

□ File No.: EXP202207094

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On June 28, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against DIGITECNIA
SOLUTIONS, S.L. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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File No.: EXP202207094

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following:

FACTS

FIRST: Don A.A.A. (hereinafter, the complaining party), dated April 11,
2022, filed a claim with the Spanish Data Protection Agency. The
claim is directed against DIGITECNIA SOLUTIONS, S.L. with NIF B42661439 (in
hereafter, the party claimed).

The grounds on which the claim is based are as follows:

“On December 15, 2021, I filed a claim against the company
Digitecnia Solutions SL with registration number O00007128e2100051261, for a
alleged violation of article 6 of EU Regulation 2016/679, General of
Data Protection (RGPD), when downloaded and published on its website,

www.digitecnia.es, the image below, without my authorization or that of the company image owner.

In a claim filed against the owner of the image, the latter alleged that Digitecnia Solutions SL downloaded and published said image without their authorization, allegations endorsed by the agency because they served to inadmit the aforementioned claim. It should also be noted that the claim made against Digitecnia Solutions SL on December 15, 2021 with registration number 000007128e2100051261, has been admitted for processing by the AEPD due to silence positive administrative as three months have elapsed since the filing of the claim and not having received any notification about it.

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Apart from everything previously mentioned on March 7, 2022

I sent a burofax to Digitecnia Solutions SL exercising my right to access and to give me information about the origin of said photograph as dictated by the Article 15 of EU Regulation 2016/679, General Data Protection (RGPD).

Once a month has elapsed since the aforementioned merchant received said burofax, no

I have not received any response from it, for which I request protection from the Spanish Data Protection Agency to act in accordance with the law.

I enclose proof of said burofax.

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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on May 26, 2022, as

It is stated in the acknowledgment of receipt that is in the file.

On May 30, 2022, this Agency received a written response indicating the following:

"On 12/14/2021 at 12:03 I received an email sent from the email account

***EMAIL.1, informing me that on my website www.digitecnia.es

some images of him appeared where he was identified, despite the fact that

his person could be identified is questionable since he appeared in a

anonymized, on the same day 12/14/2021 they were removed from the web and therefore

he unreservedly complied with his request.

I understand that if the claimant's request has been answered, then the images

They were immediately withdrawn.

The decision has been made to remove all photographs from the web www.digitecnia.es

of any person whether or not they are identifiable to avoid this type of situation in

a future.

No response has been given to the claimant, he was unaware that he had to do so.

Digitecnia Solutions, SL shares facilities as a tenant with Digiman

Alicante, SL, the latter had published some photographs on its website showing its

facilities, by using the same common areas I understood that I could use those

images to show on my website www.digitecnia.es the facilities, such as

really the images are totally accessory or irrelevant and did not contribute anything

to the purpose of the web were all removed immediately.”

THIRD: On June 9, 2022, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing. I know

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initiated a procedure for protection of rights regarding the lack of attention of the

right of access (PD/00132/2022), and this sanctioning procedure

(PS/00346/2022) as a consequence of the possible infraction of the regulations of

Data Protection.

FOUNDATIONS OF LAW

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

(General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

The image as personal data

The image of a person, in accordance with article 4.1 of the RGPD, is personal data.

make it identifiable, and its protection, therefore, is the subject of said RGPD:

“«personal data»: any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;”

The image is a personal and individual attribute of each physical person that is

defined by their height, complexion, way of sitting, dressing. endowed with traits

unique and singular distinctives that individualize it directly, associating it with

a specific individual, being able to know, through it, the age, the sex, the color of

the skin, his way of being by the way he sits... which facilitates the identification of the

individual.

For this reason, report 139/2017 of the Legal Office of this Agency states that "the

image, as well as the voice of a person is a personal data, as it will be

any information that allows to determine, directly or indirectly, your identity

(...)”

Article 4.2 of the RGPD defines "treatment" as: "any operation or set

of operations carried out on personal data or sets of personal data,

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whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction.”

The inclusion of the image of a person in web pages, forums, publications, which identifies or makes a person identifiable, involves data processing and, therefore, the person responsible for the treatment that carries out the same is obliged to comply with the obligations that for the person in charge of the treatment have in the RGPD and in the LOPDGDD.

III

Right to data protection

This proceeding is initiated because the respondent party published, on the website referred to in the facts, the image of the claimant, to illustrate the work that they performed. The image does not allow to see the person completely, but it is seen in part. This coupled with the fact that it appears linked to Digitecnia, which is another additional information, make that person identifiable. All this constitutes a processing of personal data of the complaining party.

Individuals have the power to dispose of their personal data, including its image, as well as its dissemination, resulting, without a doubt, worthy of protection of the person whose personal data is disseminated in violation of the legal legal.

Thus, the STC 292/2000, of November 30, provides that "the content of the right fundamental to data protection consists of a power of disposition and control on the personal data that empowers the person to decide which of these data provide to a third party, be it the State or an individual, or what this third party can

collect, and that also allows the individual to know who owns that personal data and for what, being able to oppose that possession or use. These powers of disposal and control over personal data, which constitute part of the content of the right fundamental to data protection are legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual. And that right to consent to knowledge and treatment, computerized or not, of the personal data, requires as complements essential, on the one hand, the ability to know at all times who has that personal data and to what use it is subjecting them, and, on the other hand, the power oppose such possession and uses”.

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the processing of personal data, in the following sense:

"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

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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;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of another natural person.

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the person responsible for the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that on such interests do not override the interests or rights and freedoms fundamental data of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

On this issue of the legality of the treatment, Recital 40 also affects of the aforementioned RGPD, when it states that "In order for the treatment to be lawful, the personal data must be processed with the consent of the interested party or any other legitimate basis established in accordance with Law, either in the present Regulation or by virtue of another Law of the Union or of the Member States to which referred to in this Regulation, including the need to comply with the legal obligation applicable to the data controller or the need to perform a contract with which the interested party is a party or in order to take measures at the request of the concerned prior to the conclusion of a contract.

In relation to the above, it is considered that there is evidence that the treatment of data made by the complaining party of the complaining party that appears in the images object of this procedure has been made without legitimizing cause of the collected in article 6 of the RGPD.

The data of the complaining party, which has been processed by the complaining party, is identifiable since your identity can be determined, directly or indirectly.

IV

The Judgment of the Supreme Court, Civil Chamber, dated July 12, 2004, resource number 1702/200, indicates the following in relation to the image:

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<<The appealed judgment bases its acquittal on not being identifiable the plaintiff in the photograph reasoning that <as observed in the aforementioned photograph, the "face" of the person who appears nude is not "visible"; on the other hand, the "silhouette" does not offer special, singular, specific signs, which in the normal coexistence and citizen public relations allow its attribution to a concrete and certain person...

In the present case, the conclusion reached by the Court of appeal if the plaintiff in the aforementioned photograph is not identifiable, being so that the witnesses who testified in court, all of whom knew Ms. Lina for several years, identified photography as a reproduction of the figure of the same, being indifferent that the circle of acquaintances of that lady is greater or minor.

Therefore, the estimation of the motive is imposed, with the consequence of having as proven fact that the photograph of the woman who appears in the photograph published in the cover of the June 28, 1998 issue reproduces the image of the demanding...

Declared proven that the published photograph corresponds to the plaintiff appellant and there is no dispute about the circumstance of having been taken and published without the consent of the photograph, not being this character public, such publication constituted an illegitimate interference in the right to one's own image, provided for in art. 7.5 of the Organic Law 1/1982, not concurring in the case none of the circumstances of justification collected in art. 8.2 of the Law itself.

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In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the party complained against has processed data of the party claimed without legitimacy.

The known facts could constitute an infringement, attributable to the party claimed, of article 6.1. of the RGPD, with the scope expressed in the Fundamentals previous law, which, if confirmed, could lead to the commission of the infringement typified in article 83.5, section a) of the RGPD, which under the rubric

"General conditions for the imposition of administrative fines" provides that:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount:

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a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Infractions 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:

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

SAW

Classification of the infraction

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

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

"Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

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

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;

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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 they have applied under of articles 25 and 32;

e) any previous infringement 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 remedy the infringement and mitigate the possible adverse effects of the infringement;

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 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.”

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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 treatment of personal information.
- 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 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 officer.
- 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 controversies between them and any interested party.”

In an initial assessment, the amount of the fine that would correspond, without prejudice to the resulting from the instruction of the procedure, is €2,000 (two thousand euros).

7th

Non-imposition of measures

In accordance with the provisions of article 58.2 d) of the RGPD, according to which each control authority may “order the controller or processor to processing operations comply with the provisions of this

Regulation, where appropriate, in a certain way and within a certain period specified...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In the present case, no measures will be imposed since the respondent has

Deleted all images with identifying or identifiable personal data.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

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FIRST: START A PUNISHMENT PROCEDURE against DIGITECNIA SOLUTIONS,

S.L., with NIF B42661439, for the alleged infringement of the for the alleged infringement of the article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €2,000, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to DIGITECNIA SOLUTIONS, S.L., with NIF B42661439, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at €1,600 (one thousand six hundred euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €1,600 (one thousand six hundred euros), and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €1,200 (one thousand two hundred euros),

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In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account no. ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, in what successively, the notifications sent to you will be made exclusively in a electronically by appearance at the electronic headquarters of the General Access Point of the Administration or through the unique Authorized Electronic Address and that, if not access them, their rejection will be recorded in the file, considering the processing and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of commissioning disposition of the notifications and that the lack of practice of this notice will not prevent that the notification be considered fully valid.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On July 9, 2022, the claimed party has proceeded to pay the sanction in the amount of 1200 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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FOUNDATIONS OF LAW

Yo

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

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

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202207094, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to DIGITECNIA SOLUTIONS, S.L..

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.

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

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