

938-0419

Procedure No.: PS/00385/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 06/13/2018 before the Spanish Agency for Data Protection. The claim is directed against CANARY ISLANDS CAR S.L. with NIF B35051820 (hereinafter, the claimed one). The reasons in which the claim is based on are that this entity has provided your data to the treatment of automated complaints from the Ministry of the Interior (file ending in 685-3) for speeding on 04/04/2018 at 13:47, with a rental vehicle property of the claimed as its driver. He states that "I have never rented any vehicle from CICAR (or any other car rental company) in Gran Canaria."

He indicates that before Traffic he has proven that he was not driving on the date and hour driving the aforementioned vehicle, providing a certificate from your entity dated 05/29/2018

Provide a copy of:

- Traffic complaint notified with your data, vehicle registration ***MATRICULA.1, and date 04/04/2018, at 13: 47, bears date of 05/7/2018.
- "Document of the DGT driver identification", which contains the date identification 05/03/2018 resident lessee driver, owner data, the claimed one and its address and a contract number ending in XXX
- Certificate from your company in which on that day between 8 and 15 hours the claimant was working, providing his ordinary shift from 8 a.m. to 3 p.m.

SECOND: In view of the facts reported in the claim, dated 07/20/2018

a letter is sent to the respondent, transferring a copy of the full complaint, which she received on 27 of same month. In the letter it was stated:

“In accordance with the functions provided for in Regulation (EU) 2016/679, of 27 of April 2016, General Data Protection (RGPD), particularly those that They respond to the respect, by the data controller, of the principles of transparency and proactive responsibility, transfer of the submitted claim is given, requiring them, within a maximum period of one month from receipt, to notify the claimant the final result of the actions carried out to address the claim, must provide this Agency with a copy of the communications exchanged to this regarding the claimant.

Together with the aforementioned documentation, they must be sent to this Agency, within the same period, all the documents that are considered relevant in relation to the facts set forth in the claim, including in particular the following information:

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Clear specification of the causes that have motivated the incidence that has

1.

gave rise to the claim.

Detail of the measures adopted by the person in charge to solve the

two.

incident and to prevent new incidents such as the one described.

In this regard, you can obtain, through www.aepd.es, additional information

on the obligations, provided for in the data protection regulations, for those responsible and treatment managers.

3. If applicable, supporting documentation that, in accordance with the provisions of the article 12 of the RGPD, the appropriate measures have been taken to facilitate the affected party exercise of their rights under articles 15 to 22, including a full copy of the communications sent in response to requests made by the claimant.

The requested information must be sent to the Agency through its Registry Electronic (<https://sedeagpd.gob.es>) or from any of the official registries contemplated in article 16.4 of Law 39/2015, of the Administrative Procedure Common to Public Administrations, including assistance offices in matters of records of all the bodies of the General Administration of the State, of the Administrations of the Autonomous Communities, and of the entities that make up the Local Management.

In view of all the documentation provided, the Agency will carry out the actions that are appropriate, in application of the investigative and corrective powers established in article 57 of the RGPD.

The respondent did not send any response.

THIRD:

<https://monitoriza.axesor.es> on CANARY ISLANDS CAR S.L., B35051820 consists:

According to the information obtained on 02/8/2019 from the website

- Economic Group: CABRERA MEDINA BUSINESS GROUP LIMITED COMPANY

-Global parent company: GRUPO EMPRESARIAL CABRERA MEDINA SOCIEDAD LIMITED

EU Size: Corporate

-Big size

-Activity: 7711 - Rental of automobiles and light motor vehicles

-Constitution: 09/23/1980

-Type of company: Group subsidiary

-CNAE: 7711 - Rental of automobiles and light motor vehicles

-Employees: 431

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-A report extracted from the aforementioned website is included, as well as general information on the entity, extracted from the Mercantile Registry on 01/11/2019, highlighting that the share capital disbursed amounts to €909,026.

-The query made to the AEPD database that manages the history of the companies, and the defendant, as of 02/12/2019, does not have any sanction.

On 02/18/2019, the director of the AEPD agreed

FOURTH:

START

SANCTION PROCEDURE against CANARY ISLANDS CAR S.L., for the alleged

Violation of article 5.1 d) of the RGPD punishable in accordance with the provisions of art. 83.5 of the aforementioned GDPR.

For the assessment of the sanction that was implemented in the initial agreement, contemplated:

-The data processed has been in compliance with an imposed legal obligation.

-The affected data is of a basic nature, fully identifying the affected party, in correspondence with those that can usually appear in lease contracts of

vehicles.

-The impact on the claimant's right is not of a high level, by making himself known to a competent body that has a register of drivers and uses it for said function, being a legal function.

-- It has not collaborated with the control authority, since the claim was transferred, with its documentation did not respond to this AEPD in any way, and it is also unknown if it has taken some measure so that the infraction is not repeated and to mitigate the facts produced (83.2.f).

- In the transfer, it was expressly warned of possible actions to be taken by this AEPD in depending on the answer given.

-Treats, as part of its activity on a regular basis, with personal data
83.2.k) RGPD in relation to 76 LOPDGDD.

As a consequence with the elements that are available, without prejudice to what derived from the processing of the procedure, the initial assessment reached by the imposition of the fine for the imputed infraction was 45,000 euros without prejudice to what result of the instruction of this procedure.

FIFTH: Faced with the agreement, the defendant states on 03/1/2019:

Indicates that the request for information on the transfer of the claim was answered, and
a)

contributes:

1-copy of the document from the electronic headquarters of the AEPD "receipt, registration entry" entry 08/17/2018 registration number 190559/2018, entitled
"response to request for information" in that on the second page there is no
there is an attached file.

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2-copy of the document from the electronic headquarters of the AEPD "receipt, registration entry" 08/20/2018 registration number 190658/2018, titled "response to request for information" in which the second page does not contain a file any attached.

The copies sent coincide with those registered in the dates mentioned in procedure E/03659/2018, and in which there are no references of associated response attachments. By comparison, in the writing that now it presents as allegations that said annexes are included, one by each attached document, which may show that at the time they could not

The response sheets that it manifests must be attached.

For this reason, it requests that the allegations be "retroduced to the moment of the presentation of said writings.

b)

Manifested in a document that it provides, signed on 08/16/2018 (response request E/3659/2018) that there were two CICAR clients with the same name and surname. attached screen print of your management program as document one. In it are listed two sheets in the "Clients-Consultation code" application with different client numbers, DNI and rest of the data, coinciding in the name and surnames, one completely in lowercase, another in capital letters. The data of the claimant consist of registration since 11/15/2017, last contact 05/17/2018, "contracts 14", type of client "web", client number ending in 092. In the file of the other client, client code ending in 38 and in contracts appear 68.

It states that "this was the reason that the vehicle rental contract was made in the name of the claimant." Attached in document two, a copy of the contract

of rental in which the data pre-filled automatically,

including ID of the claimant, address, handwritten signature, date of delivery and collection

04/04/2018, client number ending in 92

c)

Provide a copy of the rental contract of the vehicle with which the violation of

traffic, appearing completed with the data of the claimant in typography of

computer, with a signature that does not resemble that of the claimant on the DNI of the

claim copy provides. It is also reflected that the car was delivered by an employee of

CIGAR. The copy provided does not contain the date on which the contract was signed.

On the back of the contract, the processing of the data, its purposes and

headquarters before which to exercise their rights in English and Spanish.

It states that the claimant did not contact them.

It should be noted that if the claimant did not sign said contractual document that gives

If the data is given to the DGT, it would be impossible for it to know those rights.

d)

It was the DGT that contacted them, submitting the complaint of the

claimant and it was at that moment when they became aware of the “duplicity of the codes

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customers". Attached in document four, a letter from the DGT, of which the following stands out: dated 06/27/2018,

requests the accused: “In view of the documentation sent by you on 06/12/2018

and in order to comply with the provisions of the Road Safety Law, we request that you send

signed by both parties the sanctioned vehicle lease contract” adding

copy of the claim that the claimant filed on 05/30/2018 with the aforementioned entity

and)

Indicates that a notification has been sent to all offices so that at the moment

to carry out the contracts, in addition to the identification with name and surnames, the

ID verification.

They proceeded "to settle the fine directly with the bank"

F)

"taking charge of said sanction." Attach a copy of the payment of the fine as

document five", income receipt of 50 euros with the indication of the number of

file made on 07/12/2018.

SIXTH: On 04/29/2019, the test practice period begins, incorporating the

from the claim and its documents, as well as those obtained and provided by

the one denounced in the allegation phase.

In addition, it is decided to practice the following:

To the claimed:

Provide a copy of the protocol followed by employees for contracting with clients-

1)

natural persons, vehicle rental with regard to:

-Document requested from the client when hiring and signing the rental contract

(internal document or established protocol or any document that accredits it and that is

certify that it is delivered to the employees or they know it).

-Report if at the beginning of the vehicle rental contract, the database is consulted

The client is requested to show the DNI or valid identification document, or only with the appointment of

surnames name (Provide the internal document or established protocol or any document

that proves it and that it is proven that it is delivered to the employees or they know it).

It answers that the OUTSET information system is used. Attach a copy of

documents 2, 3 and 4. To gain access, the employee must identify himself with a username and password.

Users have the help option in the application, which can be accessed by all staff.

Document 1 entitled "Rent a car vehicle delivery procedure" is the

Feb 2010 version. It indicates the process for the delivery of vehicles to its customers

distinguishing if they have a reservation or not.

The protocol states that for clients with a reservation, "when the client visits the

office to pick up the vehicle, the administrative attendant asks for the driver's license

and the DNI if you are a foreign client, and the reservation code that you enter in the program

OUTSET and automatically obtains all the data of the reservation"- The permission of

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driving because "in case of having it withdrawn by the DGT, the employee would not proceed to make him contract."

"If the client does not know the reservation code, the administrative performs a search in the OUTSET by DNI or by client name".

"If the client is not registered, their data is entered in the OUTSET from

of the driving license. Subsequently, a contact telephone number is entered in the contract,

number plate of the assigned vehicle and at the end prints the contract, which is reviewed with the client and in

If he agrees, he signs it, handing over the keys and a copy of the contract. Inside of

delivery envelope in which the administrative registers the vehicle's license plate, the

vehicle registration, model, color kilometers, where it is parked, level of

fuel and if the vehicle is delivered with any damage", finally reminds you that "the delivery

of keys must do it using said envelope, completing the cover of this ".

If the client does not have a reservation, prepare the contract and act as indicated.

It is indicated that the license plate of the vehicles is in the computer program, counting with your rental history. Each contract is identified with a unique number and is registered in said computer program.

Document two provides a printout of the authentication screen to access the OUTSET system two.

Proof of access in the information systems or database used for the rent a car. Print and provide the screens resulting from these operations:

- query to the information system that is used to make a rental contract of vehicle, by the terms: AAA, results that are given, it should be seen step by step or introduced and the resulting).

It states that document 4 reflects the result of the query with the data of surname and name of the claimant, pointing out that the program only allows searching by name or surnames, in addition to ID, telephone, address, but not by name and surnames, or by customer number, for "not being necessary for the operation". In the screen print that accompanies in the search by surnames, 19 clients with the same results are returned surnames, including one with the same name and surnames, different DNI, mobile and number of client ending in 38. The letters with which it appears are in capital letters, those of the lowercase claimant. Each client has a code containing the permit number of driving, which coincides with the DNI, stating type: WEB or DIR, date of birth, and telephone. The claimant's information appears with her NIF, code ending in 92, date of birth, line mobile and "R.R.R. SL".

Consult the information system that is used to make a rental contract for two.

vehicle by the terms: customer number ***NUMERO.1.

Document five resulting from the consultation with said client number is attached,

featuring A.A.A. with three contracts with different numbers, from 10 and 04/29/2019 and 05/3/2019.

This customer number corresponds to the person whose name and surname coincide with

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those of the claimant and that she was allegedly the one who contracted the vehicle that was sanctioned. It coincides with the data provided in allegations to the agreement in which they appeared both clients with the same names and surnames and different client numbers.

3.

Documents that are collected on the first occasion that a client contracts the rental of a vehicle, and if the same is collected each time. (internal document or protocol established or any document that proves it and that proves that it is delivered to the employees or know).

It states that it has already been answered in another point, on the first occasion that a client contracts is the same documentation, valid driving license where the DNI appears (document 1)

Four.

In this specific case, the claimant was registered in 2017, a copy of the contract signed on that occasion.

Attach in document 7 a copy of the contract with the data printed in the document,

NIF, date of birth, customer code ending in 092, vehicle delivery date 12/4/217 to

5/12/2017, and a handwritten signature that is dissimilar to that of the contract that gives rise to the fine. In

the copy provided does not contain the date on which the contract was signed

5.

Explanation of the reason why the claimant in her client file, has a date

last contact 05/17/2018, and what does "contracts 14" mean, or if no amount appears

in said section, accrediting it.

He states that 14 is the number of contracts that appear in his client file as

made in your name, and the date of the last contract, 05/17/2018 refers to the object contract

of this procedure.

Considers that given the volume of clients they handle and who have never had a

assumption like the one analyzed, should be treated as an exceptional error that will be taken into

account for action

To the claimant:

Yo.

You are informed that the accused has your data on the occasion of having

requested his services, high date, 11/15/2017 although in "his complaint indicates that he has not

never rented a vehicle from CICAR or in Gran Canaria". In this regard, state whether you ratify

these circumstances.

The claimant responds on 05/23/2019 that what she indicated in her claim is that

that "I have never rented any vehicle from CICAR (or any other car rental company)

vehicles) in Gran Canaria.", but indicates that: "It is obvious that to commit the illicit that I have

denounced, my data had to work in their database", "indeed I rented in

one occasion a defendant's vehicle" "without remembering the exact date, it could well

be on 11/15/2017 in Santa Cruz de Tenerife". "But this circumstance that I have not denied does not

It is related to the complaint filed.

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The claimant requests that "ignoring the documents presented by CICAR" "the transfer of all the briefs presented by the accused party in the file"

Responding to the claimant in writing dated 05/30/2019:

In relation to the recent response provided by you in the period of tests, in which he was asked:

"You are informed that the accused has your data on the occasion of having requested his services, high date, 11/15/2017 although in his complaint he indicates that he has never rented a CICAR vehicle or in Gran Canaria. In this regard, state whether you ratify said circumstances."

As the question is not well explained, it is clarified that in your complaint you indicated that "I have never rented any vehicle from CICAR (or any other car rental company) vehicles) in Gran Canaria."

Upon learning from the allegations of the claimed party, that she possesses her data by virtue of a contract carried out in Santa Cruz de Tenerife, and that he gave his data erroneously, missing the Instructor that you did not indicate in your complaint if you had ever rented from said company before a vehicle, was for what was requested in evidence in a way not clearly expressed.

The request is aimed at distinguishing whether in any way he had a prior relationship as user with you or if indeed, as you state, you have been a user of said service prior to the event.

Regarding your request for a complete copy of the proceedings, the presentation of the complaint drives the procedure, which is initiated ex officio by agreement of the director of the AEPD (article 58 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations (LPACAP), indicated in its article 62: "A complaint is understood,

the act by which any person, in compliance or not with a legal obligation, puts into

knowledge of an administrative body the existence of a certain fact that

could justify the ex officio initiation of an administrative procedure.” Section 5 of

The same article indicates "The presentation of a complaint does not confer, by itself, the condition interested in the procedure.”

The issue must be examined taking into account the limits presented by the

intervention of complainants in sanctioning procedures. First,

residing the ius puniendi in the State, it is not considered legitimate interest that the imposition

of the sanction constitutes by itself the satisfaction of an interest, nor is a position

advantage or legal utility by the complainant or the immediate investigation of the

facts, which, on the other hand, appear in the resolution, which this AEPD publishes on its website.

The complainant, even when he/she considers himself/herself to be a "victim" of the infringement

denounced, does not have a subjective right or a legitimate interest that the denounced person be

sanctioned, or on the amount of the sanction. Since the punitive power belongs

only to the Administration -in this case, the Spanish Data Protection Agency-

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Only the Administration has an interest protected by the legal system in which the offender is punished.

Therefore, you should, if you deem it convenient, prove some genuine interest worthy of guardianship that allows their situation to be considered as interested.

On 06/27/2019, the claimant resubmitted a document ratifying the

terms of his complaint and that the question asked in evidence is a manipulation, a

procedural fraud by CICAR, and affirms "About CICAR's error-which informs me

In your last communication-I indicate that this statement is not true either. Upon receiving the proposed traffic sanction, I contacted the defendant by phone, unsuccessfully demanded explanations and the rectification of the error before the DGT. Until today".

In this sense, the terminological error was that of the instructor himself, who is the one who motu own configured and prepared what was requested in tests, which were not required by the claimed. On the other hand, the error is not related to the fact that it has not been given explanations about the correction of the sanction.

To the DGT:

Regarding the file number of the sanction, dated 04/04/2018, number ***NUMERO.2, 1.

DNI ***NIF.1, A.A.A., if the claim filed against the commission of said fine, which was paid by the CICAR rental company on 07/12/2018. No response was received.

SEVENTH: On 07/08/2019, a resolution proposal is issued, with the literal: "That by the director of the Spanish Agency for Data Protection, CANARY ISLANDS is sanctioned CAR S.L., with NIF B35051820, for a violation of Article 5.1. d) of the RGPD, in accordance with article 83.5 of the RGPD, with a fine of €45,000.00 (FORTY-FIVE THOUSAND euros). "

It was taken into account to assess the amount:

"Regarding the duration of the infraction, it is committed since the data is reported, materializing at the moment in which the claimed party receives the complaint bulletin of 05/07/2018, the traffic fine being processed pending clarification by the driver when the defendant files her claim, on 05/30/2018, proceeding from then on the part of the claimed to collaborate with the traffic authorities until the

payment of the penalty. (83.2.a of the RGPD).

Although there is an obligation to transfer the identification data of vehicle drivers who have committed a traffic offense to comply with the legal obligation established, also and therefore, extreme care must be taken when dealing with data, concurring a lack of diligence through an employee regarding the performance of the contract (article 83.2.b of the RGPD). The mere coincidence of name and surname does not justify the realization of the vehicle rental contract with the data of another person, of the claimant, especially when you have the person in front, to whom the vehicle is delivered and several people or phases intervene: preparation of the contract, data collection and delivery-

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verification of the vehicle, delivery of a copy of the contract, payment, procedures in all of which the identity of the contracting party must be verified and in this case diligence is not credited some, despite the existence of a procedure. The defendant does not explain well what she could happen despite the coincidence of name and surname, which cannot serve on its own, to understand why things happen.

The infringement is not due to the lack of protocol for data processing, but well they should be reinforced, and let employees know that they can lead to the commission of an infraction if in their way of acting they do not carry out the indicated verifications (83.2.d). On the identification of the person responsible for the lack of attention to the data in the contract, the claim does not indicate what measures have been adopted.

The reinforcement that the respondent will remember in the measures of contracting (83.2.f) as a modality so that infractions such as the one analyzed are not repeated,

but it is also appreciated that it was already implemented.

The affected data is of a basic nature, fully identifying the affected party, in correspondence with those that usually appear in rental contracts of vehicles (83.2.g) data that is otherwise disclosed and disclosed to a competent body which also has a drivers registry.

It should be noted that in the management database of the Subdirector General for Inspection does not show previous violations by the claimed.

It cannot be considered, as indicated in the initial agreement, that there is a lack of collaboration with the supervisory authority since it is proven that it sent written responses without the attached files, and in pleadings to the agreement it was seen that the document was dated 08/16/2018.”

EIGHTH: On 07/19/2019, the respondent presents allegations indicating:

1)
The established identification procedure was not followed, believing it to be a unusual name and surname, due to overconfidence, considering it unnecessary also request the DNI. It is an error and there is no intent or fraud, concurring a psychological error in the appreciation of the action, an "insurmountable human error".

two)
It is not in accordance with the typification, and the article 25 must correspond, sanctionable according to 83.4 of the RGPD.

3)
Concurs to reduce the amount, the lack of intentionality or negligence. The Negligence must be intentional according to article 28.1 of Law 40/2015.

4)
The “mitigating” cooperation with the control authority has not been appreciated. The amount of the sanction has not changed with respect to what was initially erroneously considered and

This was indicated in the initial agreement, "due to the malfunction of the electronic headquarters",
as confirmed.

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PROVEN FACTS

a) The data of the claimant were transferred to the DGT by the claimed, company of rental of vehicles, for appearing in their information systems as a driver of the vehicle at the time of a traffic violation on 04/04/2018, at 13:47. Provides the certified claimant of his company in which that day, between 8 and 15 hours he was working, providing his ordinary shift from 8 a.m. to 3 p.m.

b) The claimant states that she received the complaint from the DGT, providing the bulletin that It bears the date of 05/07/2018 stating your data. The claimant filed a brief resorting to the DGT the sanction on 05/30/2018.

c)

The data of the claimant was delivered by the claimed to the traffic authorities on 05/03/2018 as the driver of the vehicle at the time the infraction occurred, stating the NIF ending 162 H, name and surnames, address.

d) The defendant provides a copy of her information systems in which another client appears with the same name and surnames as the claimant, different: DNI, address and number of client ending in 38, the claimant's ending in 92, claimant registration date 11/15/2017, of the other person 03/1/2016.

e) The vehicle rental contract on the day the traffic violation occurred 04/04/2018, figure filled in with the data of the claimant, her client code ending in

92, in computer typography, with a signature that does not resemble that of the claimant in the DNI whose copy is provided in his claim. The car was delivered for a CIGAR employee. The contract is undated.

On the back of the contract, information is provided on the processing of the data, its purposes and the venue before which exercise their rights in English and Spanish.

The claimed manages the delivery of the vehicles and the contracting with an application

F)
information technology that, among other things, collects data from the driving license and DNI (normally it coincides with the DNI and the driving licence). The employee must indicate start the task of contracting and delivering the vehicle, your username and password and collect the data if it is the first time, print the contract and verify it. The claimed states that he will insist on also verifying with the DNI, which coincides with the driving license number.

g) The respondent provided a copy of the contract that the claimant used for the first time. In the The same data as the one that motivates this claim, data printed on the document, NIF, date of birth, customer code ending in 092, vehicle delivery date

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12/4/217 to 12/5/2017, and a handwritten signature that is dissimilar to that of the contract that gives rise to the penalty fee. The copy provided does not contain the date on which the contract was signed.

h) The respondent paid the penalty imposed on the claimant on 07/12/2018.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 on the protection of people regarding the processing of personal data and the free circulation of these data (hereinafter GDPR); recognizes each control authority, and as established in art. 47 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

II

Produced as data processing by the claimed party is accredited by sending incorrect data for the identification of the driver of the vehicle on the day of the infraction, it is considered that the respondent has committed an infraction of article 5.1 d) of the RGPD, establishes:

“Personal data will be:

d) accurate and, if necessary, updated; all reasonable steps will be taken so that personal data that is inaccurate with respect to regarding the purposes for which they are processed ("accuracy");

The established obligation imposes the need for the personal data that is collected in any file are accurate and respond, at all times, to the situation of those affected, being those responsible for the treatment who is responsible for the fulfillment of this obligation.

Not only is it necessary for the data to be collected for processing in accordance with a series of criteria (principle of proportionality) and that they are used to purposes compatible with those that motivated the collection (principle of purpose), but rather It also requires that whoever collects and processes personal data guarantees and protects that the information submitted to treatment is accurate and up-to-date.

Non-compliance or violation of the principle of accuracy may have important consequences for the affected party, as occurs in the prosecuted case, in which a undue to the claimant a sanctioning procedure for infraction of, proving the poor processing of the driver identification process by the of the lessor of the vehicle, the claimed one.

The imputed fact consists of associating a name and surnames and address data with a certain vehicle, with which a traffic offense had been committed, and such association of personal data was clearly inaccurate as the own

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denounced recognizes, since the person to whom the name and surnames correspond provided was not the driver of such a vehicle.

The respondent used the claimant's data to draw up a contract of vehicle rental, and led to the identification as a driver of a vehicle incurring in the infringement of lack of accuracy of data in the treatment carried out, proving that said data is not true, true or truthful. Completing the contract takes to misidentify the cause of the infraction. If the contract had been rigorously completed, the data of the claimant would not have been contemplated but of the real person who used the service that day.

Regarding the allegation that actions are being rolled back, it should be noted that as soon as to your statement that on 08/17 and 20/2018 you sent the response, you are told that in the two shipments does not appear in the accompanying supporting document that was sent with any of the two mailings, which is why the annex with his response was not received. I also know

means that both there is an infringement if these are rolled back or not, indicating that the Responsibility for not having attached the annexes with the answers lies with the person claimed. The The processing of the transfer of the claim is carried out in order to analyze the alleged infringement and to assess whether it is convenient or appropriate to start the procedure.

The claimant did have her data in the systems of the claimed by a prior service, but initially reported them as the driver of the vehicle that caused the infringement. The treatment of the data of the person who causes the infringement derives from the contractual relationship and if this was not configured properly, it leads to the infraction that here is considered.

Knowing that there may be different names and surnames, the claimed account with elements to discriminate by DNI, number that coincides with the permit of driver, customer number or printing of the copy of the contract, among others, although these checks are carried out by employees, it should be noted that in this case they were not carried out. Indeed, if any of the three elements had been verified, the problem could have been detected. defect at its source. That is, you must demand the identification document at the time adequate to provide effectiveness to the measure.

In addition, it should be noted that it is not that the data of the complainant were wrong, but they have been in relation to your information to traffic authorities such as lessee of a vehicle that causes a traffic violation, when as it is credited,

Your data does not correspond to said rental. That lack of veracity is what is imputed in this procedure. This issue is related to management, but it is a qualified treatment of a customer's data consisting of providing data personal, those of the complainant in a matter in which he has no intervention and is indirectly violate their rights by being charged as responsible for the traffic authorities in an administrative file for said declaration of the reported. When handling personal data, you must be careful and give

importance to its management so that situations such as the one denounced do not occur.

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Article 58. 2.i and 2.i) of the RGPD indicates:

2. Each supervisory authority will have all of the following corrective powers

listed below:

1. impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each case

particular;

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles

for processing, including the conditions for consent under the

articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article

83 of the aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or,

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

of total annual global business of the previous financial year, opting for the one with the highest

amount.

Recital 150 of the RGPD indicates: “In order to reinforce and harmonize the sanctions

administrative actions for infringement of this Regulation, each control authority must

be empowered to impose administrative fines. This Regulation should indicate

violations as well as the maximum limit and the criteria to set the corresponding

administrative fines, which the competent control authority must determine in each

individual case taking into account all the concurrent circumstances in it, taking into account

in particular to the nature, seriousness and duration of the infringement and its consequences and to the measures taken to ensure compliance with the obligations imposed by the this Regulation and prevent or mitigate the consequences of the infringement.

The LOPGDD in its article 72.1.a) indicates: "Infringements considered very serious

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

4. The processing of personal data violating the established principles and guarantees in article 5 of Regulation (EU) 2016/679".

The determination of the sanction that should be imposed in this case requires observing the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, have the following:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with this article for the infringements of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive."

"two. Administrative fines will be imposed, depending on the circumstances of each case individually, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case shall be duly taken into account:

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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

such as the number of interested parties affected and the level of damages they have suffered.

suffered;

b)

the intentionality or negligence in the infringement;

any measure taken by the controller or processor to

c)

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 they have applied under

articles 25 and 32;

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

and)

treatment;

the degree of cooperation with the supervisory authority in order to remedy

F)

to the infringement and mitigate the possible adverse effects of the infringement;

g)

the categories of personal data affected by the breach;

i)

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

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure;

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

previously 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 of

certification 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 obtained or losses avoided, directly or

indirectly, through the infringement." Within this section, the LOPDGDD

contemplates in its article 76, entitled "Sanctions and corrective measures":

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"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also

may be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing personal.

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

d) The possibility that the conduct of the affected party could have led to the commission of the infringement.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

Regarding the duration of the infraction, it is committed since the data is reported, materializing at the moment in which the claimed party receives the complaint bulletin of 05/7/2018, when the defendant files her claim, on 05/30/2018, leaving the traffic fine in process while waiting to clarify the identity of the driver, proceeding since then by the claimed to collaborate with the traffic authorities until the payment of the penalty (83.2.a of the RGPD). The affected data is of a basic nature, in correspondence with those that usually appear in rental contracts of vehicles (83.2.g) data that is otherwise disclosed to a competent body. The fine was paid to the DGT for the claim on 07/12/2018. The claimant does not suffer economic damage, since the process was started with the defendant to clarify the facts.

In order to comply with the established legal obligation, extreme care must also be taken care when data is processed, concurring a lack of diligence through a employee regarding the performance of the contract (article 83.2.b of the RGPD). the mere coincidence of name and surname does not justify the execution of the rental contract of vehicle with the data of another person, of the claimant, especially when you have the person in front, to whom the vehicle is delivered and several people or phases intervene: preparation of the contract, data collection and delivery-verification of the vehicle, delivery of a copy of the contract, payment, procedures in all of which the identity of the party must be verified

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contracting party and in this case no diligence is credited, despite the existence of a process. The defendant does not explain well what could have happened despite the coincidence of name and surname, which cannot serve by itself, to understand why events happen.

The infringement occurs not because of the lack of protocol for the treatment of data, although they must be reinforced, and let employees know that they can give give rise to the commission of an infraction if in their way of acting they do not carry out the verifications indicated (83.2.d).

The reinforcement that the requested party will remember in the measures is positively valued. of contracting (83.2.f) as a modality so that infractions such as the one analyzed are not reiterate, but it is also appreciated that it was already implemented.

It cannot be considered, as indicated in the initial agreement, that there is a lack of collaboration with the supervisory authority, since it is proven that he sent writings of response without the attached files, and in pleadings to the agreement it was seen that the writing had date of 08/16/2018. This does not suppose but a will to give answer to the explanations of the AEPD, reflected in said letter without being related to "cooperation in order to remedy the infraction and mitigate the possible adverse effects", since they had already been resolved and paid the fine, even before receiving the transfer of the complaint by of the AEPD (07/20/2018). It should be emphasized that in the management database of the Subdirector General for Inspection there are no previous infractions by the claimed. Taking these circumstances into account, a penalty of 25,000

euros.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CANARY ISLANDS CAR S.L., with NIF B35051820, for a infringement of Article 5.1.d) of the RGPD, typified in Article 83.5 of the RGPD, a fine of 25,000 euros, in accordance with 83.2 a), b) d) f) and g).

SECOND: NOTIFY this resolution to CANARY ISLANDS CAR S.L.

THIRD: Warn the sanctioned person that he must make the imposed sanction effective once that this resolution is enforceable, in accordance with the provisions of art. 98.1.b) of Law 39/2015, of 1/10 of the Common Administrative Procedure of the Administrations Public (hereinafter LPACAP), within the voluntary payment period established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 12/17, through its entry, indicating the NIF sanctioned and the procedure number that appears in the heading of this document, in restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Data Protection Agency at Banco 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 between the days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be

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until the 20th day of the following month or immediately after, and if it is between the days

16th and last of each month, both inclusive, the payment term will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also

must transfer to the Agency the documentation that accredits the effective filing of the

Sponsored links. If the Agency was not aware of the filing

contentious-administrative appeal within two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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