

□ Procedure No.: PS/00060/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The claim presented by the Court has been received in this Agency of First Instance and Instruction No. 1 of ***LOCALITY.1, dated 18 December 2019. The claim is directed against D. A.A.A. with NIE ***NIE.1 (in later, the claimed one).

The claim presented by the Court by virtue of what was agreed in the procedure, Trial on minor crimes nº ***PROCEDIMIENTO.1, in which it is dictated sentence against the defendant for the crime of fraud in obtaining a microcredit to through the web portal ***URL.1 and for which the respondent made use of the data third-party personal.

Date on which the claimed events took place: April 16, 2019

Documentation provided by the claimant:

- Sentence nº ***SENTENCIA.1 on the minor crime of fraud.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant and 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).

On January 21, 2020, in procedure E/00577/2020, the Agency

Spanish Data Protection agreed to carry out these actions of

investigation in relation to the facts reflected in the claim in order to

correctly identify the claimant.

- It is proven, according to Judgment No. *** JUDGMENT.1, that the claimant used third party data for a micro loan application.

- Requested from the entity Nbq Technology, S.A.U., lender of the micro loan that

gave rise to the trial for a minor crime of fraud, to report whether the

data provided in the loan application to any asset solvency file and

credit. On February 17, 2020 it is received in this Agency, with registration number

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007283/2020, written response to the request stating that the data of the

presumed holder of the loan had not been included in any solvency file

patrimonial and credit due to the fact that they received, only 8 days after the expiration

of the credit, police report of the presumed fraud.

- Requested to the Court the identification data of the claimed, dated July 2

of 2020 is received at this Agency, with registration number 022961/2020, letter of

reply reporting them.

- It is stated in Judgment No. ***SENTENCIA.1 that the defendant has been sentenced to

the penalty of two months fine at a rate of eight euros per day of quota (which makes

a total of 480 euros) and the payment of procedural costs.

THIRD: On March 1, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5 a) of the

GDPR. Said agreement was notified by post on March 18, 2021 and through

of the BOE edictal board on April 9, 2021.

FOURTH: Formal notification of the initiation agreement, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

on the content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: It is stated that the defendant according to judgment No. ***SENTENCE.1

of the Court of First Instance and Instruction No. 1 of ***LOCATION.1, dated 9

December 2019, made use of the personal data of third parties to obtain

of a micro loan through the web portal ***URL.1.

SECOND: On March 1, 2021, this sanctioning procedure was initiated by the

alleged infringement of article 6.1 of the RGPD, being notified on March 18 and

April 2021. Not having made allegations, the respondent, to the initial agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

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The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The General Data Protection Regulation deals in article 5 with the principles that must govern the processing of personal data and mentions among them that of "legality, loyalty and transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful: conditions:

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

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The violation of article 6.1 of the RGPD is typified in article 83

of the RGD that, under the heading "General conditions for the imposition of fines administrative", says:

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

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72.1.b) qualifies this infraction, for the purposes of prescription, as a very serious infraction.

The documentation in the file offers evidence that according to collects judgment No. ***SENTENCIA.1 of the Court of First Instance and Instruction No. 1 of ***LOCALITY.1, dated December 9, 2019, the respondent processed the data of a third party for the application of a microcredit, without complying with any of the legal authorizations that appear in article 6 of the RGD.

In short, there is evidence in the file that the defendant dealt with the personal data of the third party without legitimacy to do so. The behavior described violates the article 6.1. of the RGD and is subsumable in the sanctioning type of article 83.5.a, of the

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GDPR.

III

In order to determine the administrative fine to be imposed, the precautions

visions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“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 the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

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

nature, scope or purpose of the processing operation in question

as well as 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 Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

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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 party.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to be imposed on the person claimed as responsible for an infraction typified in article 83.5.a) of the RGPD, in an initial assessment, it is estimated Concurrent in this case, as aggravating factors, the following factors:

- In the present case we are dealing with an intentional action. (art.83.2. b) of the GDPR).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. A.A.A., with NIE ***NIE.1, for a violation of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of 1,000 euros (one thousand euros).

SECOND: NOTIFY this resolution to D.A.A.A..

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in the executive period.

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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 term to make the payment voluntary 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 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure 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 reconsideration before the

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

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided 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, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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