 File No.: PS/00369/2022

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: On 03/11/2021, a document submitted by

FACUA, on behalf of D.A.A.A. (hereinafter, the claiming party). The

claim is directed against RCI BANQUE, S.A. BRANCH IN SPAIN with NIF

W0014596A (hereinafter, the claimed party). The reasons on which the

claim are the following: the reception of telephone calls and messages of

text, claiming a debt pending payment with the claimed entity related to

financing a vehicle; financing that the claimant is unaware of, by not

maintain any legal relationship with the defendant.

It accompanies the claim addressed to the claimant of 08/25/2020 reporting the

Harassment by telephone that he suffers on his mobile line ***TELEPHONE.1 related to a debt of

financing a vehicle that you do not know you have, requesting the deletion of your data

and the response of the defendant of 09/09/2020, in which they inform him that the

Claimant does not appear as a client of the entity.

SECOND: On 04/15/2021, after the analysis carried out on the documents provided and

the concurrent circumstances, there were no rational indications of the existence

infringement within the jurisdiction of the Spanish Agency for the Protection of

Data, therefore, in accordance with the provisions of article 65.2 of the Organic Law

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

digital rights, issuing a resolution by the Director of the Spanish Agency for

Data Protection, agreeing to the inadmissibility of processing the claim. The

resolution was notified to the affected party on April 16, 2021,

THIRD: On 05/13/2021, the affected party filed an appeal for reversal against the

relapse resolution, registered with the Agency on the same date, showing its

disagreement with it, arguing basically the same facts as in

your initial claim and attaching photographs of a mobile phone, in which

show individual SMS messages from the claimed entity, from dates after the date on which

the claim was filed: March 31 and April 19, 2021, respectively.

FOURTH: On 06/16/2021, once the appropriate checks were carried out after the

Documentation provided after the resolution of inadmissibility for processing of

the initial claim presented, it is resolved to estimate the appeal for reversal

filed against the resolution issued on 04/15/2021.

FIFTH: The General Sub-directorate of Data Inspection proceeded to carry out

preliminary investigation actions to clarify the facts in

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

control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of

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

Title VII, Chapter I, Second Section, of the LOPDGDD.

On 07/01/2022, the Director of the AEPD issued a resolution declaring

the expiration of the previous investigation actions indicated with the number

E/07106/2021 for the course of more than twelve months from the date of

admission to processing of the claim and not proceed to issue and notify the agreement of

commencement of disciplinary proceedings and the opening of new actions of investigation with the number ***REF.1.

SIXTH: The representatives of the entity manifest during previous investigations carried out that after consulting their information systems have verified that there is no information or documentation relating to the claimant as long as there is no is, nor has been, a client of this Entity.

However, the claimant's phone number is listed in the systems of the entity associated to the loan contract ***REF.2 formalized with ***COMPANY.1, with CIF ***NIF.1, on 11/04/2015 and ended on 11/05/2021.

This telephone number was provided directly by the attorney of the legal entity holder of the loan contract, through its Client Space, in the course of the commercial relationship on 07/17/2020. This Space is available in the website of the claimant so that their clients can carry out, prior registration, certain procedures and consultations on the contracts that they maintain in force with the Entity.

Through said Customer Area, customers, previously registered, have the possibility of modifying in the section "My profile" certain data, among them, the contact phone number linked to your contract. In this case, the Client of the aforementioned loan contract, modified through this functionality, a pre-existing telephone number (second contact telephone number), entering the number ***PHONE.1.

In the initial registration to the Client Area, the Client must provide his DNI/CIF, email, telephone and date of birth. These data are collated systematically with those collected and verified at the time of formalization of the loan contract to guarantee its coincidence, in case of disagreement between the data provided in the Registry and those obtained at the time of the

signature of the loan contract, a "case" is automatically generated that must be

processed manually by an agent, who analyzes the suitability of the change made,

not allowing the Client to continue with the Registration in the Client Space

Once the initial registration has been made, the Client accesses his Client Area with

his NIF/CIF and a personal, unique and non-transferable password, created by himself in

the time of Registration.

As regards the subsequent modification of data, the defendant has

In addition, a precautionary block has been implemented that makes it impossible to carry out any

modification of data, provided that the Client has more than two non-payments in the

time of making said modification, to avoid fraudulent changes that

seek to prevent the action to recover the debt owed.

In this case, the Client, after accessing his personal password to his

Customer Space, modified his second contact telephone number, entering the number

of the affected

The company that owns the loan contract began not paying

the receipts, thus failing to comply with what was agreed in the contract, and having to carry out

by this Entity various procedures aimed at the recovery of the debt, using

for this, the contact information provided by the owner himself.

In the notes available in the agenda associated with the contract, it is possible to see

that the Entity tried to contact the client by various means, to the main number

associated with the contract, but also with the claimant's telephone number. Without

However, they have verified that none of the contacts made to that number

it was fruitful; the owner of the telephone line never responded to any

of the calls or messages that were sent in order to recover the debt

According to the "Industrial recovery platform manager manual", in case

of having detected that the second telephone number provided by the Client in

Your Customer Space did not correspond to the holder of the contract, as stated by the holder

of the line, would have stopped immediately at its location and would have

deleted the number in the management system. However, the claimed

never managed to establish contact with the Client at the telephone number informed by

this corresponds to the complainant, not being able to know at any time that

That second telephone number provided did not correspond to the owner of the operation.

The defendant has no proof that the owner of the telephone line has

been in contact with the Entity, by any means, to reveal this

situation, or has filed a claim with the Customer Service

Customer of the claimed or going to any of the enabled mailboxes;

dpoesp@rcibanque.com or dpo.seguridad@rcibangue.com.

As a result of the actions of the Spanish Agency for Data Protection, the

claimed has proceeded to delete the claimant's telephone number before

answer the request. Likewise, the defendant will analyze the implementation of the

security filter consisting of sending an SMS to the telephone number

introduced to verify the changes that occur in the Customer Area, also

for the cases of Client legal person.

SEVENTH: On 07/20/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

violation of article 17 of the GDPR, typified in article 83.5.b) of the aforementioned GDPR.

EIGHTH: Notified of the start agreement on 08/05/2022, the defendant requested

copy of the file and the extension of the term to answer; both the copy and the

extension was granted by writing dated 08/10/2022.

The claimant on 08/16/2022 submitted a written statement of allegations ad

caution, according to his own expression, given the impossibility of prior access

to the administrative file, stating the lack of motivation of the initiation agreement

by not collecting the specific infringing act; requesting its file or subsidiarily the

Retroaction of the actions to the moment prior to the initiation agreement.

On 08/26/2022, a copy of the file and the extension were sent to him again.

of the term to answer and by writing of 09/12/2022 the defendant alleged that the

infringing premise is erroneous since the exercise of the right had been contested and its

action was presided over by good faith; the absence of guilt in their actions

and the misclassification and violation of the principle of legality.

NINTH: On 12/20/2021, a test practice period began,

remembering the following

Deem reproduced for evidentiary purposes the claim filed by the

claimant and its documentation, the documents obtained and generated by the

Inspection services that are part of file E/05859/2020.

Deem reproduced for evidentiary purposes, the allegations to the initiation agreement

submitted by the defendant.

TENTH: On 03/07/2023, a Resolution Proposal was issued in the sense of

that the Director of the Spanish Data Protection Agency sanction the

claimed for violation of article 17 of the GDPR, typified in article 83.5.b) of the

GDPR, with a fine of €20,000 (twenty thousand euros).

On 03/22/2023, the defendant reiterated what had already been stated during the

proceeding and alleged, in summary, that the offending premise is erroneous since

the exercise of the right was answered, its action being presided over by good faith and

having acted proactively; absence of guilt in his actions and the

erroneous classification of the offense violated the presumption of innocence; the absence

damages and circumstances not taken into account when assessing the

sanction.

ELEVENTH: Of the actions carried out in this procedure, have

the following have been accredited:

PROVEN FACTS

FIRST. On 03/11/2021 it has a written entry from FACUA in the AEPD, in

representation of the claimant, against the defendant motivated by the receipt of

phone calls and text messages, in which a debt is claimed

pending payment relating to the financing of a vehicle; financing than the

The claimant is unaware that he does not have any legal or contractual relationship with the

reclaimed. Likewise, it states that the SMS addressed to the claimant refer to

him as ***COMPANY.1

SECOND. There are provided screenshots that contain messages

sent by the defendant to the claimant on dates 07/22/2020, 08/03/2020,

08/05/2020, 08/11/2020, 03/31/2021, 04/19/2021 with the following content:

Wednesday, July 22, 2020

UNPAID VEHICLE RECEIPT

PAY NOW €260.04 WITH CARD ON TLF ***TELEPHONE.2 OR MAKE

TRANSFER B. SANTANDER IS... TO AVOID ASNEF FROM HOLDERS AND

GUARANTEES".

"Monday, August 3, 2020

RCI WE INFORM YOU

WHO HAS A DEBT

PENDING, WE PLEASE

CALL ***PHONE.2

TO REGULARIZE THE SITUATION

TLF ***PHONE.2"

Wednesday, August 5, 2020

RCI WE INFORM YOU

WHO HAS A DEBT

PENDING, WE PLEASE

CALL ***PHONE.2

TO REGULARIZE THE SITUATION

TLF ***PHONE.2"

"Tuesday, August 11, 2020

URGENTDEBT

VEHICLE** WE REQUEST

URGENT CONTACT

TO AVOID INCLUSION

IN ASNEF OF HOLDER AND

GUARANTEES. CALL NOW AT

***PHONE.2”

“Wednesday, March 31, 2021

FINAL WARNING

WE DON'T LOCATE YOUR

PAYMENT*** UNTIL 3:00 PM

TO MAKE PAYMENT AND THE

STOP PROCESS** CALL

URGENT TO ***PHONE.2”

“Monday, April 19, 2021

**WE NEED CONTACT

URGENT ** DEBT

VEHICLE** TRANSFER TO

PREJUDICIAL DEPARTMENT. LAST WAY

FRIENDLY TLF ***PHONE.3”

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/17

THIRD. There is a written statement from the claimant addressed to the claimant on 08/25/2020,

informing you of the telephone harassment to which you are being subjected on your mobile line

***TELEPHONE.1 as a result of a debt linked to the financing of a

vehicle that you do not know you have, requesting the deletion of your personal data.

ROOM. There is evidence of the response offered by the defendant to the previous letter, of

09/09/2020, indicating that: "...we inform you that with the data provided it does not appear

no person as a client of this Entity".

The defendant, as can be verified in the second fact, after

he continued to receive messages on his mobile phone.

FIFTH. The complainant in writing in response to the request for information from the

AEPD dated 02/15/2022 has indicated "That, having consulted our systems, it does not work

in the same information or documentation about the person whose data

You have made it easy for us. Therefore, it is not possible for us to send you the

requested information".

SIXTH. On 04/18/2022 the AEPD sends the defendant a second requirement

requesting information on the phone number ***TELEPHONE.1. in your answer

stated that "the telephone number that they provide us works in our system

associated with loan contract no. ***REF.2 formalized with ***COMPANY.1 with

CIF…, on 11/04/2015 and ended on 11/05/2021".

And he continues "This telephone number was provided directly by the attorney of the

legal entity holder of the loan contract, through its Client Space, in the

during the commercial relationship, specifically on 07/17/2020.

This space is available on the RCI BANQUE website so that its clients can

can carry out, prior registration, certain procedures and consultations on the

contracts that they maintain in force with the Entity.

Through said Customer Space, customers, previously registered, have the

possibility of modifying in the section "My profile" certain data, among them, the

contact phone number linked to your contract. In this case, the Client of the

aforementioned loan contract, modified through this functionality,

a pre-existing telephone number (second contact telephone number), entering the

number ***PHONE.1.

(…)

FUNDAMENTALS OF LAW

Yo

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

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

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that:

"The

procedures processed by the Spanish Data Protection Agency will be governed

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

regulatory provisions dictated in its development and, as soon as they are not

contradict, on a subsidiary basis, by the general rules on the

administrative procedures".

II

The facts revealed materialize in the reception of calls

on the claimant's mobile phone line and text messages requesting a

debt pending payment with the defendant derived from the financing of a vehicle,

that the claimant is unaware of as he does not maintain any legal relationship with the

claimed, which would imply the violation of the regulations on protection

of personal data.

Article 58 of the GDPR, Powers, states:

"2. Each supervisory authority shall have all the following powers

corrections listed below:

(…)

i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, according to the

circumstances of each particular case;

(…)"

1. The exercise of the right of deletion is regulated in article 17 of the

GDPR, which establishes:

II

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

responsible for the treatment the deletion of personal data that concerns him, the

which will be obliged to delete the personal data without undue delay when

one of the following circumstances occurs:

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

those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of

in accordance with Article 6(1)(a) or Article 9(2),

letter a), and this is not based on another legal basis;

c) the data subject opposes the processing in accordance with article 21, paragraph 1,

and no other legitimate reasons for the treatment prevail, or the interested party

object to the processing pursuant to Article 21(2);

d) the personal data have been unlawfully processed;

e) the personal data must be deleted for the fulfillment of a

legal obligation established in the Law of the Union or of the States

members that applies to the data controller;

f) the personal data have been obtained in connection with the offer of services

of the information society mentioned in article 8, paragraph 1.

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

of the provisions of section 1, to delete said data, the person responsible for the

treatment, taking into account the available technology and the cost of its application,

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

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

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

the same.

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

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

b) for the fulfillment of a legal obligation that requires the treatment of

data imposed by the Law of the Union or of the Member States that are

apply to the data controller, or for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers vested in the

responsible;

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

in accordance with article 9, paragraph 2, letters h) and i), and paragraph 3;

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

historical or statistical purposes, in accordance with article 89, paragraph 1, in

to the extent that the right indicated in paragraph 1 could make it impossible

or seriously impede the achievement of the objectives of such processing, or

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

Recital 59 of the GDPR states that:

"Formulas must be arbitrated to make it easier for the interested party to exercise their

rights under this Regulation, including mechanisms for requesting

and, where appropriate, obtain free of charge, in particular, access to the data

personal information and its rectification or deletion, as well as the exercise of the right to

opposition. The data controller must also provide means for

applications are submitted by electronic means, in particular when the data

Personal information is processed by electronic means. The data controller must

be obliged to respond to the requests of the interested party without undue delay and to

no later than within a month, and to explain his reasons in case he was not going to

serve them".

And Recital 66 of the GDPR states that:

"In order to strengthen the 'right to be forgotten' in the online environment, the right to

deletion should be extended in such a way that the data controller who has

made public personal data is obliged to indicate to those responsible for the

treatment that is processing such personal data that delete any link to

them, or copies or replicas of such data. In doing so, said controller must

take reasonable steps, taking into account the technology and means at your disposal

provision, including technical measures, to inform of the request of the interested party

to those responsible who are processing personal data".

2. The regulations on the protection of personal data allow

that you can exercise before the data controller your rights of access,

rectification, opposition, deletion, limitation of treatment, portability and if not

subject to individual decisions.

Therefore, this right can be exercised before the person in charge requesting the

deletion of your personal data when any of the

circumstances established in article 17 of the GDPR.

However, it should be noted that this right is not unlimited, so

that it may be feasible to withhold removal when treatment is necessary

for the exercise of freedom of expression and information, for the fulfillment of a

legal obligation, for the fulfillment of a mission carried out in the public interest or in

the exercise of public powers conferred on the responsible person, for reasons of

public interest, in the field of public health, for archiving purposes of interest

public, scientific or historical research or statistical purposes, or for the

formulation, exercise or defense of claims.

3. The documentation in the file offers clear indications that

the defendant, violated article 17 of the GDPR, right of deletion, since it was not

attended the same, despite the fact that the defendant alleges the contrary, as evidenced by the fact that

it continued to process the claimant's data.

From the documentation in the file, evidence that the defendant

linked the claimant's mobile phone number to the loan agreement number

***REF.2; loan that had been formalized with ***COMPANY.1, with CIF...,

from 11/04/2015 to 11/05/2021, causing the claimant to suffer from

on 07/22/2020 until 04/19/2021 a harassment, a siege in the form of calls and

SMS messages deposited on your mobile phone demanding payment of a debt

related to the financing of a vehicle, object of the aforementioned loan contract

and that the claimant had never subscribed with the claimed entity with which

neither did nor maintains any contractual relationship.

It should be noted that the person claimed in response to the request for

information sent by the AEPD, dated 02/15/2022, stated “That

consulted our systems, there is no information or documentation in them

any about the person whose data you have provided us. therefore not

It is possible for us to send you the requested information”.

However, on 04/18/2022 the Agency sent the defendant a second

requirement, requesting information on the phone number ***TELEPHONE.1 and in its

response, this time it did reveal that "the telephone number that they provide us works in

our system associated with the loan contract no. ***REF.2 formalized with

***COMPANY.1 with CIF..., on 11/04/2015 and ended on 11/05/2021”.

It must be remembered, as stated in the proven facts, that on 08/25/2020

the claimant himself wrote to the defendant informing him of the harassment that

He had been suffering on his mobile phone line, intimidating him to pay a debt

from the financing of a vehicle and that in case of not paying it

threatened to be included in asset solvency files, commonly

delinquency calls; financing that he stated he was unaware of, indicating "That,

since last July 22 of this year... he has been harassed by the company,

that we are hereby addressing, by means of calls and sending sms to the hotline

phone associated with the number ***TELEPHONE.1, requesting the cancellation of your data

and the answer was that "with the data provided, no person appears as

client of this entity.

One of the main novelties and main concept presented by the GDPR,

It is the principle of proactive responsibility. This principle is defined as the need

that the data controller applies technical measures and

appropriate organizational measures in order to guarantee and demonstrate that the data processing

personal data is in accordance with the Regulations. That is, it is not enough to comply with the

data protection regulations, you must also be able to demonstrate that you are

complying with the regulations.

This principle is included in article 5.2 of the GDPR, which establishes:

"2. The controller will be responsible for compliance with the

provided for in paragraph 1 and able to demonstrate it ("proactive responsibility")."

This principle therefore requires a conscious and diligent attitude towards all

the processing of personal data that is carried out, an attitude that has not existed

in the present case since before the letter sent by the claimant on 08/25/2020

the claimant should have acted with greater diligence and proactivity in order to preserve

your rights in the processing of your personal data and its legitimacy,

quite the opposite of what happened on 04/18/2022 when the AEPD sent him his second

requirement, requesting information related to the telephone number *** TELEPHONE.1

belonging to the claimant.

And that before said actions the defendant had proceeded to erase the

telephone number of the claimant before answering the request, measure is

that should have been carried out in light of the claimant's brief, verifying and

verifying that he was not a client of the entity and that he could not belong to

***COMPANY.1, and from that moment the personal data of the

claimant should not have been treated as the claimant was not legitimized

to do so, for not having the consent or authorization to do so.

4. In the brief of 08/25/2020 in which the claimant informed the defendant

of the harassment to which he was being subjected on his mobile line ***TELEPHONE.1 as

consequence of a debt linked to the financing of a vehicle of which he was unaware

have, requested the cancellation of your personal data exercising the right to

suspension before the person in charge and specified his request stating that:

“- REFRAIN from continuing to require any payment.

- PROCEED TO CANCEL the personal data of our partner

from its internal base.

- PROCEED TO CANCEL or refrain from including the personal data

personnel of our partner of all the patrimonial solvency files since the

They themselves do not respond to a certain debt, expired, much less demandable..."

In accordance with the provisions of article 17 of the GDPR, the claimant

had the right to obtain without undue delay the deletion of their data by the

claimed, especially when said data was being processed illegitimately and

exposing the claimant to an unfair and unfounded situation.

Therefore, with the data transferred by the affected party in his request, the

The defendant should have proceeded with greater responsibility, taking into account what the claimant was enduring and realizing that messages and calls were being they were doing to someone who was not forced to suffer it because they were not related contractual with the entity and not limit yourself to responding "that with the data provided, no person appears as a client of this Entity", because with those For the same data, the response was the opposite of the AEPD requirement of 04/18/2022.

According to the statements of the defendant, the aforementioned number of telephone number was provided directly by the attorney of the legal entity that owns the loan contract, through your Customer Area, during the course of the relationship commercial on 07/17/2020; said space is available on the website of the claimant to that its clients can carry out certain procedures and queries about the contracts that they maintain in force with the Entity.

In this case, the client of the aforementioned loan contract modified through this functionality, the pre-existing telephone data (second contact telephone number), entering the number ***TELEPHONE.1.

Likewise, the defendant has stated that he was not aware that the owner of the telephone line had contacted the entity for any medium in order to highlight the situation suffered or has filed a claim some.

However, such manifestation must decline and cannot be admitted, in light of the documentation provided; suffice it to point to the claimant's brief and the response offered to the same dated 09/09/2020 cited above that evidences everything contrary.

5. Regarding the absence of guilt alleged by the defendant, it is necessary to point out that the principle of guilt is required in the disciplinary procedure and Thus, STC 246/1991 considers it inadmissible in the field of administrative law

sanctioning a responsibility without fault.

The Supreme Court (STS April 16, 1991 and STS April 22, 1991)

considers that from the guilty element it follows "that the action or omission,

classified as an administratively sanctionable infraction, it must be, in any case,

attributable to its author, due to intent or imprudence, negligence or inexcusable ignorance". He

The same Court reasons that "it is not enough...for the exculpation of conduct

typically unlawful the invocation of the absence of guilt" but it is necessary

"That the diligence that was required by the person claiming its non-existence has been used."

(STS January 23, 1998).

In this doctrine abounds then the STC (Second Chamber) 129/2003, of June 30

of 2003, which, citing the previous STC 246/1991, states in its F.J. 8: (...) admission

in our sanctioning administrative law of the direct responsibility of the

legal persons, thus recognizing their infringing capacity, implies that the

responsibility is configured on the capacity to infringe and the responsibility,

"that derives from the legal right protected by the norm that is infringed and the need to

that said protection is really effective... and for the risk that, consequently,

The legal person that is subject to compliance with said standard must assume it.

(STC 246/1991, FJ 2). In the present case, having existed probative activity of

charge on the facts that were imputed to the company now appellant, it was her

who was responsible for providing the administrative bodies that have intervened in the

substantiation of the file a principle of proof, however minimal, that

would allow them to think that the violation of the rule was not blameworthy (...)".

Therefore, the entity has suffered from a serious lack of diligence as demonstrates that its internal procedures or action protocols were ineffective and were unable to detect that the data provided by the claimant and the AEPD, especially its telephone number, were not owned by the real debtor, ***COMPANY.1, with whom a loan agreement had been entered into and that non-payment notices continue to be sent to your mobile intimidating you to pay a debt that was not due.

And with regard to the alleged good faith, it should be noted that the Court Nacional in its judgments, among others that of 05/24/02, has indicated that "good faith in acting, to justify the absence of guilt –as is done in the present case-; suffice it to say that this allegation is enervated when there is a specific duty surveillance derived from the professionalism of the offender. In this traditional line of reflection, the STS of March 12, 1975 and March 10, 1978, reject the allegation of good faith, when the offender has duties of vigilance and diligence derived from his professional status".

Lastly, it alleges the claimed error in the legal characterization since it is not true that there has been a lack of response to the exercise of the right to delete the concerned and that when the AEPD communicated the claimant's mobile number was disconnected from ***COMPANY.1, and that such proceeding should be classified as slight for what the infraction would be prescribed.

In the first place, nowhere is it stated, as the defendant says, that there would be absence of response since the proven facts themselves include the response offered to the claimant and to the inspector acting for the claimant; what I know affirms is that the right was not attended to because the treatment continued despite the submitted writings (which should have led to the cessation of the

treatment), as evidenced by the fact that they continued to intimidate the claimant with repeated

sms and warnings that in case of non-payment it would be included in delinquency files.

Secondly, it is not true, as stated by the defendant, that until

that the acting inspector did not communicate the mobile number of the claimant was when

the link between the data and the third party, ***COMPANY.1, was discovered, since the

The claimant (his representative) had already communicated this in writing on 08/25/2020.

Therefore, up to three attempts had to be necessary, through two separate

written for the defendant to stop processing the data of the claimant, to give

realized that this was not the debtor and released the link that associated the

mobile number as belonging to the true debtor and client of the company.

From the foregoing it can be deduced that the right of suppression exercised by the

claimant was not dealt with, which implies in a certain way his obstruction, his

impediment, the repeated non-attention to the exercise of the same, considering that such

Proceeding supposes the violation of article 17 of the RGPD, an infraction that is

typified in article 83.5. b) of the GDPR.

IV.

Violation of article 17 of the GDPR is typified in article

83.5.b) of the aforementioned GDPR in the following terms:

"5. Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

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

total annual global business volume of the previous financial year, opting for

the highest amount:

(…)

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

(…)”

For its part, the LOPDGDD in its article 71, Violations, states that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law”.

And in its article 72, for prescription purposes, it qualifies as "Infractions

considered very serious":

"1. Based on what is established in article 83.5 of Regulation (EU)

2016/679 are considered very serious and the infractions that

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

particular, the following:

(…)

k) The impediment or the obstruction or the repeated non-attention of the exercise

of the rights established in articles 15 to 22 of Regulation (EU)

2016/679.

(…)”

In order to establish the administrative fine that should be imposed, the

observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which

point out:

V

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or 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 shall 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 and losses suffered by the interested parties;

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

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

applied under articles 25 and 32;

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

treatment;

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

remedy the breach and mitigate the potential 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

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

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

previously ordered against the person in charge or in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to 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 the financial benefits obtained or the losses avoided, direct

or indirectly, through the infringement".

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing

of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

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

commission of the offence.

e) The existence of a merger process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

data.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character

voluntary, alternative conflict resolution mechanisms, in those

cases in which there are controversies between those and any

interested."

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 violation of article 17 of the

GDPR typified in article 83.5 of the aforementioned Regulation for which it is responsible

to the defendant, in an initial assessment, it is estimated the concurrent

following factors:

As aggravating circumstances:

- The nature, seriousness and duration of the infringement, taking into account the

nature, scope or purpose of the processing operation in question; there is no

to forget that we are facing the infringement of a right of the interested party,

right of deletion, which has not been attended to by the entity, which has meant that

the claimant was summoned to pay a debt that did not correspond to him

causing him damages with the attempt to make him a creditor of a debt that he did not

corresponded and the attempt, produced the non-payment, to include it in files called

commonly delinquency; In addition, the treatment operation has meant that its

data of a personal nature were subject to treatment without any legitimacy by not

demonstrate any legal basis for its treatment.

In addition, the claimant's personal data has been processed

by the defendant, without stating that he is or has been a client of the entity (article 83.2.

a) of the GDPR).

- Although it is not possible to maintain that the entity has acted

intentionally or intentionally, there is no doubt that he has committed a serious lack of

diligence by not attending to the right exercised as evidenced by continuing and

persisted in his treatment as evidenced by the messages issued with

after the exercise of the right (article 83.2. b) of the GDPR).

- The continuous nature of the infringement, since the defendant has been

processing the personal data of the claimant until 04/19/2021; since

The complaint document was sent to him, requesting the deletion of the data from the

claimant should have stopped being processed without any delay (article 76.2.a) of the

LOPDGDD in relation to article 83.2.k).

- The activity of the allegedly infringing entity is linked to the

data processing of both clients and third parties. In the activity of the entity

claimed, it is essential to process the personal data of its

clients and third parties, therefore, given its business volume, the

The significance of the conduct that is the subject of this claim is undeniable.

(article 76.2.b) of the LOPDGDD in relation to article 83.2.k).

As extenuating circumstances:

- The number of people affected, since it only appears that the

claimant.

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

graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE RCI BANQUE, S.A. BRANCH IN SPAIN, with NIF

W0014596A, for a violation of article 17 of the GDPR, typified in article 83.5

of the GDPR, a fine of €20,000 (twenty thousand euros).

SECOND: NOTIFY this resolution to RCI BANQUE, S.A. BRANCH IN

SPAIN.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted IBAN number: ES00-0000-0000-0000-0000-0000, open in the name of the

Spanish Agency for Data Protection at the bank CAIXABANK, S.A..

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the deadline for making the

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

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

Payment will be until the 5th of the second following or immediate business month.

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

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

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, interested parties may optionally file an appeal for reversal before the Director of the Spanish Data Protection Agency within a period of one 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 for in article 46.1 of the referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be temporarily 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, presenting it 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 a period of two months from the

day following the notification of this resolution, would terminate the

injunction suspension

Electronic record of

through the

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es