimant and the entity claimed, <<TODAY>>

Message sent by the entity, (which was later deleted):

- (“This message was deleted”)

Claimant's response:

- “Well, it is clear that they have not erased my data. I'm going to make a complaint."

SECOND: On 10/06/20 this Agency sent a request

information to the claimed party, in accordance with the provisions of article 65.4

of Organic Law 3/2018, of December 5, on the protection of personal data and

guarantee of digital rights, (“LOPDGDD”).

According to a certificate from the Electronic Notifications and Electronic Address Service, the

request sent to the claimed entity, on 10/06/20 through the service of

notifications NOTIFIC@, was rejected at destination.

THIRD: On 12/16/20, by the Director of the Spanish Agency for

Protection of Data, an agreement is issued for the admission of processing of the pre-

sitting, in accordance with article 65 of Organic Law 3/2018, of December 5,

bre, Protection of Personal Data and guarantee of digital rights

(LPDGDD).

FOURTH: 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 article 17 of the RGPD, res-

regarding the lack of diligence in removing the personal data from the claim.

maintaining its databases with an initial penalty of 30,000 euros (thirty thousand euros).

ros).

FIFTH

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

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

“According to the content of the notification, the claimant denounces that they have not been

given by the undersigned the various requirements that he has sent to the mercantile Personal

nal Mark SL in order for it to stop sending communications through messages.

instant messaging (Whatssap).

In this sense, it provides a series of messaging conversations in which, after re-

receive messages offering services, it answers requesting on the first occasion

information regarding the exercise of rights.

On a second occasion in which he answers (to the first notification there is no con-

testation) does so after receiving a service request message for already

announce their willingness to report the undersigned and after informing the company that they will not

will see happen the claimant confirms her decision to denounce the facts.

There is no other message sent, so from the date of September 8

From 2020 your data is deleted. It should be noted that none of the messages that

appear in the file include the formal request for the exercise of rights.

In addition, the following must be taken into account:

1.- This party is not aware that what is included in the second fact of the

notification, that is, consulted the headquarters of the DEH, there is no evidence that my

principal has rejected the information request dated October 6. I know

I attach a copy of the DEH page that proves that notifications have not been rejected.

AEPD as Document No. 1.

2.- The notifications that the accused makes to the complainant through her system.

ma of instant messaging are based on the legitimate interest of the company

Personal Mark SL under the provisions of article 6.1.f) RGPD as a result of the

existence of a previous contract for the provision of services between the parties.

3.- Certainly the company Personal Mark SL sent three different messages to the one de-

advertiser in which it offered its services, which are identical to those that had been

provided in the past, however, there is no evidence that with respect to the first message

requested by the complainant exercised any kind of right. Regarding the second

message, it is recorded that the complainant requested information regarding the request for

exercise of the right (not the exercise of the right in itself), a request that was agreed

Tested by telephone informing that if he wished to exercise rights he could request it

through the email address exercise derecho@protectordedatos.-

com, a channel enabled by the company denounced for the exercise of rights that

works regularly, as evidenced by a copy of different requests

exercise of rights that have been requested by various clients and users of the company.

ny with optimal results. Attached as an example is a copy of two files

of exercises of rights of other clients of the denounced duly anonymized

two, one of them of recent date and that has entered into progress, as Documents Nº 2

and 3.

In the aforementioned files it can be verified that when any client or user

rio formally requests the exercise of rights, a protocol is initiated by which

checks the request, the request is communicated to Personal Mark SL (management is ex-

outsourced to ensure professionalism and success), the applicant is sent the form

form with the instructions, then proceed to carry out the exercise requested.

quoted and the entire operation is certified to the applicant.

4.- The users and clients of the accused, including the complainant herself, have

access to information regarding the exercise of rights in its channels (web, mail, …)
easily accessible, channels in which it is stated that rights can be exercised through
from the email address exercise derecho@protectordedatos.com.

5.- The instant messaging channel used by the complainant (WhatsApp) contains
They have a simple message blocking system that can be activated in two clicks, which
that facilitates a fast and easy system to avoid receiving more messages while processing
the exercise of rights.

6.- Although the complainant asked about how to exercise her rights and it was due-
mind answered by the company, at no time exercised the right to be forgotten
through the channels communicated by the company, limiting itself to a first message
to consult on how to do it and in the second to communicate their decision to
announce At the same time, the defendant chose to cancel the data of the claim.
complainant definitively, not having made any other contact since then.
then that could be considered contrary to the exercise of the right to be forgotten, therefore
that no reference can be made to a repeated attitude of non-compliance.

In short, strictly speaking, in none of the messages is the exercise expressly exercised.
cio of the right that is invoked. The complainant only asks where she should exercise
certify the right, being answered by the company, for already in the second of the mentions
sajes announce that he is going to proceed to denounce.

7.- In short, it is an action in which, after an initial request for exercise,
cycle of rights not carried out by the plaintiff, the denounced company returns
to send a new message because it has not received the request through the channel
informed, so it has not been able to take the appropriate measures. After the threat of
denounces the company becomes aware of the situation and sends a new informative message
command again on the form of exercising rights, which finally erases the recipient
receive a message from the complainant in the sense of ensuring that she will continue with the

nuncia. However, given the seriousness of the news, skipping the protocol itself

relative to the procedure for the exercise of rights, it is decided to proceed

according to art. 17.1 RGPD, not sending more notifications to the de-

complainant, so that at the date of presentation of the complaint by the latter,

the complainant's data had been suppressed.

8.- In any case, even in the unusual event that this procedure

ended with the imposition of a penalty, it could never reach the amount that was

formulated by the acting instruction, all this because the incumbent is not reiterated.

compliance, if accredited and, where appropriate, sanctioned, the maximum amount should be

2% of the previous year's income. Even in the event that it was considered

application 4% of the income of the mercantile Personal Mark SL, the total amount

would yield a much lower result than the one proposed.

Regarding the measures and policies carried out by the denounced company, it is

point out that it is duly adapted to the obligations of the RGPD and the

LOPDGDD. Regarding the exercise of rights, the

e-mail address exercise derecho@protectordedatos.com, address

that it makes available to its users and clients in practically all of its channels.

of public access and that in any case is easily accessible and understandable.

there.

At the same time a request to exercise rights is received, an equivalent

external professionalized type responds by sending a form that, once completed,

is documented and the company proceeds to respond to the exercise requested.

ted. This operation has been operating regularly and there are various documents

sas requests that have obtained the due response by the company.

Consequently, the company has an adequate system, proportionate, of

easy to understand, free and simple to facilitate the exercise of rights of their

users. However, the undersigned expressly acknowledges that on the occasion that we

occupies the system could have worked better, enabling the possibility of sending the

form relating to the exercise of the right directly through the message channel-

instantaneous, in order to avoid the extension in time of the practice of that policy.

ethics, thus improving the policy regarding the exercise of rights.

Sixth.- Although, as has been said and accredited, Personal Mark SL, has the policies

adequate ethics to guarantee the exercise of rights by its clients and

users, in order to ensure that what happened and cause of this procedure

does not happen again, the reported company is implementing the following actions

nes:

1.- Training for workers in relation to the response to the exercise of rights of

more efficient way.

2.- Improvement of the instant messaging channel so that any user

or client can exercise their rights through the channel itself.

With the implementation of both measures, it is intended that what has happened

of as an isolated event and does not happen again, being, as has been said of the

the only occasion in which a procedure for the exercise of rights has caused inconvenience

nients to a client of the company.

Seventh.- Article 58.2 RGPD: In response to the aforementioned precept, the control authority

control can, alternatively to the imposition of a sanction, order the person responsible for the

treatment that meets the request to exercise the right, as well as warn or warn

bir to the person in charge when the content of the regulation can or has been infringed.

In the present procedure, although it is true that the protocol of the message-

instantaneous water can be improved and the company has been able to verify this, so is

that the appropriate measures have been taken so that new situations do not arise

through the decision to incorporate a direct model into the instant messaging channel.

exercise of law and through reinforcing the training of employers

pleads. In view of the foregoing. REQUESTS: Please submit this document with

your data and attached documents and on its merits revoke and leave without effect the agreement

initiation of sanctioning procedure or subsidiarily resolved by ad-

warning and/or warning, as well as with the order to attend to the exercise request

of law

SIXTH: On 06/21/21, the respondent entity was notified of the proposed resolution

tion, in which it is proposed that, by the Director of the Spanish Protection Agency

of Data proceed to sanction the entity PERSONAL MARK, S.L. (HOUSE AREA),

for violation of article 17 of the RGPD with a fine of 30,000 euros (thirty thousand euros),

Regarding the lack of diligence in eliminating the personal data of the claim.

maintenance of its databases ignoring its request.

SEVENTH: On 07/05/21, the respondent entity sends this Agency a letter of

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

“This party has already made allegations to the AGREEMENT OF INITIATION OF PROCEDURES.

TO SANCIONADOR, allegations that he reiterates, which are considered reproduced here at

the appropriate effects and that are summarized in the following questions:

1.- The complainant has never formally proceeded to exercise her rights

rights before the denounced company even though it may have had knowledge of the protocol

to exercise them after the telephone conversation with the defendant of the

that indeed there is no proof because the calls are not recorded. Nevertheless,

that the existence of that call cannot be accredited in the administrative office,

to conclude that it did not occur.

2.- The proposed sanction is more than excessive insofar as the channel in which it is

the reported events occur allows the blocking of the sender in two simple

steps, which makes it easier for any user to stop receiving messages that are not

wants to receive while exercising their rights, rights that in this matter, as has been

said they have never been formally exercised.

3.- Although it is true that the accused sent several messages by whatss messaging-

ap to the complainant, so is the fact that prior to filing

of the complaint by the complainant, the accused had already proceeded, even

without having exercised the rights by the complainant, to delete the data of this and

never received a new message again, which for all intents and purposes should be taken as

a measure adopted by the reported organization in favor of compliance with the

data protection regulations. Measure we insist, taken in advance of the interpo-

position of the complaint, which must have a value when calculating the

sanction to be imposed, clearly disproportionate in view of the size of the company

and of the alleged imputed non-compliance.

4.- Imposition of an excessive sanction by virtue of the provisions of article 83

GDPR.

5.- The reported company regularly complies with its obligations in matters of

of data protection, has the channels and protocols enabled and certifies that

effectively, when a right is exercised by a user in a way that is pro-

yields to facilitate and carry out that exercise of right.

6.- The company has taken measures to prevent a circumstance similar to the one de-

announced happens again, thus demonstrating its commitment to the norm invoked and

its interest in protecting the rights of users.

7.- It is possible to replace the sanction with a warning and the instruction to the administrator.

Second.- Presented the allegations before the investigating body, it resolves with fe-

date of June 14, 2021, notified to this party on June 21, 2021,

resolution that rejects in its entirety the allegations presented by this party

justifying itself in the supposed seriousness of the facts.

Third.- This part could not be more in disagreement with the conclusions of the

won instructor contained in the proven facts and in their legal foundations

dated June 14, which is why, in addition to reiterating his allegations

initials raises the following questions to the aforementioned conclusions:

1. Indeed, as has already been said, there is no record showing that

the defendant informed the complainant by telephone, nor is there any record of the

On the contrary, that is, the complainant has not denied that circumstance, so it cannot be

without further considering that allegation unproved by virtue of the content of art. 12.1

RGPD that in no case establishes the obligation to prove the existence of the co-

verbal communication. In addition, as stated in the previous letter, the company denounces

da has a protocolized and professionalized model for the exercise of rights

chos that can be accessed directly even through the web. It's undeniable

that currently have the information model for the exercise of rights in

The company website should be understood as a concise, transparent, intelligent model.

ble and of

clear and simple language.

(http://www.areacasa.es/static2/proteccion_de_datos/). Similarly, as

The acting body expressly recognizes the content of art. 12.1 GDPR can be

to conclude that the information can be provided verbally, as has been the case.

with a

access,

easy

In such a case, the rule invoked does not require any type of accreditation in this regard, it does not

It is necessary to prove that it has been provided in writing, so it does not fit in this instance.

cia require proof in that sense as does the examining body. On the other hand and without

any desire to blame the complainant for the reported facts, acknowledging

expressly that in that particular case and channel it should have acted more quickly-

mind, it is necessary to remember that the complainant could access the company's website

easy to exercise their rights, which, as has been said, was even notified

telephone the way to exercise them, which in addition to avoiding greater inconvenience

It had the ability to block the sender in two easy steps. None of that did, li-

limiting himself to complaining and invoking, rather than exercising, his right to data deletion.

As this is the case, it seems more than disproportionate that the imposition of

a penalty for such a high amount, when, in addition, as will be said later,

before, the aggravating circumstances of art. 83 GDPR.

2. It is worth reiterating the fact that the affirmation of the institute is false

tructor in its foundations of law in which it comes to affirm "... no type of in-

training was given to the claimant when she requested it.” As has been said and reiterated

there was a phone call. The instructor may, although without any legal basis,

na, conclude that it is not accredited, but in no way can it affirm that it is not

such communication existed.

3. Regarding the amount of the proposed sanction, it is considered totally disproportionate.

mentioned and the excessive and irrational legal grounds insofar as:

- Article 83 RGPD establishes the general conditions for the imposition of sanctions.

tions (…). Based on the content of the aforementioned article, it does not seem that they agree

enough vantages that could lead to a sanction that exceeds even the 4% foreseen

as the maximum amount in the standard.

The following are recorded as mitigating factors: The measure taken by the accused consisting of suppressing

look at the data prior to the filing of the complaint by the complainant, as well

as well as its commitment to training and informing workers after the event. The

category of personal data, that is, a name and a telephone number. The

no prior offenses.

Likewise, it lacks any argument that is affirmed by the acting inspector that

The warning procedure fits because "it should be stopped taking into account,

the aggravating factors applied in this case established in article 83.2 RGPD and in art.

76.02 LOPDGDD.”

This is a single case in which an event like this occurs in the reported company, not

It is proven that the complainant formally exercised her rights and a fortiori

There are different procedures with other users in which the company has always

acted according to the protocol giving immediate course to the exercises of law.

This is therefore the only situation in which the company can be blamed

a very improvable performance, but in no way do we find ourselves before a company

dam that abandons its obligations in terms of data protection and less in

as far as the exercise of rights is concerned. It does not seem reasonable that in the face of facts

in which there is even room for doubts as to whether the complainant certainly re-

renounced to use established channels to exercise their rights, limiting themselves only

to request information without further ado and then file a complaint, can end with a sanction.

such an excessive and disproportionate tion.

Finally, the criterion of proportionality must be taken into account when sanctioning

nar to a company that has committed an infraction, especially in these times of

pandemic in which the Spanish Government itself speaks of "all pushing together" or

“leave no one behind”.

It is a company that invoiced €345,148.54 in 2019 (reference year), with a

result before taxes of €2,295.96 in profits and in 2020 it obtained an income of

income of €446,500.94 with a result of €8,350.01. If a penalty of

€30,000.00 will be imposing a penalty of 8.7% on your billing without

damage so serious that it can justify such an amount has been caused.

In view of the facts, of which we do not deny a manifest lack of diligence,

but to which we oppose its singularity for having happened only once, consider the

subscribed that it must be proceeded to be of justice to warn the accused or subsidiary-

impose a sanction that allows adjusting the seriousness of the facts to the

aunt, taking into account the economic reality of the company and the country's situation.

In view of the foregoing

REQUEST Please submit this letter with your data and attached documents and

on its merits REVOKE and nullify the proposed resolution or SUBSIDIA-

RILY resolve by warning and / or warning, as well as with the order

to meet the request to exercise the right or, where appropriate, impose a penalty for

an amount proportionate to the facts and much lower than the proposal

EIGHTH: Of the actions carried out in this procedure, of the information

information and documentation presented by the parties, the following have been accredited:

you have facts:

PROVEN FACTS

1º.- In the present case, the complaining party denounces that he receives messages on the telephone

mobile phone to advertise their services and has repeatedly asked them to delete their

personal data from their databases without success because they continue to contact

she.

2º.- This claim is corroborated by the evidence provided in the pre-

seated:

- Provides the message sent by the claimed entity to the mobile phone of the re-

crying, on 08/28/18 trying to get him to contact them and offering his

services.

- Provides the message sent by the claimed entity to the mobile phone of the re-

crying, on 11/07/19, trying again to contact them and reiterate-

by offering their services. The claimant's response to this

The message was the following: "Do you have any document signed by me or with a

check, in which I authorize you to contact me?, Because if not, this is a violation

of my rights. Where do I have to go to have my data deleted from

your databases?”

- Provides the message sent by the claimed entity to the mobile phone of the re-

crying, on 06/29/20 trying again to contact them and reiterating

do the offer of their services. The claimant's response to this

message was the following: “I am going to report them, it is the 3rd or 4th time that I ask that

delete my data”, being the response of the entity: “Sorry for the inconvenience, no

it will happen again, best regards”.

- After that, there is a new message sent from the claiming entity-

da, the day is not specified, which was later deleted by the claimed entity,

to which the claimant replied: <<TODAY>>: “Well, it is clear that

My data has not been deleted. I'm going to make a complaint."

3.- For its part, the respondent entity acknowledges in the pleadings to the inconsistency

tion of the file that sent three different messages to the complainant in which

offered his services. However, they are not aware that, with respect to the first message,

requested by the complainant exercised any kind of right. Regarding the second

message, they know that the complainant requested information regarding the request for

exercise of law and affirms that said request was answered by telephone but

does not provide any document or telephone recording that can corroborate this assertion.

tion.

FOUNDATIONS OF LAW

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.

I- Competition.

II- Response to the allegations to the Resolution Proposal.

First.- Regarding the fact that the claimant did not exercise her rights in

matter of data protection.

In the conversation held on 11/07/19 between the claimed entity and the claimant,

(second message), this one from the response that it sends, it is clear that it is

You may exercise your rights regarding the processing of personal data and thus

indicates: “Do you have any document signed by me or with a check, in which I authorize you?

where to contact me? Because if not, this is a violation of my rights. where do i have

What should I direct them to delete my data from their databases?

The respondent entity, far from answering the complainant's question, continues to

trying to contact her to carry out a commercial transaction. This is indicated in the

third message: “Good morning, I'm from Area Casa. contact with you to find out if you have

has a property available to sell or rent since we have several interested clients.

interested in settling in the city, do not hesitate to contact us. Have a

wonderful day, best regards”.

Faced with this attitude, the complainant replies that: “it is the 3rd or 4th time that I ask that they bo-

rren my data”, telling them that he is going to report them. Faced with this threat of denunciation,

the entity replies: “Sorry for the inconvenience, it will not happen again, best regards”,

but far from fulfilling what was promised, the entity sends a fourth message again, in the

which the date is not identified, which was later deleted from the entity - ("This mess-

age was deleted“, to which the claimant replies: “Well, it is clear that they have not bo-

rar my data. I'm going to make a complaint."

Second.- On the measures taken by the entity claimed in matters of

Data Protection.

It is not a matter of whether or not the channel through which the conversation takes place has

simple mechanisms to block the sender, what it is about is that the claim

mantely, when exercising your rights regarding the protection of personal data, you received

affirmative response from the entity, indicating that "they would not contact it again"

assuming that your personal data would be deleted from their databases

thus agreeing to the request. However, as evidenced by the

filed by the claimant, this was not the case, producing, a few days later,

another attempt to contact the claimant, thus making an illicit use of their

personal information.

In this sense, article 17.1.b) of the RGPD is clear, establishing that: “1. The interest

sado will have the right to obtain without undue delay from the data controller the

deletion of personal data that concerns you, which will be obliged to delete

look without undue delay at the personal data when any of the circumstances

following tances: (...) b) the interested party withdraws the consent on which the transaction is based

treatment in accordance with Article 6, paragraph 1, letter a), or Article 9, paragraph

2, letter a), and this is not based on another legal basis;

But in addition, the respondent entity, far from answering the claimant's question,

(...) “Where do I have to go to have my data deleted from their databases?”) follows in-

trying to contact her to carry out a commercial transaction, (“Good morning,

I am from the Home Area. Contact with you to find out if you have a property available for

sell or rent since we have several clients interested in settling in the city.

dad, feel free to contact us. Have a wonderful day, best regards

them").

Third.- About the existing tools to exercise the rights in mate-

data protection law.

The different tools that they have are not being evaluated in this procedure.

applications or app to fight unwanted messages or emails-

two. What is being assessed in this procedure is the degree of due diligence

that the claimed entity put in the request for deletion of personal data

of the claimant from its databases. Diligence that, according to the evidence presented

given by the claimant, the claimed entity lacked.

Fourth.- Regarding the amount of the sanction imposed.

Indicate that the alleged infraction committed by the entity, according to article 83.5

“can be sanctioned with a maximum fine of €20,000,000 or, in the case of a

company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, opting for the highest amount.

Therefore, even if the entity claims that 2% or even 4% of its total income

of the previous year do not exceed the amount of the penalty initially imposed, clarify

that, what is established in article 83.5, when it indicates that "... opting for the greatest

amount” is that, if the total income of a company does not exceed 20,000,000

euros per year, the administration can choose to impose a sanction of up to those

20,000,000 euros, for being "the largest amount" but if it is the other way around, 4% of the

total income of a company exceeds 20,000,000 euros, the administration

You can choose to impose a penalty of up to that 4% of total annual income,

for being: “the largest amount”.

In the agreement to initiate the file, it was considered appropriate to graduate the

sanction to be imposed in accordance with the aggravating criteria established in article

83.2 of the RGPD: the duration of the infringement, (section a); lack of diligence for

part of the claimed entity, (paragraph b); identifiers are affected

basic personnel, (section g). In addition, they also considered themselves for their part, the

aggravating circumstances of article 76.2 of the LOPDGDD: the continuous nature of the infraction,

(section a) and the link between the activity of the offender and the performance of

processing of personal data, (section b), setting an initial penalty of 30,000

euros, (thirty thousand euros).

Taking into account the allegations presented by the entity claimed to the pro-

resolution, at its end point, in this case, the mitigating factors must be applied

following, in accordance with the criteria established in article 83.2 of the RGPD and in

Article 76.2 of the LOPDGDD:

a) Regarding article 83.2 of the RGPD:

-

-

The measures taken by the person in charge or in charge of the treatment to

damages suffered by the interested parties by not appearing in this

Agency new illicit data processing by the entity (section

c);

The current economic circumstances of the company, influenced by the following

social status (section k).

b) Regarding article 76.2 of the LOPDGDD:

-

The non-existence of benefits obtained as a result of the commission of

the infringement (paragraph c).

III

In accordance with the evidence available, set out in the sections

above, it is verified that the exposed facts suppose the violation of the article

17.1 of the RGPD, in application of article 12 of the aforementioned Regulation, since the

entity did not act diligently by not deleting the claimant's personal data

of its databases, in a timely manner as requested.

Article 72.1.k) of the LOPDGDD considers it very serious, for prescription purposes,

“The impediment or the hindrance or the repeated non-attention of the exercise of the rights

rights established in articles 15 to 22 of the Regulation”.

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

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 this case and in response to what was requested by the entity claimed in

their allegations, it is considered appropriate to graduate the sanction to be imposed in accordance

with the following aggravating and mitigating criteria established in article 83.2

of the RGPD and in article 76.2 of the LOPDGDD:

According to article 83.2 of the RGPD:

- As aggravating factors:

o The duration of the infraction, (section a).

o The lack of diligence shown by the claimed entity, (section

b).

- As mitigating factors:

o The measures taken by the data controller to alleviate the

damages suffered by the interested parties by not appearing in this

Agency new illicit data processing by the entity

(section c);

o The current economic circumstances of the company, influenced

by social situation (section k).

According to article 76.2 of the LOPDGDD:

- As aggravating factors:

o The continuing nature of the infraction, (section a)

or linking the activity of the offender with the performance of

processing of personal data, (section b).

- As mitigating factors:

o The non-existence of benefits obtained as a consequence of the

sion of the infraction (paragraph c).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 17 of the

RGPD, allows you to set a penalty of 10,000 euros, (ten thousand euros).

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

:

RESOLVE

FIRST: IMPOSE the entity, PERSONAL MARK, S.L. (HOUSE AREA), with CIF.: B62920962, a penalty of 10,000 euros (ten thousand euros), for violation of article 17 of the RGPD, regarding the lack of diligence when eliminating personal data-them from the claimant of their databases.

SECOND: NOTIFY this resolution to the entity PERSONAL MARK, S.L. (HOUSE AREA) and INFORM the claimant about the result 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es