 Procedure No.: PS/00451/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following:

BACKGROUND

FIRST: Mr. A.A.A., on behalf of Mr. B.B.B. (hereinafter, the

claimant) dated October 10, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against Equifax Iberica, S.L.

with NIF B80855398 (hereinafter, the claimed one).

The claimant states that, on January 3, 2019, he submitted mail

requesting the cancellation of the inclusion of your data in the Asnef file

from December 10, 2018.

Subsequently, they answer that you are exercising the right of cancellation in

excess and therefore its processing is not appropriate since it was exercised on December 9,

2018.

Thus, the claimant alleges that the previous request for cancellation was

for a tax debt and the entry of your data in the Incident file

Judicial and not for those that now exercise the right of cancellation again.

In addition, the data has not been blocked for 30 days as stated in the Law

Organic 3/2018 on the Protection of Personal Data and guarantee of rights

(hereinafter, LOPDGDD).

The claimant provides the following documentation:

 Notifications of inclusion of your data in the Asnef file of four debts

corresponding to three credit entities sent by the entity Equifax

Iberica, S.L. (hereinafter Equifax).

Equifax report of the data informed of the claimant to the Asnef file and

query history.

 Copy of the response of the Equifax entity to the exercise of deletion of

 Copy of the response of the Equifax entity to the exercise of deletion of

date January 3, 2019.

date January 9, 2019.

 Statement of claim

 Copy of representation authorization by D. A.A.A.

On February 10, 2019 it is received in this Agency, with number of

registration 06919/2019, new document sent by the claimant clarifying that the

The claim presented to this Agency was for breach of article 20

of the Organic Law 3/2018 of Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD).

With the notification date of February 18, 2019, the claimant is informed

that his claim was not admitted for processing because there were no reasonable indications of

the existence of an infringement within the competence of the Spanish Agency for

Data Protection.

On February 27, 2019, this Agency received, with the number of

registration 010185/2019, written appeal from the claimant

stating, among other aspects, that the Equifax entity has failed to comply with the provisions in art. 20.1.c of the LOPDGDD and emphasizing that it has not respected the 30-day lock-in period from your discharge date.

The claimant provides, in addition to the documentation presented in the claim, the next documentation:

Equifax report dated December 10, 2018. In which it appears that a On this date there was no data on the claimant in the Asnef or Asnef files. Companies

 Communication sent by Equifax to the claimant stating that, after receiving your request to cancel your data from the file of Judicial Incidents and Claims from Public Organizations, your data had been canceled, and reporting that the canceled data was obtained from public sources.

 Cancellation request email addressed to the claimant dated January 3 of 2019.

On April 1, 2019, the Director of the Spanish Agency for the Protection of Data, upheld the appeal filed by the claimant.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, of the facts and documents of which he has had knowledge of this Agency, the Subdirectorate General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

With the notification date of April 4, 2019, the transfer of the

claim to the EQUIFAX entity.

On April 24, 2019 it is received in this Agency, with registration number

021042/2019, letter of allegations from this entity stating

Regarding the causes that have motivated the claim, that on December 9, 2018

a data cancellation request was received by email, with

supporting documentation, corresponding to tax debts that had

caused the inclusion of the data of the claimant in the file of Incidents

Judicial and claims from Public Organizations. Dated December 18,

2018 is canceled and a communication is sent to the claimant on the same date. With

On January 3, 2019, the new right of withdrawal was received at the Equifax offices.

cancellation without providing any supporting documentation. In the response issued to

affected was denied his request for cancellation, basing it on the legal regulations

in this regard, according to which the claimants cannot exercise the rights

recognized by data protection legislation indiscriminately,

abusive and immoderate, since another request for

cancellation for the same reference holder. The response is prepared with a date

01/03/2019 and sent on 01/08/2019 by email.

On the occasion of the transfer of the claim, they inform this Agency that

verify that as of April 5, 2019 there were 4 annotations in the file

Asnef with data from Caixabank S.A, Nuevo Micro Bank and two of Caixabank Payments, and that after consulting the creditor entities, only one of the debts corresponding to Caixabank Payments were deregistered, ratifying the other three. On April 22, 2019, they send a communication to claimant about these extremes and they inform him that he can go to the creditor entities that have confirmed the debts to obtain more information about these.

And attached, among others, the following documentation:

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Report of records informed to the Asnef file and history of queries to date of April 5, 2019.

- Request for information from creditor entities about debts informed.

- Response of creditor entities.

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Report of the claimant's records in the Asnef file dated April 22 of 2019.

- Communication dated April 22, 2019 sent to the claimant regarding the situation in the Asnef file after its cancellation exercise and consultation with the creditor entities.

THIRD: On December 18, 2019, the Director of the Agency Spanish Data Protection agreed to initiate sanctioning procedure to the claimed, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations (hereinafter, LPACAP), for the alleged violation of Article 6.1 f) of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent requested extension of the term and subsequently presented a brief of allegations in which, in synthesis, stated that: "As a consequence of not blocking the data, the AEPD considers that my client has proceeded to carry out a treatment of data without a legitimate basis, and therefore considers the existence of a

breach of article 6.1 f) of the RGPD in relation to the data of the complainant.

In the case at hand, the interpretation and direct application of article 20.1 c) by the AEPD implies, the exclusion of the weighting required by the legitimating basis of article 6.1.f) of the RGPD and, on the other, add an additional requirement for the legitimacy of data processing established in article 6.1 f) of the RGPD.

Both facts, which as we have been pointing out, are contrary to the very spirit of the rule applied by the AEPD, the RGPD itself and the jurisprudence of the CJEU.

The data of the complainant were registered in ASNEF and accessible by the entities participating in the credit system on December 10, 2018, although they were sent electronically by the creditor entities on 7 December of the same year. My client proceeded to send the complainant the information indicated in article 14 of the RGPD on December 11, 2018.

Through this action, we understand that the AEPD what is actually doing is imposing an additional requirement, such as data locking, on a data processing based on legitimate interest and in a specific case

regulated in the RGPD such as the obtaining of personal data through

a source that is not the interested party, and additionally, interpret and apply a

presumption as if it were a regulation and not a presumption according to the

Statement of Reasons of the LOPDGDD.

Formulate in your day Proposal for a Resolution in which the

claims requested, declaring the nullity of the proceedings and their filing and the

absence of responsibilities on the part of my principal".

FIFTH: On January 22, 2020, the practice period for

evidence, remembering: 1. To consider reproduced for evidentiary purposes the complaint

filed by the claimant and his documentation, the documents obtained and

generated that are part of the file and 2. Consider reproduced for purposes

evidence, the allegations to the initiation agreement of PS/00451/2019, presented

by the accused entity.

SIXTH: On February 18, 2020, it was issued and notified on the 19th of the same month and

year to the claimed party the Resolution Proposal for the presumed infraction of the

Article 6.1 f) of the RGPD, typified in Article 83.5 of the RGPD, with a fine of

€75,000.

The respondent presented arguments to the Proposed Resolutions, with

date of entry into this Agency on March 11, 2020, in which, in summary,

states the same facts and arguments set forth in the allegations to the

initiation agreement, that is to say that the obligation to block the data for a

period of 30 days when the data has not been collected directly from the

interested, it is not established in the conducts typified by the RGPD in its article

83 and therefore would be responsible for an infraction that is not

corresponds to the typification that is made of it.

Consequently, the respondent requests that the claims be upheld
requested, declaring the nullity of the proceedings and their filing and the absence of
responsibilities.

PROVEN FACTS

1.- The claimant's data was registered in the ASNEF file and
accessible by the entities participating in the credit system on the 10th of
December 2018, were not blocked, being visible from the day after the
registration of the data in the file.

2.- The denial of cancellation of the data of the claimant with
dated January 3, 2019 and again on January 9, 2019, alleging that
according to article 12.5 b) of Regulation (EU) 2016/679 General Protection of
Data, the claimants cannot exercise the rights recognized by the
data protection legislation in an indiscriminate, abusive and
immoderate There is no evidence that the respondent has consulted in any of the
occasions with the creditor entities, prior to the denial of the
cancellation, on reported debts.

3.- Regarding the maintenance of non-visible data for a period of
thirty days marked by the LOPDGDD in its article 20.1.c, is received in this
Agency at the request of the inspection dated October 10, 2019 and
registration number 047972/2019, document sent by the respondent alleging that:
“Although it is true that said LOPDGDD was applicable from the day
following its publication in the BOE, that is, dated December 7, 2018,

for technical and internal development reasons at Equifax, it was not feasible

implement such changes in our systems until last January 22

2019, the date from which the 30-day blockade was effectively

implemented."

FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2

of the RGPD and in art. 47 and 48.1 of LOPDGDD.

II

The defendant is accused of committing an infringement by

violation of Article 6 of the RGPD, "Legality of the treatment", which indicates in its

section 1 the cases in which the processing of third party data is

considered lawful:

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

following conditions:

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

over said interests do not prevail the interests or the rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child. The provisions of letter f) of paragraph

first will not apply to processing carried out by public authorities

in the performance of their duties."

The infringement is typified in Article 83.5 of the RGPD, which considers as

such:

"5. Violations of the following provisions will be sanctioned,

in accordance with section 2, with administrative fines of EUR 20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5,6,7 and 9."

Organic Law 3/2018, on the Protection of Personal Data and Guarantee of

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and infringements will expire after three years.

that suppose a substantial violation of the articles mentioned in it and,

in particular, the following:

(…)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679."

III

The documentation in the file offers evidence that the

claimed, violated article 6.1 f) of the RGPD, since it did not have incorporated

in its treatments the obligation established in article 20.1 c) of the LOPDGDD

to block the information for thirty days.

Article 20.1 c) of the LOPDGDD establishes:

“That the creditor has informed the affected party in the contract or at the time of

require payment about the possibility of inclusion in said systems, with

indication of those in which it participates.

The entity that maintains the credit information system with relative data

non-compliance with monetary, financial or credit obligations must

notify the affected party of the inclusion of such data and will inform him about the possibility of

exercise the rights established in articles 15 to 22 of the Regulation (EU)

2016/679 within thirty days of notification of the debt to the

system, the data remaining blocked during that period.”

Therefore, the data was visible from the first day of registration in the file.

ASNEF contravening the visibility requirements contained in the LOPDGDD.

It is verified, as claimed, that the data reported on the 10th of

December 2018, the period required in the LOPDGDD was not blocked

being visible from the day following the registration of the data in the file.

Well, as the defendant acknowledges in his pleadings brief

which states the following: "Although it is true that said LOPDGDD was of

application from the day following its publication in the BOE, that is, with the date

December 7, 2018, for technical and internal development reasons at Equifax, no

it was feasible to implement such changes in our systems until last 22

January 2019, the date from which the 30-day blockade was

actually implemented."

It is clear, and this is the essential, the above makes the treatment of the data

of the claimant is not legitimate, given that the budgets were not given

established in article 20.1 c) of the LOPDGDD.

IV

In accordance with the provisions of the RGPD in its art. 83.1 and 83.2, when deciding the

imposition of an administrative fine and its amount in each individual case

will take into account the aggravating and mitigating factors that are listed in the

indicated article, as well as any other that may be applicable to the

circumstances of the case.

"Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive."

"Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a

administrative fine and its amount in each individual case will be duly

consider:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

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

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement,

in particular if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

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

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

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

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement."

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article

76, "Sanctions and corrective measures", provides:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

c) The profits obtained as a result of committing the offence.

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

commission of the offence.

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

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

data.

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

In accordance with the precepts transcribed, in order to set the amount of the

sanction of a fine to be imposed in the present case for the infraction typified in the

article 83.5.a) of the RGPD for which the claimed party is responsible, they are estimated

concurrent the following factors:

As aggravating criteria:

-

In the present case we are facing an unintentional negligent action,

but significant identified (article 83.2 b).

The duration of the illegitimate treatment of the data of the affected person carried out

-

by the claimed party (article 83.2 d).

The balance of the circumstances contemplated in article 83.2 of the

RGPD, with respect to the infraction committed by violating what is established in its

Article 6 allows a penalty of 75,000 euros (seventy-five thousand euros) to be set,

typified as "very serious", for the purpose of prescription of the same, in the

Article 72.1.b) of the LOPDGDD.

Therefore, in accordance with the applicable legislation and valued the

Graduation criteria for sanctions whose existence has been

accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE EQUIFAX IBERICA, S.L., with NIF B80855398, for a

infringement of Article 6.1.f) of the RGPD, typified in Article 83.5 of the RGPD,

a fine of €75,000.00 (seventy-five thousand euros).

SECOND: NOTIFY this resolution to EQUIFAX IBERICA, S.L..

THIRD: Warn the sanctioned party that he must enforce the sanction

imposed once this resolution is enforceable, in accordance with

The provisions of the art. 98.1.b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (in

hereinafter LPACAP), within the voluntary payment period established in art. 68 of the

General Collection Regulations, approved by Royal Decree 939/2005,

of July 29, in relation to art. 62 of Law 58/2003, of December 17,

by entering, indicating the NIF of the sanctioned person and the number of

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

restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the

Spanish Agency for Data Protection in the banking entity CAIXABANK,

S.A.. Otherwise, it will be collected in the executive period.

C/ Jorge Juan, 6

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Received the notification and once executed, if the date of execution

is between the 1st and 15th of each month, both inclusive, the deadline for

make the voluntary payment will be until the 20th of the following month or immediately

later business day, and if it is between the 16th and last day of each month, both

inclusive, the payment term will be until the 5th of the second following month or

immediate subsequent business.

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

This Resolution will be made public once it has been notified to the

interested.

Against this resolution, which puts an end to the administrative process in accordance with

art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of

the LPACAP, the interested parties may optionally file an appeal for

replacement before the Director of the Spanish Agency for Data Protection in

within one month from the day following the notification of this

resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended if the interested party expresses his intention to file an appeal contentious-administrative. If this is the case, the interested party must formally communicate this fact in writing addressed to the Agency Spanish Data Protection, presenting it through the Registry Electronic Agency [https://sedeagpd.gob.es/sede-electronica-web/], 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would terminate the precautionary suspension.

Sea Spain Marti

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