

☐ Procedure No.: PS/00206/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated April 9,

2019 filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the CENTER FOR RESEARCH AND STUDY FOR THE  
OBESITY, S.L. with NIF B85626554 (hereinafter, the claimed one).

The claimant states that the claimed party has transferred her personal data without  
your consent to the financial entity Evo Finance E.F.C., S.A.U. and this in turn to  
the recovery company TEAM4 Collection & Consulting (hereinafter, TEAM4).

It adds that your data has been reported to the asset solvency file and  
BADEXCUG credit. In turn, he maintains that he went to the clinic to request a budget  
for a stomach reduction and decided not to accept it because of its cost.

On the other hand, he states that he did not sign anything.

It states that the events took place on October 18, 2018.

And, among other things, it provides the following documentation:

☐ Letters sent by TEAM4 with dates of October 18, November 5 and 12  
December 2018.

☐ Letter sent by EXPERIAN BUREAU DE CRÉDITO S.A. dated 15  
January 2019 informing the claimant of the inclusion of her data in the  
BADEXCUG file.

☐ Letter sent by ASNEF-EQUIFAX dated January 15, 2019

informing the claimant of the inclusion of their data in the file

BADEXCUG.

☐ Complaint filed with the Municipal Consumer Information Office of

Madrid dated December 12, 2018.

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 Subdirector 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

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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).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

The background information is the following:

On May 6, 2019, it was agreed not to admit for processing the

claim filed by the claimant.

THIRD: The claimant filed on May 20, 2019, an appeal for

replacement, providing new documentation, highlighting the contract, without signing, of a

medical treatment that the affected party states was never carried out and that had only requested a quote, finally opting for another treatment with a lower budget and for which financing was not necessary.

And provides, among others, the following documents:

- ☐ Stomach reduction operation budget.
- ☐ Loan contract request not signed by the claimant.
- ☐ Bulletin of adherence to insurance for death, unemployment, disability, etc. not signed.
- ☐ Communication from EVO FINANCE indicating the monthly payment plan.
- ☐ Request to the BANKIA entity for a refund of an improper charge originating from EVO FINANCE and modification of the SEPA direct debit order.

On July 2, 2019, the Director of the Spanish Agency for the Protection of Data, agrees to estimate the reversal appeal filed by the claimant against the Resolution of this Agency issued on May 6, 2019.

FOURTH: On July 15, 2019, the respondent was asked to provide the corresponding supporting documentation of the services offered, the amounts, if financing was chosen and acceptance by the claimant and, where appropriate, financing contract with the entity EVOFINANCE E.F.C., S.A.U. without there being answered to the request of this Agency, the notification date is 15 July 2019.

- ☐ Information requested from EQUIFAX IBERICA, S.L. (hereinafter, EQUIFAX) on the data of the claimant reported to the ASNEF file, dated 3 June 2020, this Agency receives a response to the request sent by EQUIFAX stating that there are no records of the claimant of any entity in the ASNEF file.

- ☐ Information requested from EXPERIAN BUREAU de CRÉDITO, S.A. Over the

data of the claimant reported to the BADEXCUG file, dated 1

July 2020, this Agency receives a response to the request sent

by this company indicating that there are currently no reported data

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to the BADEXCUG file of the claimant, although in its historical file, there was

a registration informed by EVO FINANCE on January 13, 2019, by a

unpaid amount of €738.76, which was written off on June 23, 2019 as

consequence of the weekly automatic updating of the data file

sent by the entity.

FIFTH: On July 20, 2020, the Director of the Spanish Agency for

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

alleged infringement of Article 6 of the RGPD, typified in article 83.5 a) of the RGPD

and considered very serious in 72.1.a), for prescription purposes, setting a sanction

initial payment of 50,000 euros (fifty thousand euros).

SIXTH: Having been unsuccessful in the practice of notification by the S.E.

Correos y Telégrafos, S.A., was notified by the Single Edictal Board of the

BOE, on August 14, 2020.

SEVENTH

: Formal notification of the start agreement, the claim 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 Protection Agency of Data in this procedure the following are considered proven facts:

#### FACTS

FIRST: It is stated that the claimed party has transferred the personal data of the claimant to the financial entity Evo Finance E.F.C., S.A.U. and this in turn to the recovery company TEAM4 Collection & Consulting (hereinafter, TEAM4), as a debtor of a credit operation that she never subscribed.

SECOND: The data of the claimant have been informed to the solvency file patrimonial and credit Badexcug.

THIRD: There are letters sent by TEAM4 dated October 18, November and December 12, 2018 to the claimant.

FOURTH: It is confirmed that there are currently no data reported to the file Badexcug of the claimant, although in her historical file, there was an informed discharge by Evo Finance on January 13, 2019, for an unpaid amount of €738.76, which was decommissioned on June 23, 2019 as a result of the update Automatic weekly data file sent by the entity.

FIFTH: On July 20, 2020, this sanctioning procedure was initiated by the violation of article 6 of the RGPD, being notified on the 14th of the same month and year.

Not having made allegations, the claimed, to the initial agreement.

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

II

The defendant is accused of committing an infraction for violation of the Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met conditions:

- 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 infringement is typified in Article 83.5 of the RGPD, which considers as such:

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

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

(...)

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a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

III

The documentation in the file proves that the claimed,

violated article 6.1 of the RGPD, since it processed the data of the claimant without having any legitimacy to do so.

The respondent processed the data of the claimant without legitimacy, since communicated the data of this to the financial entity Evo for the financing of a treatment that was not carried out.

It is noteworthy that required information on these facts to the claimed,

Although it is known that the notification was delivered on July 15, 2019, it has not replied to this Agency and has not made allegations to the Start Agreement of this sanctioning procedure, stating as notification date the 14 August 2020.

However, and this is essential, the respondent has not proven the legitimacy for the processing of the claimant's data.

#### IV

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that, respectively, provide the following:

“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;

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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.” (The underlining is from the AEPD)

In order to specify the amount of the sanction to be imposed on the one claimed by violation of article 83.5.a) of the RGPD, it is essential to examine and assess whether the circumstances described in article 83.2 of the RGPD concur and if they intervene

mitigating or aggravating the responsibility of the responsible entity.

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to be imposed in this case is considered to be the party claimed as responsible for an infringement typified in article 83.5.a) of the RGPD, and

The following factors are considered concurrent.

As aggravating the following:

- In the present case we are facing a negligent action on significant data that allow the identification of a person (article 83.2 b).
- Basic personal identifiers are affected (name, a number of identification, the line identifier) (article 83.2 g).
- Section k), in relation to article 76.2 of Organic Law 3/2018, in the that the continued nature of the offense is framed as an aggravating circumstance attributed to the claimant.

This is why it is considered appropriate to adjust the sanction to be imposed on the claimed and set it at the amount of €50,000 for the infringement of article 6 of the RGPD.

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 THE RESEARCH AND STUDY CENTER FOR THE OBESIDAD, S.L., with NIF B85626554, for an infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a fine of 50,000 euros (fifty thousand euros).

SECOND: NOTIFY this resolution to the RESEARCH CENTER AND STUDY FOR OBESITY, S.L.

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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.

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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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

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

month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

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