 File No.: PS/00372/2021

IMI Reference: A56ID 122865- Case Register 128401

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim with the

Polish data protection authority. The claim is directed against

GLOVOAPP23, S..L. with NIF B66362906 (hereinafter, GLOVOAPP). The reasons in

on which the claim is based are as follows:

After discovering that his home was not within the scope of action of the

GLOVOAPP distributors (information that is only obtained once one is opened once

account and enter your personal data), the complaining party requested the deletion of

your account and personal data, up to two times 5 days apart, but

got no response. In addition, it states that the forms found

available in the GLOVO app for the revocation of consent is only

They are in Spanish, not in English or Polish.

Along with the claim, provide:

- Copy of an email sent on November 7, 2019 at 12:10 a.m.

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: “Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period”. This email responds to a message dated November 6, 2019 at

23:10 hrs in which it is claimed that the delivery area is too small.

- Copy of an email sent on November 12, 2019 at 8:56 a.m.

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: “Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period”. This email responds to a message dated November 12, 2019 at

8:56 hrs in which he explains that his requests are not being attended to. Warns that it has already

notified to the data protection authority and awaits immediate deletion

of your account.

- Copy of an email sent on November 12, 2019 at 9:43 a.m.

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: “Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period”. This email responds to a message dated November 12, 2019 at

8:43 a.m. in which it is explained that a week ago he sent an email

requesting the deletion of your account and you have not received a response, but you have received a

information document. It also warns that it will notify the protection authority

of data that does not have data deletion request forms in Polish, only in

Spanish.

- Copy of an email sent on November 13, 2019 at 7:39 p.m.

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: “Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period". This email responds to a message dated November 13, 2019 at 18:39 hrs in which you request to stop processing your personal data immediately and are deleted from all databases. In addition, you request the deletion of your account within two business days.

SECOND: Through the "Internal Market Information System" (hereinafter IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the cross-border administrative cooperation, mutual assistance between States members and the exchange of information, as of April 27, 2020, had entry in this Spanish Data Protection Agency (AEPD) the aforementioned claim. He transfer of this claim to the AEPD is carried out in accordance with the provisions in article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Physical Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (hereinafter, GDPR), taking into account its cross-border nature and that this Agency is competent to act as main control authority, given that GLOVOAPP has its headquarters and main establishment in Spain.

This Agency accepted, on May 18, 2020, to be the competent authority to act as main supervisory authority (LSA), in accordance with the provisions of Article 56.1 of the GDPR, regarding the right of deletion. However, proposed to reject the part related to the forms, since its Inspection services verified that the data protection forms are downloaded in the language of the city that is selected on the home page, and, consequently, the forms in Polish are available if a Polish city is chosen.

The proposing authority raised the possibility of granting the complaining party the possibility of presenting evidence that the forms were only available in

Spanish language at the time of filing the claim, since the

The findings of the AEPD refuted the complaint of the claimant at the time the

that the verification was carried out (that is, five months after the presentation of the

the claim). They commented that they would send a letter to the complaining party requesting

said rectification, and that, if in 7 days from the delivery of the same not

received a response, they would accept the dismissal of that part of the claim.

On August 11, 2020, this Agency received an email from the

Polish authority, reporting that no response had been received from the

claimant, and that, consequently, the part of the

claim related to the forms, reducing this to the question related to

the exercise of the right of deletion (art. 17 GDPR).

According to the information incorporated into the IMI System, in accordance with the

established in article 60 of the GDPR, acts as a "control authority

data subject", in addition to the Polish data protection authority, the data protection authorities

control of Portugal, Italy and France. All of them under article 4.22 of the GDPR,

given that data subjects residing in these Member States are likely to be

are substantially affected by the treatment object of this procedure.

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

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

forward LOPDGDD), said claim was transferred to GLOVOAPP, so that

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

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

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on August 20, 2020 as

It appears in the acknowledgment of receipt that is in the file.

On September 18, 2020, this Agency received a written response

indicating:

 That the origin of the incident lies in the fact that, unlike what

the complaining party indicates, the deletion of their personal data was not requested

through the form enabled for this purpose on its web portal, but through

a chat with the Customer Service Agent (SAC) in charge of

the management of orders and incidents related to them. In

instead of using the different visible, clear and specific channels that the

company at your disposal, both on its website and in its application, to

exercise personal rights, i.e. the addresses legal@glovoapp.com and

gdpr@glovoapp.com, as well as the different forms of exercise of

rights published on the web and accessible in the application in the section

"Contact", requested the deletion of your data through a channel

wrong, and not intended for this purpose.

 That your SAC assigns an agent in charge of responding to users in

depending on the territory in which the user is located, in order to be able to

respond in the same language in which your request is launched. In this case, at

claiming party was not assigned any city or territory, since, by not

having placed any order through the 'app', he could not be located in

function of the territory. For this reason, given the impossibility of locating the

user in a specific city, the system did not transmit requests for

deletion of data to the attention of any SAC agent, receiving the

user only the answer that the SAC generates automatically before

that an agent be assigned to respond to users.

 That, as a result of the transfer of the claim, they have proceeded to eliminate the data

personal information of the claimant (they clarify that they only had their address

e-mail, since he did not manage to place any order), and they have been

contacted to inform you of this, and of the conservation of your data

in a state of blocking, among other things, to defend against claims

(provide a copy of the e-mail, dated September 16, 2020). They explain

that the reason for not responding to your request was the use of a

wrong channel to exercise your right.

 That, in order to avoid the occurrence of this type of incident in the future, they have

sent a reminder to all agents about the need to send to the

office of the Data Protection Officer all communications that

may include a request to exercise rights, even if this request is

hidden or not obvious. They have also reported to the department in charge

of the SAC the inconvenience related to the allocation of requests by

part of users who have not placed orders and/or who have not indicated

a country or an address when registering in the app. As long as I don't know

find a technical solution to the problem, your agents will control, manually and

periodically, applications that have not been automatically assigned to

no agent.

They also deny the fact, denounced by the complaining party, that they did not

forms are available in your language, and, also, that it is necessary to open

an account to know the geographic area of service availability,

since the shipment coverage is accessible through a URL

dedicated (https://glovoapp.com/es/map in Spain, for example).

FOURTH: On December 11, 2020, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On October 5, 2020, the Director of the AEPD adopted a

draft decision to archive the proceedings. Following the established process

in article 60 of the GDPR, that same day this

draft decision and the authorities concerned were informed that they had

four weeks from that time to raise pertinent objections and

motivated. Within the period granted for this purpose, the control authority of Poland

presented its pertinent and reasoned objections to the effects of the provisions of the

Article 60 of the GDPR, in the sense that it considered that a file of

the proceedings but rather that the case be analyzed and a warning issued since

there had been a breach of the GDPR. For its part, the supervisory authority

Portugal filed its pertinent and reasoned objections to the same effect,

understanding that GLOVOAPP should be penalized for having produced a

GDPR violation.

SIXTH: On September 3, 2021, the Director of the AEPD adopted a

revised draft decision to initiate disciplinary proceedings. following the

process established in article 60 of the GDPR, on September 6, 2021,

transmitted through the IMI System this revised draft decision and they were made

let the authorities concerned know that they had two weeks from that moment

to formulate pertinent and reasoned objections. Within the term for this purpose, the

control authorities concerned did not raise relevant and reasoned objections

in this regard, for which reason it is considered that all the control authorities are in agreement.

accordance with said revised draft decision and are bound by it, accordingly

in accordance with the provisions of paragraph 6 of article 60 of the GDPR.

SEVENTH: On March 31, 2022, the Director of the Spanish Agency for

Data Protection agreed to start a sanctioning procedure against GLOVOAPP, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 12 of the GDPR, in relation to the

Article 17 of the GDPR, typified in Article 83.5 of the GDPR.

The initiation agreement was notified in accordance with the rules established in the LPACAP on

April 11, 2022, as stated in the acknowledgment of receipt in the file.

EIGHTH: On April 19, 2022, GLOVOAPP files a brief through the

which requests the extension of the term to adduce allegations.

NINTH: On April 21, 2022, the examining body agrees to the extension

of term requested up to a maximum of five days, in accordance with the provisions of the

Article 32.1 of the LPACAP.

The extension agreement is notified to GLOVOAPP that same day, as stated in the

acknowledgment of receipt in the file.

TENTH: On May 3, 2022, it is received at this Agency, on time and

form, writing of GLOVOAPP in which it alleges allegations to the start agreement in the

which, in summary, stated that:

FIRST. - ABOUT GLOVO'S COMPLIANCE WITH THE ATTENTION OF

RIGHTS OF PROTECTION OF PERSONAL DATA

In the first place, GLOVOAPP refers to the statements presented in the

brief dated September 18, 2020 in relation to the events that occurred

on the management of the right of deletion exercised by the ex-user of Glovo, of

Polish nationality, through the chat managed by the Service Department of

Glovo Customer Service (SAC).

In these statements, GLOVOAPP understands that it became clear that in

At no time did Glovo deny or hinder the exercise of the right to delete

the complaining party for the purposes of the provisions of article 12.2 of the LOPDGDD,

but rather that Glovo showed flagrant flexibility by proceeding to the elimination

of the personal data of the complaining party immediately after receiving the

claim by this Agency, despite not being exercised through the

channels enabled for this purpose at that time (email addresses

legal@glovoapp.com and gdpr@glovoapp.com).

GLOVOAPP also refers to the reasons why it could not proceed to eliminate

the personal data of the complaining party in time (impossibility of locating him in

a specific territory or city for not having placed any order through the

platform and, consequently, impossibility of assigning your request to an agent

specific to the SAC), which cannot be understood, in any case, as a will

de Glovo of not wanting to comply with its duty of care of the right of deletion exercised by the claimant, for the purposes of article 74.c) of the LOPDGDD.

Moreover, GLOVOAPP records that the right of deletion of the party claimant was immediately attended to for the reasons that were already expressed in said brief dated September 18, 2020, complementing it with a shipment mass to all the agents that are part of the SAC reminding them of the need to immediately send to the Data Protection Officer any exercise of rights that could arrive through the chat.

Therefore, it understands that it is clearly demonstrated that GLOVOAPP, as responsible for treatment, already had insured and continues to insure in their policies the satisfaction of the rights of the interested parties, regardless of the how they are exercised.

It affirms that GLOVOAPP regularly and constantly monitors all the channels with which that has contact with the user (web forms, application chat, addresses email, postal mail, social network profiles, among others) in such a way so that, in case a data protection right is exercised, it is properly cared for.

It understands that proof of this is that, since the claim by the claimant sent by this Agency, GLOVOAPP has not received any other claim for part of it or of any other control authority of the countries in which it operates for not having met a data protection right or, especially, a right of deletion. And that all these actions of GLOVOAPP cannot be understood in another way than as a clear will of GLOVOAPP to comply with

the personal data protection regulations.

For all these reasons, GLOVOAPP considers that the Agency errs in penalizing it with a

warning, since the actions that occurred cannot be understood as a

clear will to breach the data protection regulations in the form

of not wanting to attend to the right of deletion of the complaining party, being necessary

decree the file of the same.

SECOND. - ON THE PRONOUNCEMENT OF THIS AGENCY ON THE

ARCHIVE OF PERFORMANCES

GLOVOAPP expressly mentions the resolution dated October 5,

2020 by which the Director of the AEPD adopted a draft decision to file

the actions that occurred in this procedure.

Although the control authorities concerned in Poland and Portugal submitted

objections to the draft decision, for GLOVOAPP it is clear that said draft

is not adopted by the AEPD without considering that from the proceedings and evidence obtained

to date do not result in the existence of a breach or in damages and

Serious damage to the rights and interests of the complaining party.

GLOVOAPP considers that the AEPD, as the main control authority of this

procedure, should have upheld the decision taken at the time, being the

warning an unnecessary and inappropriate sanction for this case, since

Glovo at no time has shown a willingness not to attend to the right of

deletion of the complaining party, especially when it has shown clear and flexible flexibility

unequivocally deleting your data immediately after receiving the

claim by the AEPD, despite having exercised this right by a

channel not enabled for this purpose.

In short, GLOVOAPP considers that Glovo has not breached the regulations of

data protection, being, for this reason, the filing of the proceedings the most

suitable for the case at hand.

THIRD. – NULLITY OF THE ADMINISTRATIVE ACT DUE TO THE ABSENCE OF THE

NECESSARY ELEMENTS FOR IT TO BE CONSIDERED TO EXIST

INFRINGEMENT

Additionally, GLOVOAPP understands that in no case is Glovo's conduct

punishable in the form of a warning, for the reasons that are exposed to

continuation.

3.1 Absence of the subjective elements of the offence. Nullity of Sanction

GLOVOAPP considers that concurrence should be examined first, or more

exactly the non-concurrence of the fundamental elements and requirements

necessary to be able to impose a sanction in this case.

Thus, the principles that will govern the sanctioning power of the Administration will be,

in general, those of the Sanctioning Administrative Law and in

particular, "the principles of legality, typicity, responsibility, proportionality and

concurrence".

Law 40/2015, of October 1, on the Legal Regime of the Public Sector, establishes

that the administrative infraction is constituted by the action, understood in the sense

wide range of any action -or omission of the people directed to the production of

a result and that the Legislator himself has typified as an infraction.

In accordance with the foregoing, in order to be faced with an infringement in terms of

protection of personal data there must have been an act or omission

willful or culpable with any degree of negligence. What does this mean? what to

responsible subject could, at least, have demanded a different conduct.

Without intending to subscribe to a compendium of sanctioning law, we can define the

subjective elements such as the different degrees of voluntariness or, when

less, non-observance of due diligence; fraud being the clear exponent of the

willfulness in the commission of the typical action and the simple negligence of the conduct

lacking the necessary care in the fulfillment of the obligations regarding

sanitary.

In this way, it corresponds to the competent body to examine whether the conduct object of

analysis is intentional or culpable, since said assessment is essential to be able to

impose a sanction because they are constitutive elements of the infraction

administrative.

The jurisprudence that we could cite supporting the above statement would be almost

unlimited, so we are only going to refer to the Judgment of October 13,

2005 of the National Court since in it a detailed review of the

sanctioning principles, their evolution and that of the applicable jurisprudential criteria.

Given that the Judgment cited is quite lengthy, and in order not to lengthen

unnecessarily transcribing literally the entire content of it,

We extract below exclusively the paragraphs that we consider most

representative:

"FOURTH (...) the assessment of guilt in the conduct of the offending subject is

a requirement that arises directly from the constitutional principles of the

legal certainty and legality, regarding the exercise of sanctioning powers

of any nature. The principle of guilt constitutes a basic element to the

time to classify the behavior of a person as punishable, that is, it is a

essential element in all administrative illicit (...)

SIXTH (...) In summary, the guilt must be as proven as the conduct

active or omission that is sanctioned, and that proof must be extended not only to the facts

determinants of responsibility but also, where appropriate, those who qualify or

aggravate the offense. (…)"

It is precisely the analysis of guilt that differentiates a system of

strict liability, in which sanctions are exclusively based on the

result, one based on the principle of guilt.

Therefore, GLOVOAPP understands that it can be concluded that the Agreement notified to

GLOVOAPP dispenses with one of the essential elements when it comes to imposing

a sanction (even if it is in the form of a warning), such as the examination of the

guilt, being fully demonstrated that at no time GLOVOAPP

has fraudulently wanted to ignore the right of deletion of the complaining party.

Quite the opposite. Glovo has proceeded immediately to the attention of said

right once transferred by this Agency.

Therefore, GLOVOAPP states that it must be taken into account that the AEPD had to

having carried out this analysis and therefore, not being able to appreciate, in any way

way, an intention to violate the data protection regulations by Glovo (in

the way of wanting to hinder, prevent or not attend to the right to suppress the

complaining party), and having dispensed with the assessment of said spirit as

essential element of the administrative offence, GLOVOAPP understands that the

imposition of a sanction would be invalidated.

3.2. Of the lack of proof that distorts the presumption of innocence of Glovo. Nullity of sanction

In this sense, it should be noted that, as has been repeatedly pointed out by jurisprudence, to proceed to the imposition of any administrative sanction is

prerequisite and inexcusable the existence of a conduct constituting an infringement administrative. Therefore, the Administration cannot sanction without proving sufficiently the guilt of the penalized subject, that is, the existence of bad faith in his conduct. Consequently, it is clear that it is up to the Administration to burden of proof of the subject's guilt, which must be proven by any of the means admitted by law.

However, in the case at hand, GLOVOAPP does not know that there is absolutely no evidence that allows to consider destroyed the presumption of innocence that, within the administrative-sanctioning scope, is fully applicable to the relations between the Administration and the administered, as as countless jurisdictional resolutions have recognized in all areas hierarchical and territorial.

In this sense, for example, the Judgment of the Superior Court of Justice of 10 June 1994, established: (...) in the exercise of the sanctioning power of the Public Administrations plays, with full effectiveness, the presumption of innocence of any person accused of an offense until his guilt has been been demonstrated. This principle, incorporated in article 24 of our Constitution,

produces the immediate procedural consequence of shifting the burden of proof to the accuser, and in the case of the sanctioning power, to the Public Administration. Is she who, in a contradictory procedure, with the participation and audience of the accused, must supply, collect and provide the evidence, through the common means that serve as support to the assumption of fact whose classification as an administrative fault is intended. In the event that such evidentiary activity is not produced, it is evident that the account or description of the events by the authority or its agents does not lead to a presumption of veracity that obliges the defendant to prove his innocence, thus reversing the burden of proof (SSTS of 16 December 1986 and December 26, 1988)”

Likewise, in relation to said lack of evidence and for the purpose of assessing what happened In the present case, the Judgment of the Supreme Court of 26 December 1983 (RJ 1983\6418), which provided the following: "(...) Regarding disciplinary measure, it is not enough for the Administration to believe that a person has carried out certain facts to apply the sanction that corresponds to them, but rather it is necessary for him to prove that he is indeed the author thereof, and this requirement does not It can certainly be considered fulfilled with two reports, which (...) do not go beyond being a subjective appreciation of the person who issued them and that even though he is enhanced by the quality of its author, cannot be as decisive as the Administration claims, when the person concerned contradicts it in full detail, and, when it refers to facts which by their nature could have been easily and definitely proven or confirmed by the most varied media (...). That in the sanctioning field of Administrative Law, it is not appropriate to resort to rational indications, or valuations in conscience, to prove an administrative offense, imposing by application of the presumption of innocence of the accused, to the Administration that accuses and sanctions, the burden of proving the reality of the facts that he imputes, and that these are

reproachable to the accused person, given that the presumption of innocence, before

referred to, currently enshrined in art. 24 of the Constitution, can only

be destroyed by a finished proof of guilt SS. From February 16, March 23 and 28

September 1982 (RJ 1982/968, RJ 1982/2324 and RJ 1982/5513), being conditioned

the legality of administrative sanctions due to the typicity of the offense and the sanction

and by conclusive and unequivocal proof that the sanctioned party is responsible for

that one, recalling the S. of this Chamber of December 23, 1981 (RJ 1981/5453), that the

specific prosecution of an administrative resolution that completes a file

corrective or sanctioning, must be based on the analysis of the challenged fact or act, its

nature and scope, to determine and see if the administrative offense pursued is or

not subsumable in any of the assumptions, types of administrative offense provided for

in the norm that serves as a basis for the estimation of the transgression that is

persecutes and, where appropriate, is sanctioned, prosecution that must be done with a criterion

exclusively legal, since the classification of the administrative offense is not

discretionary power of the Administration or sanctioning authority, but rather

legal activity that requires as an objective assumption the framing of the fact

incriminated in the predetermined type legally as a fault, and cannot be resolved

the responsibility of an administrative infraction by mere presumptions, indications or

conjectures, but by the reality of perfectly accredited facts and

demonstrated (…)".

This being the case, it is clear that something more must be required of the Agreement than the simple

mention of the legal precepts of the LOPDGDD to which it has previously been made reference. In this case, GLOVOAPP understands that the AEPD is limited to reviewing in the Agreement the background of the file but, as has been demonstrated, it cannot be affirmed in any way that we are dealing with an infringement clearly intended of the data protection regulations by Glovo, especially if, as it has been possible to demonstrate in the facts, the right to suppress the complaining party was clearly addressed.

The main objective of the disciplinary procedure must be, in the opinion of GLOVOAPP, precisely not to stay in what has already been indicated in the procedure, but try to break the presumption of innocence that assists all obligors seeking the intentional element in his performance, the subjective element of the administrative offense to through a probative activity that can be considered sufficient.

However, GLOVOAPP considers that in this case there is no evidence real charges in said initiation of procedure that allow us to understand that there is guilt in the conduct of GLOVOAPP.

For all the arguments presented, GLOVOAPP requests the AEPD to withdraw the sanction imposition agreement imposed on GLOVOAPP in the Agreement, understanding that wants to be imposed with a total absence of probative elements of the guilt and, consequently, with violation of the fundamental right to presumption of innocence included in the Spanish Constitution.

3.3. Absence of guilt. Nullity of sanction

In order to prove the absence of guilt, GLOVOAPP brings up, in relation to the invocation of the principle of guilt, which the Court Constitutional has established as one of the basic pillars for the interpretation of the Sanctioning Administrative Law that the principles and guarantees present in the field of Criminal Law are applicable, with certain nuances, in the exercise of

any disciplinary power of the Public Administration (STC 76/1990, of 26 December

April).

The Supreme Court in its judgment of February 10, 1986 stated that "the exercise

of punitive power, in any of its manifestations, must accommodate the

constitutional principles and precepts that preside over the criminal legal system in

as a whole, and, whatever it may be, the area in which the punitive power of the

State, Jurisdiction, or the field in which it occurs, is subject to the same

principles whose respect legitimizes the imposition of penalties and sanctions, therefore, the

administrative offenses, to be subject to sanction or penalty, must be

typical, that is, foreseen as such by a previous legal norm, unlawful, that is,

injurious to a legal asset provided for by the Law, and guilty, attributable to a

author by way of fraud or negligence, to ensure in his assessment the balance between the

public interest and the guarantee of people, which is what constitutes the key to

Rule of law".

In the specific case, at no time has the regulations of

data protection, moreover, GLOVOAPP considers that it has religiously complied

with all its obligations. There has been no intent to infringe, quite the contrary.

GLOVOAPP understands that it has demonstrated to the AEPD its willingness to comply with the

personal data protection regulations, proceeding immediately to the

deletion of the data of the complaining party, once the claim has been transferred by

part of this Agency, and ensuring the full satisfaction of the rights of the

users at all times regardless of the channel that they are exercised.

For all the arguments presented, GLOVOAPP considers that there is an absence

total evidence of guilt and, consequently, a violation of the

fundamental right to the presumption of innocence enshrined in the Constitution

Spanish.

3.4. Absence of the principles of criminality and presumption of innocence. nullity of

sanction

GLOVOAPP deems it necessary to highlight the non-existence of conduct

considered as an infraction and for which he is penalized administratively.

This should have led, in its opinion, the AEPD to file the proceedings

sanctions against GLOVOAPP (decision already made by this Agency in its Project

decision dated October 5, 2020), since, otherwise, it would incur

a flagrant violation of the principle of classification that emerges from the regulations

of application.

From the beginning it is indicated that the legal system protects those administered in

the disciplinary procedure demanding that the administrative bodies in charge

of the promotion of sanctioning actions, only consider as infractions those

behaviors that fit appropriately into the definitions that are explicitly

establish norms with legal force. Thus, the first paragraph of article 129 of the Law

40/2015, establishes the following: "Article 27. Principle of classification. 1. They only constitute

administrative offenses the violations of the legal system foreseen

as such violations by a Law, without prejudice to the provisions for the

Local Administration in Title XI of Law 7/1985, of April 2" (the underlining and the

bold are ours)."

In close connection with said provision, the same Law 40/2015 establishes that the

starting point for any action aimed at establishing responsibilities for the

commission of administrative offenses should be to consider that, unless

the opposite is proven, the company has not incurred the rates declared

as such violations.

As previously mentioned, it is what is known as the principle of

presumption of innocence, which is fully consistent with the fact that the

Administration is obliged to carry out the instructional activity to

check if a specific behavior is subsumed in an offending type. so, so

Regarding the presumption of innocence, Law 39/2015 establishes that in the

disciplinary procedure also governs this principle.

Regarding the importance of the administrative procedure respecting the principle

of typicity, the Judgment of the Supreme Court of June 2, 2010, Chamber of

Contentious-Administrative, Section 4, has pointed out, reproducing what has been

said in an extensive and consolidated doctrine, the following: "The principle of typicality, the

most important of those on which administrative sanction law is based,

requires, as a minimum, a perfect adaptation between the act and what is definitive as

transgression, such as the objective and personal circumstances that determine the

illegality, in order to accurately configure the conduct of the subject with the definitive type

by the norm that is considered violated (Judgments of March 25, 1977, December 13,

May and December 22, 1986. Rulings of the Supreme Court of February 12).

As regards the principle of presumption of innocence in the field of

sanctioning administrative power, the jurisprudence has been equally unequivocal in

the sense of demanding from administrative bodies strict respect and submission

the same. Thus, from an early –and consolidated doctrine- the Court

Constitutional Court has been invariably declaring that the principle of

presumption of innocence fully subjects the administrative sanctioning power.

As an example, one can cite -for all- the Constitutional Court Judgment

13/1982, of April 1, which was expressed literally as follows: "(...) the presumption of

Innocence has ceased to be a general principle of law that must inform the

judicial activity ("in dubio pro reo") to become a fundamental right that

binds all public powers and is immediately applicable, as has been

This Court has specified in repeated judgments.[…] The right to the presumption of

innocence cannot be understood reduced to the strict field of prosecution of

allegedly criminal conduct, but it must also be understood that he presides over the

adoption of any resolution, both administrative and jurisdictional, based on

in the condition or conduct of people and from whose appreciation a judgment is derived.

penalizing result for them or limiting their rights."

Delving into what has been transcribed, the Supreme Court has also reflected in its activity

jurisdictional application of the principle of presumption of innocence. Thus, by Judgment

of February 28, 1994, Contentious-Administrative Chamber, Section 7, the High Court

stated: "From a broad perspective, the identity of principles of law

administrative sanction with criminal punitive power is limited to the

following general doctrines: to the principle of legality (there is no infraction or sanction

administration without a prior law that determines them), to that of the typical unjust (delimitation of the reprehensible conducts for the purposes of its sanction), to that of "nulla pena sine culpa" (concurrence of fraud or fault in the author of the offense with a requirement of disciplinary reproach) and, finally, and with obvious significance in the event of case file, at the beginning of proven proof of the reality of the reprehensible conduct, whose embodied in the constitutional principle of presumption of innocence is evident, and that forces to fully prove the effective realization by the defendant of the reprehensible action or omission, being rigorously applied to the law administrative penalty".

Well, given the importance that the legal system gives to the principles of criminality and presumption of innocence within the scope of the sanctioning power of the Administration, and proven the extensive reception in jurisprudence of the obligation to apply these principles to the administrative disciplinary procedure, must Contrast everything said immediately with what has happened in the present performances.

In view of all of the foregoing, GLOVOAPP understands that it has been duly demonstrated that it has acted at all times in good faith, applying the maximum effort to comply with data protection regulations with the conviction of be within the law, as this is his requirement as responsible for the treatment of the personal data of the interested parties, and with the aim of not putting never jeopardize your rights and freedoms. There is, therefore, no clear "intentionality" in failing to comply with current regulations since, he made all the necessary and due actions to comply with the regulations and has adjusted prudently their performance to the law.

ELEVENTH: On May 9, 2022, the instructing body of the disciplinary procedure formulated a resolution proposal, in which it proposes that

by the Director of the AEPD a warning is addressed to GLOVOAPP23, S..L., with NIF B66362906, for a violation of article 12 of the GDPR, typified in Article 83.5 of the GDPR.

The proposed resolution was notified in accordance with the rules established in the LPACAP on May 18, 2022, as stated in the acknowledgment of receipt that works in The file.

TWELFTH: After the period for this purpose has elapsed, the Agency has not received GLOVOAPP's allegations to the aforementioned resolution proposal.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: On November 7, 2019 at 0.10 a.m. an email was sent from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with the following message: “Thank you for contacting Glovo! We have just received your message. We will respond to it in 24 hours. Thank you for your patience during this waiting period”. This email responds to a message dated November 6, 2019 at 23:10 hrs in which it is claimed that the delivery area is too small.

SECOND: On November 12, 2019 at 8:56 a.m. an email was sent from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with the following message: “Thank you for contacting Glovo! We have just received your message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period". This email responds to a message dated November 12, 2019 at

8:56 hrs in which he explains that his requests are not being attended to. Warns that it has already

notified to the data protection authority and awaits immediate deletion

of your account.

THIRD: On November 12, 2019 at 9:43 a.m. an email was sent

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: "Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period". This email responds to a message dated November 12, 2019 at

8:43 a.m. in which it is explained that a week ago he sent an email

requesting the deletion of your account and you have not received a response, but you have received a

information document. It also warns that it will notify the protection authority

of data that does not have data deletion request forms in Polish, only in

Spanish.

FOURTH: On November 13, 2019 at 7:39 p.m. an email was sent

from the address liveops.comms@glovoapp.com to ***USER.1@gmail.com, with

the following message: "Thank you for contacting Glovo! We have just received your

message. We will respond to it in 24 hours. Thank you for your patience during this

waiting period". This email responds to a message dated November 13, 2019 at

18:39 hrs in which you request to stop processing your personal data immediately and

are deleted from all databases. In addition, you request the deletion of your account

within two business days.

FIFTH: The GLOVOAPP Customer Service Department (SAC) assigns an agent

responsible for responding to users based on the territory in which it is located.

find the user, in order to be able to respond in the same language in which

launch your application. In this case, the complaining party was not assigned any city

or territory, since, having not placed any order through the 'app', you will not be

could locate based on territory. This is why, given the impossibility of

locate the user in a specific city, the system did not transmit requests for

deletion of data to the attention of any agent of the SAC, receiving the user as

only the response that the SAC automatically generates before a ticket is assigned

agent in charge of responding to users.

SIXTH: As a result of the transfer of the claim, GLOVOAPP has proceeded to eliminate the

personal data of the complaining party (although they only had their email address

email, since he did not get to place any order), and they have been put in

contact to inform you of this, and of the conservation of your data in a state of

blockade, among other things, to defend oneself in claims (through an email

email dated September 16, 2020).

SEVENTH: GLOVOAPP has sent a reminder to all agents about the

need to send to the office of the Data Protection Delegate all the

communications that may include a request to exercise rights, although this

request is hidden or not obvious. He has also reported to the department

in charge of the SAC the inconvenience related to the assignment of the requests

by users who have not placed orders and/or who have not indicated a

country or an address when registering in the app. As long as no one is found

technical solution to the problem, your agents will control, manually and periodically, the

requests that have not been automatically assigned to any agent.

FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

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

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

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

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

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

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

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

subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is

the processing of personal data, since GLOVOAPP performs

the collection and conservation of, as a minimum, the electronic mail of natural persons,

among other treatments.

GLOVOAPP carries out this activity in its capacity as data controller,

given that it is the one who determines the ends and means of such activity, by virtue of article

4.7 of the GDPR.

The GDPR provides, in its article 56.1, for cases of cross-border processing,

provided for in its article 4.23), in relation to the competence of the authority of

main control, that, without prejudice to the provisions of article 55, the authority of

control of the main establishment or of the only establishment of the person in charge or of the

The person in charge of the treatment will be competent to act as control authority

for the cross-border processing carried out by said controller or

commissioned in accordance with the procedure established in article 60. In the case

examined, as has been stated, GLOVOAPP has its main establishment in

Spain, so the Spanish Agency for Data Protection is competent to

act as the main supervisory authority.

For its part, the deletion of personal data is regulated in articles 17 of the

GDPR and article 15 of the LOPDGDD, while the way in which these rights

must be addressed is regulated in article 12 of the GDPR.

II

Allegations adduced

In relation to the allegations adduced to the agreement to initiate this

disciplinary procedure, we proceed to respond to them according to the order

exposed by GLOVOAPP:

FIRST. - ABOUT GLOVO'S COMPLIANCE WITH THE ATTENTION OF

RIGHTS OF PROTECTION OF PERSONAL DATA

GLOVOAPP understands that it was made clear that at no time did it deny or

hindered the exercise of the right of deletion of the complaining party for the purposes

of the provisions of article 12.2 of the LOPDGDD, but rather showed a

flagrant flexibility proceeding to the elimination of the personal data of the party

claimant immediately after receiving the claim from this

Agency, despite not being exercised through the channels enabled for this purpose in that

moment (the email addresses legal@glovoapp.com and

gdpr@glovoapp.com).

In addition, it refers to the reasons why it could not proceed to delete the data

personal information of the claiming party in time (impossibility of locating him in a territory

or specific city for not having placed any order through the platform and,

consequently, impossibility of assigning your request to a specific agent of the SAC),

which cannot be understood, in any case, as a will of GLOVOAPP to

not wanting to comply with their duty of care of the right of deletion exercised by the

complaining party, for the purposes of article 74.c) of the LOPDGDD.

Moreover, GLOVOAPP records that the right of deletion of the party

claimant was immediately attended to for the reasons that were already expressed in

said brief dated September 18, 2020, complementing it with a shipment

mass to all the agents that are part of the SAC reminding them of the need to

immediately send to the Data Protection Officer any exercise of

rights that could arrive through the chat.

Therefore, it understands that it is clearly demonstrated that GLOVOAPP, as

responsible for treatment, already had insured and continues to insure in their policies

the satisfaction of the rights of the interested parties, regardless of the

how they are exercised.

In this regard, this Agency wishes to point out that, precisely, it did not "have insured" the satisfaction of the rights of the interested parties, regardless of the way in which these are exercised, since the complaining party requested the suppression of their data through a channel certainly different from that provided by GLOVOAPP, which is why which the company was not able to serve him correctly. And this was, just like the The company acknowledges, because the complaining party had not made any order, for which reason it could not be assigned a specific territory or city, which caused that a specific agent of the SAC was not assigned to said request.

Although it is true that after the transfer of the claim by this Agency, GLOVOAPP has duly attended to the request of the complaining party, which which is valued positively by this Agency, it is no less true that the request of the complaining party was not attended to within the period stipulated by the GDPR.

GLOVOAPP also states that it regularly and constantly monitors all channels with which they have contact with the user (web forms, chat of the application, email addresses, postal mail, social media profiles, among others) in such a way that, in the event of exercising a right of data protection it is properly taken care of.

And what proof of this is that, from the claim of the complaining party sent by this Agency, GLOVOAPP has not received any other claim from it nor of any other control authority of the countries in which it operates for not having attended a right of data protection or, especially, a right of suppression.

However, this Agency wishes to highlight that the fact that no any other claim by any control authority does not constitute proof that “it regularly and constantly monitors all the channels with which it has contact with the user (...) in such a way that, in the event of exercising a right of

data protection, this is properly attended".

In any case, it is clear that regardless of the action taken

carried out by GLOVOAPP after the events that are the object of this

procedure, at the time the complaining party made its request for

deletion of your data, this monitoring was not being carried out or was not being

performing correctly, given that his right was not duly attended to.

Finally, GLOVOAPP considers that the Agency errs in penalizing it with a

warning, since the actions that occurred cannot be understood as a

clear will to breach the data protection regulations in the form

of not wanting to attend to the right of deletion of the complaining party, being necessary

decree the file of the same.

In this regard, this Agency does not consider that there was a clear will to

breach of data protection regulations, but GLOVOAPP acted in

negligent manner by not having foreseen an internal mechanism to give effect to those

requests on the exercise of rights of the data protection regulations

personal, received through channels other than those initially planned. In

special, for those cases in which the system could not assign a SAC agent

determined, since it cannot be assigned a specific city or territory to the user, such

as has happened in the present case.

For all the foregoing, this claim is dismissed.

SECOND. - ON THE PRONOUNCEMENT OF THIS AGENCY ON THE

ARCHIVE OF PERFORMANCES

GLOVOAPP expressly mentions the resolution dated October 5,

2020 by which the Director of the AEPD adopted a draft decision to file

the actions that occurred in this procedure.

Although the control authorities concerned in Poland and Portugal submitted

objections to the draft decision, for GLOVOAPP it is clear that said draft

is not adopted by the AEPD without considering that from the proceedings and evidence obtained

to date do not result in the existence of a breach or in damages and

Serious damage to the rights and interests of the complaining party.

GLOVOAPP considers that the AEPD, as the main control authority of this

procedure, should have upheld the decision taken at the time, being the

warning an unnecessary and inappropriate sanction for this case, since

Glovo at no time has shown a willingness not to attend to the right of

deletion of the complaining party, especially when it has shown clear and flexible flexibility

unequivocally deleting your data immediately after receiving the

claim by the AEPD, despite having exercised this right by a

channel not enabled for this purpose.

In this regard, this Agency wishes to point out that the mechanism that article 60 of the

GDPR obliges the main authority, in the case of cross-border processing, to

take a unanimous decision together with the other authorities concerned. And

precisely provides for a new decision to be reached in which all

supervisory authorities agree, either through a draft decision or

a revised draft decision.

In this sense, initially the Spanish Agency proposed to the rest of the authorities that

the actions will be archived by means of the aforementioned draft decision to archive the

proceedings, but pertinent and reasoned objections were filed that have

led this Agency to reconsider its initial interpretation, reaching an agreement

with the rest of the authorities in assessing the existence of an infraction for

part of GLOVOAPP, without being obliged at any time to maintain its

starting posture.

For these reasons, this claim is dismissed.

THIRD. – NULLITY OF THE ADMINISTRATIVE ACT DUE TO THE ABSENCE OF THE

NECESSARY ELEMENTS FOR IT TO BE CONSIDERED TO EXIST

INFRINGEMENT

GLOVOAPP understands that in no case is its conduct punishable in the form of

warning, for the reasons set out below.

3.1 Absence of the subjective elements of the offence. Nullity of Sanction

GLOVOAPP considers that the concurrence of an intentional action or

culpable in the present case, in order to be able to impose a sanction in the present case.

That is, the existence of the subjective element (guilt) has not been analyzed.

that Law 40/2015 requires in order to verify the existence of an infringement

administrative.

GLOVOAPP insists that it has been demonstrated that at no time has

intentionally wanted not to comply with the right of deletion of the complaining party. All

otherwise. It has proceeded immediately to the attention of said right once

transferred by this Agency.

Therefore, GLOVOAPP states that it must be taken into account that the AEPD had to

having carried out this analysis and therefore, not being able to appreciate, in any way way, an intention to violate the data protection regulations by Glovo (in the way of wanting to hinder, prevent or not attend to the right to suppress the complaining party), and having dispensed with the assessment of said spirit as essential element of the administrative offence, GLOVOAPP understands that the imposition of a sanction would be invalidated.

In this regard, this Agency repeats what was previously stated, in the sense that it does not it is considered that there was a clear will to breach the data protection regulations, but it is understood that GLOVOAPP acted in negligent manner by not having foreseen an internal mechanism to give effect to those requests on the exercise of rights of the data protection regulations personal, received through channels other than those initially planned. In special, for those cases in which the system could not assign a SAC agent determined, since it cannot be assigned a specific city or territory to the user, such as has happened in the present case.

For these reasons, this claim is dismissed.

3.2. Of the lack of proof that distorts the presumption of innocence of Glovo. Nullity of sanction

GLOVOAPP alleges that the Administration bears the burden of proof of the guilt of the subject, which must be proven by any of the means admitted in law.

And that, in the present case, GLOVOAPP does not state that there is absolutely no probative element that allows to consider destroyed the presumption of innocence that, within the administrative-sanctioning field, it is fully applicable to relations between the Administration and the administered, as has been recognized by innumerable jurisdictional resolutions in all hierarchical and territorial areas.

In the present case, GLOVOAPP understands that the AEPD is limited to reviewing in the

I agree with the background of the file, but it cannot be affirmed in any way

that we are facing a clearly intentional violation of the regulations of

data protection by Glovo, especially if, as has been demonstrated in

the facts, the right of suppression of the complaining party was clearly

attended.

GLOVOAPP considers that in the present case there is no real evidence of charge in

said initiation of proceedings that allow us to understand that there is guilt in the

conduct of GLOVOAPP.

In this regard, this Agency insists that it does not understand that there had been a clear

will to breach the data protection regulations, but understands

that GLOVOAPP acted negligently by not having foreseen an internal mechanism

to process those requests on the exercise of rights of the regulations of

protection of personal data, received through channels other than those

initially planned. In particular, for those cases in which the system could not

assign a specific SAC agent, since a city or territory cannot be assigned

determined to the user, as has occurred in the present case.

Regarding the proof in this sense, GLOVOAPP has affirmed in its brief of

response to the transfer of the aforementioned claim, as well as in its pleadings

to the agreement to start the disciplinary procedure, that the request had not been processed

request for deletion of the personal data of the complaining party given that it does not

it had been possible to assign him a certain SAC agent, since he did not carry out

no order and had not been assigned a specific city or territory. And went

This situation caused the request made not to be duly attended to.

And that, after having become aware of said claim,

GLOVOAPP adopted measures to prevent this type of situation from repeating itself in a

future (which has been assessed positively and it has been decided to replace a sanction in

form of a fine for issuing a warning, under the terms of the GDPR).

For these reasons, this claim is dismissed.

3.3. Absence of guilt. Nullity of sanction

GLOVOAPP insists that, in the specific case, at no time has it been omitted or

breached the data protection regulations, what's more, GLOVOAPP considers that

He has religiously complied with all his obligations. there has been no spirit

to infringe, quite the contrary.

GLOVOAPP understands that it has demonstrated to the AEPD its willingness to comply with the

personal data protection regulations, proceeding immediately to the

deletion of the data of the complaining party, once the claim has been transferred by

part of this Agency, and ensuring the full satisfaction of the rights of the

users at all times regardless of the channel that they are exercised.

For all the arguments presented, GLOVOAPP considers that there is an absence

total evidence of guilt and, consequently, a violation of the

fundamental right to the presumption of innocence enshrined in the Constitution

Spanish.

In this regard, this Agency insists that it does not consider that there was a clear will to breach the data protection regulations, but rather GLOVOAPP acted negligently by not having foreseen an internal mechanism to process those requests on the exercise of rights of the regulations of protection of personal data, received through channels other than those initially planned. In particular, for those cases in which the system could not assign a specific SAC agent, since a city or territory cannot be assigned determined to the user, as has occurred in the present case. Therefore, consider that there is sufficient evidence to show that there has been a negligent conduct on the part of GLOVOAPP, which determines the existence of the said infraction.

For these reasons, this claim is dismissed.

3.4. Absence of the principles of criminality and presumption of innocence. nullity of sanction

GLOVOAPP alleges the importance that the legal system attaches to the principles of criminality and presumption of innocence within the scope of the sanctioning power of the Administration, and proven the extensive reception in jurisprudence of the obligation to apply these principles to the administrative sanctioning procedure, which must Contrast everything said immediately with what has happened in the present performances.

GLOVOAPP understands that it has been duly demonstrated that it has acted in at all times in good faith, applying the maximum effort to comply with the regulations of data protection with the conviction of being within the law, because it is its demand as responsible for the processing of the personal data of the concerned, and with the aim of never endangering their rights and freedoms.

There is, therefore, no clear "intentionality" in breaching current regulations since

that, carried out all the necessary and due actions for the fulfillment of the

regulations and has prudently adjusted its actions to the law.

In this regard, this Agency insists that it does not consider that there was a clear

will to breach the data protection regulations, but rather

GLOVOAPP acted negligently by not having foreseen an internal mechanism

to process those requests on the exercise of rights of the regulations of

protection of personal data, received through channels other than those

initially planned. In particular, for those cases in which the system could not

assign a specific SAC agent, since a city or territory cannot be assigned

determined to the user, as has occurred in the present case. Therefore, consider

that there is sufficient evidence to show that there has been a

negligent conduct on the part of GLOVOAPP, which determines the existence of the

said infraction.

For these reasons, this claim is dismissed.

IV.

Right of erasure

Article 17 “Right to erasure (“the right to be forgotten”)” of the GDPR establishes

that:

"1. The interested party shall have the right to obtain without undue delay from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete without undue delay the personal data when any

of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which it was

were collected or otherwise processed;

b) the interested party withdraws the consent on which the treatment is based in accordance

with Article 6(1)(a) or Article 9(2)(a) and this is not

based on another legal basis;

c) the interested party opposes the processing in accordance with article 21, paragraph 1, and does not

other legitimate reasons for the treatment prevail, or the interested party opposes the

treatment according to article 21, paragraph 2;

d) the personal data have been unlawfully processed;

e) personal data must be deleted to comply with a legal obligation

established in the law of the Union or of the Member States that applies to the

responsible for the treatment;

f) the personal data have been obtained in relation to the offer of services of the

information society referred to in article 8, paragraph 1.

2. When you have made the personal data public and are obliged, by virtue of the

provided in section 1, to delete said data, the person responsible for the treatment,

taking into account the technology available and the cost of its application, it will adopt

reasonable measures, including technical measures, with a view to informing

responsible who are processing the personal data of the request of the interested party

deletion of any link to such personal data, or any copy or replica of

the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for compliance with a legal obligation that requires data processing

imposed by the law of the Union or of the Member States that applies to the

responsible for the treatment, or for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the person responsible;

c) for reasons of public interest in the field of public health in accordance with

Article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archiving purposes in the public interest, scientific or historical research purposes or

statistical purposes, in accordance with Article 89(1), to the extent that

the right indicated in paragraph 1 could make it impossible or hinder

seriously impair the achievement of the objectives of such treatment, or

e) for the formulation, exercise or defense of claims".

For its part, article 15 "Right of suppression" of the LOPDGDD provides that:

"1. The right of deletion will be exercised in accordance with the provisions of article 17

of Regulation (EU) 2016/679.

2. When the deletion derives from the exercise of the right of opposition in accordance with the

Article 21.2 of Regulation (EU) 2016/679, the person in charge may keep the data

identifiers of the affected party necessary in order to prevent future processing to

direct marketing purposes.

In the present case, it is clear that the complaining party had requested GLOVOAPP the

deletion of your personal data on at least four occasions.

Exercise of the rights of the interested party

V

Article 12 "Transparency of information, communication and modalities of

exercise of the rights of the interested party" of the GDPR establishes that:

"1. The person in charge of the treatment will take the appropriate measures to facilitate the

interested all information indicated in articles 13 and 14, as well as any

communication pursuant to articles 15 to 22 and 34 relating to processing, in the form

concise, transparent, intelligible and easily accessible, with clear and simple language, in

particular any information directed specifically to a child. Information

shall be provided in writing or by other means, including, if applicable, by

electronics. When requested by the interested party, the information may be provided

verbally as long as the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the exercise of their rights by the interested party.

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

your rights under articles 15 to 22, unless you can show that you do not

is in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information regarding their

proceedings on the basis of a request under articles 15 to 22, without

undue delay and, in any case, within one month of receipt

of the request. This period may be extended by another two months if necessary,

taking into account the complexity and number of requests. The responsible

will inform the interested party of any of said extensions within a period of one month from

from receipt of the request, indicating the reasons for the delay. when the

interested party submits the application by electronic means, the information will be provided by

electronic means when possible, unless the interested party requests that it be

facilitate otherwise.

4. If the person responsible for the treatment does not process the request of the interested party, he will

will inform without delay, and no later than one month after receipt of the

application, the reasons for not acting and the possibility of presenting a

claim before a control authority and take legal action.

5. The information provided under articles 13 and 14 as well as any

communication and any action carried out under articles 15 to 22 and 34

they will be free of charge. When the requests are manifestly unfounded or

excessive, especially due to its repetitive nature, the person responsible for the

treatment may:

a) charge a reasonable fee based on the administrative costs incurred to

provide the information or communication or carry out the requested action, or

b) refuse to act on the request.

The controller shall bear the burden of proving the character

manifestly unfounded or excessive of the request.

6. Without prejudice to the provisions of article 11, when the data controller

has reasonable doubts regarding the identity of the natural person who is making the

request referred to in articles 15 to 21, may request that the

additional information necessary to confirm the identity of the interested party.

(…)".

For its part, article 12 “General provisions on the exercise of rights”

of the LOPDGDD provides that:

"1. The rights recognized in articles 15 to 22 of Regulation (EU) 2016/679,

They may be exercised directly or through a legal or voluntary representative.

2. The person responsible for the treatment will be obliged to inform the affected party about the means at your disposal to exercise the rights that correspond to you. The media They must be easily accessible to the person concerned. The exercise of the right may not be denied for the sole reason that the affected party opts for another means.

3. The person in charge may process, on behalf of the person in charge, the requests for exercise made by those affected by their rights if so established in the contract or legal act that binds them.

4. Proof of compliance with the duty to respond to the request to exercise their rights formulated by the affected party will fall on the person responsible.

5. When the laws applicable to certain treatments establish a regime that affects the exercise of the rights provided for in Chapter III of the Regulation (EU) 2016/679, the provisions of those will be followed.

6. In any case, the holders of parental authority may exercise in the name and representation of minors under fourteen the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law.

7. The actions carried out by the data controller will be free of charge to respond to requests to exercise these rights, without prejudice to the provided in articles 12.5 and 15.3 of Regulation (EU) 2016/679 and in the sections 3 and 4 of article 13 of this organic law".

In the present case, it is clear that the complaining party requested the deletion of his account and your personal data on at least four occasions. The last one on the 13th of November 2019. However, it was not until September 16, 2020 that

GLOVOAPP confirmed to the claiming party that it duly attended to such request,

after receiving the transfer of said claim from this Agency.

Although the complaining party had not used the form intended for that purpose, it had

contacted through a chat with a customer service agent and had received

an automatic response from the claimed party committing to

respond to you within the next 24 hours.

In fact, it is the responsibility of the data controller to ensure satisfaction

of the rights of the interested parties in general and, in particular, comply with any

GDPR requirement in relation to these rights. The principle of responsibility

proactive, in accordance with article 5.2 of the GDPR, implies that the person responsible for

Treatment must adapt its internal processes to comply with the obligations that

imposed by the regulations, adjusted to the organization and data processing

personal that it carries out. The person responsible must also demonstrate that the

Solutions adopted comply with the requirements of the regulations.

In this context, the data controller can and should have mechanisms that

allow the exercise of each of the rights in a simple way for the

interested, and give them full satisfaction in the shortest possible time. The responsible

must also demonstrate flexibility in interacting with the data subject on a

specific request, regardless of your internal policy. The fact that the

request had been made through an alternative means to the mechanisms

provided by the company should not be a reason not to serve it.

Therefore, according to the available evidence, it is considered that

the known facts constitute an infringement, attributable to GLOVOAPP,

for violation of article 12 of the GDPR, in relation to article 17 of the GDPR.

Classification of the infringement of article 12 of the GDPR

SAW

The aforementioned infringement of article 12 of the GDPR supposes the commission of the infringements typified in article 83.5 of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

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

(…)

b) the rights of the interested parties in accordance with articles 12 to 22; (…)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 74 "Infringements considered minor" of the LOPDGDD indicates:

"The remaining infractions of a legal nature are considered minor and will prescribe after a year. merely formal 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 in articles

15 to 22 of Regulation (EU) 2016/679, unless the provisions apply

in article 72.1.k) of this organic law".

Penalty for violation of article 12 of the GDPR

VII

Without prejudice to the provisions of article 83 of the GDPR, the aforementioned Regulation provides

in section 2.b) of article 58 "Powers" the following:

"Each control authority will have all the following corrective powers

indicated below:

(…)

b) send a warning to any person in charge or person in charge of the treatment

when the processing operations have infringed the provisions of the

this Regulation; (…)"

For its part, recital 148 of the GDPR indicates:

"In the event of a minor infraction, or if the fine likely to be imposed

constitutes a disproportionate burden on a natural person, rather than

penalty by means of a fine, a warning may be imposed. should however

special attention should be paid to the nature, seriousness and duration of the infringement, to its

intentional nature, to the measures taken to alleviate the damages suffered,

to the degree of responsibility or any relevant prior infringement, to the manner in which

that the supervisory authority has become aware of the infringement, to compliance

of measures ordered against the person in charge or in charge, to adherence to codes of

conduct and any other aggravating or mitigating circumstances."

In accordance with the evidence available, it is considered that the infringement

in question is mild for the purposes of article 83.2 of the GDPR given that in the present

case, it was a specific case, the consequence of a specific error (of which no

there are similar antecedents in this Agency), which would have already been corrected, which

which allows considering a reduction of guilt in the facts, for which reason

considers it in accordance with the law not to impose a sanction consisting of an administrative fine

and replace it by directing a warning.

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

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS GLOVOAPP23, S..L., with NIF B66362906, for an infraction

of Article 12 of the GDPR, typified in Article 83.5 of the GDPR, a warning.

SECOND: NOTIFY this resolution to GLOVOAPP23, S.L.

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

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

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

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

Interested parties may optionally file an appeal for reversal before the

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

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

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

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

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

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

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

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

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

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

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

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

documentation proving the effective filing of the contentious appeal-

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

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

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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