

□ File No.: PS/00535/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated September 19
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Cyrana España General S.L. with NIF B88328067 (in
hereinafter, the claimed party or Cyrana Spain). The reasons on which the
claim are as follows.

The claimant states that she has received charges on her account for two months
bank of the claimed party, without having formalized any contract with it.

In turn, he states that the foregoing was due to the fact that he made a purchase in the
establishment "Mi Store Las Arenas" where they collected their personal data and the
your bank account number.

He adds that they offered him to hire mobile insurance, a gift card and a page
of domains or web creation "Sfam, Cyrana and Hubside" that at the last moment
He decided not to contract and was told that his data would be deleted.

And, provide the following documentation to prove the facts:

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Proof of the charge made to your bank account on June 18,
2020, in relation to the purchase made by the claimant in "Mi Store
The Sands".

Invoice of the purchase made in "Mi Store Las Arenas".

Proof of charges made in your name to your bank account,

by Hubside and the Respondent on September 1, 2020 and by Sfam on

August 18, 2020.

- Complaint sheet before the General Directorate of Government Consumption

from the Canary Islands

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

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

hereinafter LOPDGDD), said claim was transferred to the claimed party, to

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

actions carried out to adapt to the requirements set forth in the regulations of

Data Protection.

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THIRD: On January 25, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

On July 28, 2021, a request for information is sent to the party claimed. The notification is done electronically. According to this system of notification, automatic rejection has occurred after ten days natural from its availability.

On August 25, 2021, the request for information to the respondent is reiterated.

The notification is made by postal mail.

On November 9, 2021, the following information is sent to this Agency and demonstrations:

On 10/30/2020, the defendant received a claim from

1.

the claimant, filed through the OCU, in which she alleged the transfer of her data to the company without your consent and the collection of various charges on your account.

Well, they proceeded to manage a refund worth €30.00 in favor of the claimant, confirming it in writing on 11/10/2020. Once said reimbursement, they proceeded to delete all the personal data of the claimant from their databases, with effect from 03/04/2021.

They attach the confirmation of said deletion sent by their collaborators to the claimant the same 03/04/2021 (document 1).

On the other hand, they state that as a consequence of the deletion of the data personal in its database, and having proceeded to the right to be forgotten, they cannot obtain the required signed contract copy.

Documentation accrediting the consent granted by the claimant two.

for the treatment of your data.

They state that, having applied the right to be forgotten with respect to personal data

of the claimant in their database, they cannot obtain the required documentation.

Screenshot of your systems in relation to all the data that is

3.

available associated with the claimant.

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They attach a screenshot of their internal database, in which you can see

that, in accordance with what was stated in point 1, the personal data of the claimant have been deleted in its entirety (document 2).

Four.

Origin of the data of the previous section.

On June 18, 2020, the claimant went to the “Xiaomi Las Arenas” store in the Las Arenas shopping center (Carretera del Rincón, Las Palmas de Gran Canaria – 35010) and proceeded to register their personal data. Point of sale subscribed in the internal applications of your company such data, which have been deleted in their entirety from their databases, as they have stated in point 1.

FIFTH: On November 19, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received

by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: It is established that the complaining party received charges for two months in his

bank account of the claimed party, without having formalized any contract with the

same.

SECOND: The complaining party provided supporting documents for the charges made to its

name in your bank account by the claimed party.

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THIRD: It is accredited that the claimed party received a claim from the claimant, filed through the OCU, in which she alleged the transfer of her data to the company without your consent and the collection of various charges on your account.

It is noted that they proceeded to manage a refund of €30.00 in favor of the claimant, confirming it in writing on 11/10/2020. Once done

said reimbursement, they proceeded to delete all the personal data of the claimant from their databases, with effect from 03/04/2021.

They attach the confirmation of said deletion sent by their collaborators to the claimant on the same 03/04/2021.

FOURTH: The respondent party does not provide the required copy of the signed contract.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD 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.

II

Article 6 of the RGD, "Legality of the treatment", details 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 it meets at least one of the following 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 infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

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

a) The basic principles for the treatment, including the conditions for the

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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 particular 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 shows that the claimed party, violated article 6.1 of the RGPD, since it processed the data claims of the claimant without having any legitimacy to do so.

The party complained against processed the data of the claimant without legitimacy, since I make various charges to your bank account, in relation to services that are not contracted and on the other hand Cyrana Spain cannot obtain a copy of the contract signature required by this Agency, as stated in its letter dated March 9, November 2021.

However, and this is essential, the defendant does not prove the legitimacy to the processing of the claimant's data.

Article 6.1 RGPD says that the treatment "will be lawful if it is necessary for the performance of a contract to which the interested party is a party.

It was therefore essential that the respondent prove before this Agency that the claimant had contracted said services.

Subsequently, as a result of receiving the claim filed by the claimant The personal data from the database have been completely deleted.

IV

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of

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each individual case, in addition to or as a substitute for the measures contemplated in the

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

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

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

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

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

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

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

in particular if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- 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.

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g) Have, when it is not mandatory, a delegate for the protection of data.

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

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to be imposed on the claimed party, as responsible for an infraction typified in article 83.5.a) of the RGPD, the following are considered concurrent factors:

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The intentionality or negligence of the infraction (art. 83.2 b). In this case the party claimed processed the data of the claimant without legitimacy, since I make various charges to your bank account, in relation to some services who did not hire

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 CYRANA ESPAÑA GENERAL S.L., with NIF B88328067, for an infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of 5,000 euros (five thousand euros).

SECOND: NOTIFY this resolution to CYRANA ESPAÑA GENERAL 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 between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

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Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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