

□ Procedure No.: PS/00069/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 23, 2019, there is an entry from the Court of
Instruction No. 11 of ***LOCALITY.1 order of the abbreviated procedure
***PROCEDURE.1

The facts set forth in the Order of October 2019, a copy of which is attached,
relating to the fact that the personal data of users have been falsified by
Lycamobile or telephone establishment authorized by said entity.

The personal data of the users of the prepaid cards that are
registered in the Lycamobile registration book do not correspond to the data of the
person who acquires the prepaid mobile phone card. In particular the data
personal data registered on the ownership of the line ***TELÉFONO.1 is not
correspond to their true owner.

Likewise, it is indicated that the use of the personal data of a third person
that is not related to the facts set forth in the Order, has caused a
serious harm not consented to. All this in a manifest breach of the
current regulations on data protection.

The claim is directed against Lycamobile, S.L. with NIF B92877141 (in
later, the claimed one).

SECOND: In view of the facts denounced and the documents provided by
the claimant, the General Subdirectorate for Data Inspection requests information from the

claimed, by means of a letter dated December 17, 2019, without the aforementioned entity has provided the requested information.

On February 28, 2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim.

THIRD: On March 17, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 6.1.a) of the RGPD, typified in the Article 83.5 of the RGPD.

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2/7

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that it should be taken into consideration that the claimed has a regulated and exhaustive procedure for the identification of clients and that there is a possibility that the perpetrator of the crime has acquired a someone else's cell phone or with a stolen cell phone. Submit the documentation supposedly is attached to this file but that the respondent has not received since, this supposes a situation of total abandonment. not be held responsible Lycamobile a use of data without the consent of the interested party since in the hypothetical case that there was a contradiction between the holder and the registration book it would be a mere error and not a responsibility of Lycamobile for using data without

the consent of the affected party. That a resolution be issued, in due course, in which the file of the sanctioning procedure is agreed and in a subsidiary manner, it is agreed the application of sanction in its lesser degree and amount, according to law.

FIFTH: On June 24, 2020, the test practice period began,

remembering: 1. Consider reproduced for evidentiary purposes the claim filed by the claimant and her documentation, the documents obtained and generated that are part of the file and 2. Consider reproduced for evidentiary purposes, the allegations to the initiation agreement of PS/00069/2020 and the documentation that they accompanies, presented by the claimed.

SIXTH: It is stated that on July 23, 2020, a copy of the file in response to your brief of allegations to the Initiation Agreement through the Electronic Notification Service, including the date of automatic rejection on August 3, 2020.

SEVENTH: The Proposed Resolution was notified on August 7, 2020, for alleged infringement of article 6.1 a) of the RGPD, typified in article 83.5 of the RGPD, proposing a fine of 60,000 euros.

PROVEN FACTS

- 1.- The facts set forth in the Order of October 2019 regarding the fact that the personal data of users has been falsified by Lycamobile or telephone establishment authorized by said entity.
- 2.- The personal data of the users of the prepaid cards that are registered in the Lycamobile registration book do not correspond to the data of the person who acquires the prepaid mobile phone card. In particular the data personal data registered on the ownership of the line ***TELÉFONO.1 is not correspond to their true owner.
- 3.- Likewise, it is indicated that the use of the personal data of a third party

person who is not related to the facts set forth in the Order, has

caused serious harm without consent. All in one manifest

breach of current regulations on data protection.

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3/7

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Article 6, Legality of the treatment, of the RGPD establishes that:

II

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

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;

conditions:

(...)"

Article 4 of the GDPR, Definitions, in section 11, states that:

"11) «consent of the interested party»: any manifestation of free will,

specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him”.

Also article 6, Treatment based on the consent of the affected party, of the new Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU) 2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

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4/7

2. When the data processing is intended to be based on consent of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship”.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned Regulation, “with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

On the other hand, the LOPDGDD in its article 72 indicates for prescription purposes:

“Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

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

particularly the following:

(...)

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

(...)”

III

The documentation in the file offers evidence that the claimed, violated article 6.1 of the RGPD, since the personal data registered on the ownership of the line ***TELÉFONO.1 do not correspond to your true owner, that is, he carried out the treatment without having any legitimacy for it. The personal data was incorporated into the information systems of the company, without having proven that it had legitimately contracted, had your consent for the collection and subsequent processing of your data. personal data, or there is any other cause that makes the treatment lawful effected.

IV

In order to establish the administrative fine to be imposed,
observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which
point out:

"1. Each control authority will guarantee that the imposition of fines
administrative actions under this article for violations of this
Regulation indicated in sections 4, 5 and 6 are in each individual case
effective, proportionate and dissuasive.

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5/7

2. Administrative fines will be imposed, depending on the circumstances
of each individual case, in addition to or as a substitute for the measures contemplated
in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a 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
yes, as well as the number of interested parties affected and the level of damages
that they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the
treatment, taking into account the technical or organizational measures that have
applied under articles 25 and 32;

- e) any previous infraction committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, 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.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its Article 76, "Sanctions and corrective measures", establishes that: "2. According to the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.

- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.

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6/7

- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

v

In accordance with the precepts transcribed for the purpose of setting the amount of the sanction of a fine to be imposed in the present case for the infraction typified in the article 3.5 of the RGPD for which the claimed party is responsible are estimated concurrent the following factors:

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The evident link between the business activity of the defendant and the processing of personal data of clients or third parties (article 83.2 k of the RGPD in relation to article 76.2 b of the LOPDGDD.

- Basic personal identifiers are affected (name, surnames, address, NIF) (art. 83.2 g).

The intentionality or negligence of the infraction (art. 83.2 b).

The lack of cooperation with the AEPD (art. 83.2 f)

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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 LYCAMOBILE, S.L., with NIF B92877141, for an infringement

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

60,000 euros (sixty thousand euros).

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

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.

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7/7

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.

Electronic Registration of
through the
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