

□ File No.: EXP202301039

## 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 February 16, 2023, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanction proceedings against BOX 24 2050 S.L. (in  
hereinafter, the claimed party), through the Transcribed Agreement:

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File No.: EXP202301039

## AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: On 11/16/2021, a document submitted to this Agency was entered  
by A.A.A. (hereinafter, the claiming party), through which the claim is made  
against ROMBOC COMUNICACIONES with NIF B90488610 (hereinafter, ROMBOC).

The reasons on which the claim is based are the following:

"I am receiving advertising calls with deceptive techniques, where the person

The caller identifies himself as "my energy advisor" and calls me by my first name  
giving me consumption data of my power line.

This person is identified by the name of B.B.B. ROMBOC company

COMMUNICATIONS.

At no time have I given my explicit consent to this company to be

can contact me to offer me publicity and according to what the operator who calls me, has said data for having been an Endesa customer at some point. moment, to which I reply that I haven't been an Endesa customer for many years, plus of 5 specifically, that it is not possible for said company to have my consent Express to send advertising on your part, at least to third parties.

When requesting a contact email or a site where I can exercise my rights, I have been said that they are on the website of said company, without offering me clear information or the

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specific url or any other email or contact where to exercise said rights. To the

Doing a search for that name on the net brings me to this page that matches

in name and characteristics with the information that they have given me by telephone, but not

there is no place where you can exercise your rights, not even legal notice, information

of cookies or privacy policy. I have therefore found it impossible to exercise my

rights while being completely defenseless in the face of this type of abuse.”

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

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

forward LOPDGDD), on 12/17/2021 said claim was transferred to ROMBOC,

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

of the actions carried out to adapt to the requirements established in the

data protection regulations.

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 12/28/2021 as stated in the acknowledgment of receipt in the file. That same day, this Agency receives a written of ROMBOC.

THIRD: On 02/16/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

According to the statements and the documentation provided by ROMBOC, the database of data to be able to offer energy services to its customers is provided by CONCENTRAL CENTRAL PURCHASES AND SERVICES, S.L. (onwards, CONCENTRA) who would obtain them from ATRATO MEDIA, S.L. (hereinafter, ATRATO) and this, in turn, of BOX 24 2050 SL (hereinafter, BOX 24), among others.

According to the response to the request for information from CONCENTRA, attached, among others, the following documents:

1. Acknowledgment of receipt by BOX 24 of the access request of the claimant of date 08/04/2021.

1. Document in which ROMBOC is informed of the sales pitch. In

This document indicates: Likewise, you can exercise your rights against BOX 24 2050, S.L. at the following email address \*\*\*EMAIL.1, indicating the reason for your request, or by ordinary mail at the address: Calle MAGISTRAL DOMÍNGUEZ, Number 11, Floor 4, Door A, Almería, C. P. 04003.

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2. Contract signed between CONCENTRA, ATRATO and BOX 24 for the acquisition

of leads for advertising actions (...).

Therefore, within the framework of the investigation carried out with respect to what is indicated in the claim, this Agency has learned of the existence of a possible

breach by BOX 24 of the provisions of the regulations for the protection of

Personal data.

FUNDAMENTALS OF LAW

Competition and applicable regulations

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

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

previous questions

Article 4 "Definitions" of the GDPR defines the following terms for the purposes of the Regulation:

"1) "personal data" means any information about an identified natural person or identifiable ("the data subject"); An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, data of location, an online identifier or one or more elements of identity physical, physiological, genetic, mental, economic, cultural or social of said person;"

"2) "processing": any operation or set of operations carried out on personal data or sets of personal data, either by procedures automated 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, deletion or destruction;"

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"7) "responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of processing; if the law of the Union or of the Member States determines the purposes and means of processing, the controller or the Specific criteria for their appointment may be established by Union law

or of the Member States;”

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is the processing of personal data, since BOX 24 carries out, among others, the collection and storage of personal data, such as: name, surname, address, postal code, email, among other data.

Legality of the processing of personal data

II

The principles that must govern the treatment are listed in the article 5 of the GDPR. In this sense, section 1 letter a), states that: "Personal data will be:

a) Treated in a lawful, loyal and transparent manner in relation to the interested party (lawfulness, loyalty and transparency);  
(...)”

The principle of legality is regulated, fundamentally, in article 6 of the GDPR. The assumptions that allow the processing of personal data to be considered lawful listed in article 6.1 of the GDPR:

1. The treatment will only be lawful if at least one of the following is fulfilled conditions:

a) the interested party gave his consent for the processing of his data personal for one or more specific purposes;

a) the processing is necessary for the performance of a contract in which the interested party or for the application at the request of this of measures pre-contractual;

b) the processing is necessary for compliance with a legal obligation applicable to the data controller;

c) the processing is necessary to protect the vital interests of the data subject or of

another physical person;

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

e) the processing is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that

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such interests are not overridden by the interests or the rights and freedoms 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 the processing carried out by public authorities in the exercise of their functions.”

In the present case, it is clear that on 09/17/2021 BOX 24 (responsible for the treatment) and ATRATO (agent) signed an agency contract by virtue of which the latter is undertakes to provide services as a commercial intermediary in order to promote the use of the file owned by BOX 24 to carry out campaigns

Third-party advertising companies. In the second agreement of the contract, BOX 24, as responsible for the treatment, ensures that "the people included in your file have given their explicit consent for the transfer of their data to third companies of certain sectors and/or to be recipients of actions or campaigns of third parties companies (...), having unequivocally given their consent to that effect

through a clear affirmative act and especially in the case of sending advertising or promotional communications by any means”.

Annex I attached to said contract includes the "Procedure for obtaining data by the data controller. Privacy Policy accepted by the users of the Database" of 09/21/2021 of BOX 24. In its fifth section it is indicates that the collection of personal data (name, surname, telephone, address of email, postal code and date of birth) is carried out through the website [www.contuopinion.com](http://www.contuopinion.com); and, among its purposes, is to “process personal data of users for commercial and marketing purposes, either through ordinary or electronic (...), provided they have consented to the processing of their personal data for these purposes”.

At all times, the legitimizing basis for the treatment is established consent given in a free, informed, specific and unequivocal manner by Those people who have sent their personal data to participate in the contest and receive commercial information. Also, this circumstance legitimizes the transfer of the data of those people who have checked the box on the form of data collection that states: "I accept that BOX 24 2050 S.L. give up treatment of my data to third-party companies related to the sectors of activity that are detailed in the Privacy Policy”.

However, in light of the documentation in the file, no accredited that the claiming party has consented to said assignment. Well, the document provided by CONCENTRA only contains the BOX 24 acknowledgment of receipt of the request of access of the complaining party dated 08/04/2021. In no case remains demonstrated that the complaining party registered their personal data or marked the box relating to the transfer of your data and, therefore, to grant your consent for such purpose.



Consequently, in accordance with the evidence available in this

phase of agreement to open the disciplinary procedure, and without prejudice to what

result of the instruction, it is concluded that BOX 24 could have incurred in a

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infringement of article 6.1 of the GDPR, as there is no legal basis for the assignment to

third-party companies of the data of the complaining party.

Classification of the infringement of article 6.1 of the GDPR

IV.

If confirmed, the aforementioned infringement of article 6.1 of the GDPR could lead to the

commission of the offense typified in article 83.5 of the GDPR that under the rubric

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

Violations of the following provisions will be sanctioned, in accordance with the

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:

to)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; (...)"

For the purposes of the limitation period, article 72.1 "Infractions considered very

serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that  
a substantial violation of the articles mentioned therein and, in particular, the  
following:

to)

(...)

a) The processing of personal data without the fulfillment of any of the conditions  
of legality of the treatment established in article 6 of the Regulation (EU)  
2016/679; (...)"

Penalty for violation of article 6.1 of the GDPR

V

The corrective powers available to the Spanish Agency for the Protection of  
data, as a control authority, are established in article 58.2 of the GDPR. Between  
they have the power to impose an administrative fine in accordance with the  
article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or  
processor that the processing operations comply with the  
provisions of the GDPR, where applicable, in a certain way and within a certain  
specified term -article 58. 2 d)-.

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2  
d) of the aforementioned Regulation is compatible with the sanction consisting of a fine  
administrative.

In the present case, taking into account the facts exposed and without prejudice to what  
results from the instruction of the procedure, it is considered that the sanction that

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It would be appropriate to impose an administrative fine. The fine imposed shall be, in each individual case, effective, proportionate and dissuasive, in accordance with the Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of 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 such as the number of interested parties affected and the level of damages that 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 processor, 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 controller or processor;
- 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 extent;

- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge 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,
- 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”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

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"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. 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 data processing. personal information.
- 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 included 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 it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated makes it possible to establish as an initial assessment a fine of €2,000.00 (two thousand euros) for the violation of article 21.4 of the GDPR.

SAW

adoption of measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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

Spanish Data Protection,

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HE REMEMBERS:

FIRST: INITIATE SANCTIONING PROCEDURE against BOX 24 2050 S.L., with NIF B16855629, for the alleged infringement of article 6.1 of the GDPR, typified in the Article 83.5.a) of the GDPR.

SECOND: APPOINT as instructor C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, if applicable, in accordance with the 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 into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Sub-directorate General of Inspection of Data in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be €2,000.00 (two thousand euros).

FIFTH: NOTIFY this agreement to BOX 24 2050 S.L., with NIF B16855629, 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 must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he 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, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 1,600.00 euros, resolving the procedure with the imposition of this sanction and the corresponding measures.

In the same way, it 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 1,600.00 euros and its payment will imply the termination of the procedure, with the imposition of the corresponding measures.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

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In this case, if both reductions were to be applied, the amount of the penalty would remain established at 1,200.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (1,600.00 euros or 1,200.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

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

After this period, its expiration will occur 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, as regards successively, the notifications that are sent to you will be made exclusively in a electronically, through the Unique Authorized Electronic Address ([dehu.redsara.es](mailto:dehu.redsara.es)) and the Electronic Notification Service ([notifications.060.es](mailto:notifications.060.es)), and that, if you do not access their rejection will be recorded in the file, considering the process completed and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of making available to the notifications and that failure to practice this notice will not prevent the notification be considered fully valid.

Finally, it is noted that in accordance with the provisions of article 112.1 of the



LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

935-121222

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SECOND: On February 23, 2023, the claimed party has proceeded to pay of the penalty in the amount of 1,200 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to [www.aepd.es](http://www.aepd.es)

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the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

## FUNDAMENTALS OF LAW

Yo

### Competence

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 in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

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

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

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

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

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According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202301039, in

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

SECOND: NOTIFY this resolution to BOX 24 2050 S.L..

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

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

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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