

□ File No.: PS/00536/2021

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 November 24, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against SFAM ESPAÑA
GENERAL S.L. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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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: Ms. A.A.A. (hereinafter, the complaining party) dated September 19
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against SFAM ESPAÑA GENERAL S.L. with CIF B88125646 (in
hereinafter, the claimed party or Sfam Spain). The grounds on which the claim is based
are the following.

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The claimant states that her bank has charged her several receipts for some services that it did not contract, with the claimed party appearing as the issuing entity.

In turn, he states that the foregoing is due to the fact that he made a purchase in the establishment "**** ESTABLISHMENT.1" where your data was collected personal details and your bank account number.

He adds that in said business they offered him to take out mobile insurance, a card gift and a page of domains or web creation "**** PAGE.1" that in the last moment he decided not to contract and they told him that the personal data he had facilitated they would cancel them.

And, it provides, among others, the following documentation to prove the facts:

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Invoice of the purchase made in "**** ESTABLISHMENT.1".

Proof of charges made in your name to your bank account, by ***PAGE.1 on September 1, 2020 and by the claimed party on September 18, August 2020.

- Complaint sheet before the General Directorate of Government Consumption of ***LOCATION.1.

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.

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

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

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

On August 5, 2021 Sfam Iberica Servicios, S.L. sends to this Agency the
following information and statements:

1.

They state that as soon as they received the claim from the OCU formulated by the
claimant on October 30, 2020, they proceeded to delete all their data on October 23,
February 2021 and proceeded to manage the corresponding refund.

On the other hand, they indicate that due to the aforementioned deletion, they do not have the
two.

data of the claimant, nor of their consent, nor of the signed contract.

Likewise, they point out that the origin of the data is the store “***TIENDA.1” of the

3.

shopping center ***CENTRO.1, ***ADDRESS.1, and proceeded to register their

personal information.

That the point of sale subscribed in the internal applications of your company

Four.

said data.

Provides a screenshot containing the text “B-APPLI SUPPORT” and “Modification

of the contract” and includes, among other fields:

In fields “name”, “surname”, “address”, “e-mail”, “zip code”,

“city”, “telephone contact” includes “DROIT A L’OUBLI”.

In the "subscription date" field there is "*****"

In the field "validated warranty conditions" it says "refused"

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In the field "contract status" it states "incomplete"

In the "payment status" field, it says "active"

The “agency” field contains “***STORE.1”.

On October 27, 2021 Sfam Iberica Servicios, S.L. sends to this Agency the

following information and statements:

Sfam Iberica Servicios, S.L. is responsible for the treatment and Zopo Iberia, S.L.

1.

processes data on its behalf.

After being required to provide a contract between your entity and Mistore ***LOCALIDAD.1 S.L.,

provides a copy of the contract dated June 1, 2019 between SFAM (French company)

and Zopo Iberia, S.L. of collaboration and dissemination of the service offers of the first,

where clause 16 is stated in relation to data protection.

“[...] On June 1, 2019, our company signed a Framework Contract for two.

collaboration and dissemination of service offers with the company Zopo Iberia, SL.

This company is the head of the group of various points of sale located throughout the Spanish territory. In Annex II of the Contract it was not yet recorded in June 2019 the company Mistore ***LOCALIDAD.1 SL and it was later that it was a new company for the store Mi Store located in the Centro Comercial Las Sands. The registered office of Zopo Iberia SL is the same as Mistore ***LOCATION.1 SL.[...]”

That the meaning of the content of the fields mentioned in the application 3.

has no relation to the conditions of the contract by having applied the right to forgot.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(...)"

The infraction for which the claimed entity is held responsible is

typified in article 83 of the RGPD that, under the heading "General conditions for

the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of 20,000,000 Eur or,

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

global total annual turnover of the previous financial year, opting for

the largest amount:

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

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consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

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

particularly the following:

(...)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679."

III

The documentation in the file shows that the claimed party,

violated article 6.1 of the RGD, since it processed the data

claims of the claimant without having any legitimacy to do so.

The party complained against processed the data of the claimant without legitimacy, since

I make various charges to your bank account, in relation to services that are not

contracted and otherwise cannot obtain the copy of the signed contract required by

this Agency, as stated in its letter dated August 5, 2021.

However, and this is essential, the defendant does not prove the legitimacy to

the processing of the claimant's data.

Article 6.1 RGD says that the treatment "will be lawful if it is necessary for the

performance of a contract to which the interested party is a party.

It was therefore essential that the respondent prove before this

Agency that the claimant had contracted said services.

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Subsequently, as a result of receiving the claim filed by the claimant

The personal data from the database have been completely deleted.

IV

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

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

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

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

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;

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

f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;

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

h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, to what extent;

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

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

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

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

“Sanctions and corrective measures”, provides:

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

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

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

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

commission of the offence.

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

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

f) Affectation of the rights of minors.

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

data.

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

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

In accordance with the transcribed precepts, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction of fine to

impose on the claimed party, as responsible for an infraction typified in the

article 83.5.a) of the RGPD, in an initial assessment, the

following factors:

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The nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation to be

treated as well as the number of interested parties affected and the level of damage and

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damages they have suffered (art. 83.2 a). In this case, the defendant processed the data of the claimant without legitimacy, since he made several charges in your bank account, in relation to some services that you did not contract.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.

START A SANCTION PROCEDURE for SFAM SPAIN GENERAL

SL with CIF B88125646 for the alleged violation of article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD.

1. APPOINT instructor D.B.B.B. and secretary to Ms. C.C.C., indicating that any of them may be challenged, where appropriate, in accordance with the provisions in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime Public Sector Co (LRJSP).

two.

INCORPORATE to the disciplinary file, for evidentiary purposes, the claim-tion filed and its documentation and the documents obtained and generated by the General Subdirectorate of Data Inspection.

3. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1 bre, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond to SFAM ESPAÑA GENERAL S.L. with CIF B88125646, would be 5,000 euros (five thousand euros), without prejudice to what is release from instruction.

4. NOTIFY this agreement to SFAM ESPAÑA GENERAL S.L. with CIF

B88125646, granting a hearing period of ten business days for

formulate the allegations and present the evidence they deem appropriate.

In your statement of allegations, you must provide your NIF and the number of the procedure.

statement at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same

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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, which

which will entail a reduction of 20% of the sanction to be imposed in

this procedure, equivalent in this case to 1,000 euros. with the app

of this reduction, the penalty would be established at 4,000 euros (four thousand euros),

resolving the procedure with the imposition of this sanction.

In the same way, they may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will entail a reduction of 20% of its amount, equivalent in this case to 1,000

euros. With the application of this reduction, the foreseen sanction would be established in

4,000 euros (four thousand 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 foreseen sanction would be established at 3,000 euros (three thousand euros)

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 the event that it is decided to proceed with the voluntary payment of any of the amounts indicated above, must be made effective by entering the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Data Protection Agency at Banco 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.

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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.

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 December 14, 2021, the claimed party has proceeded to payment of the penalty in the amount of 4,000 euros using one of the two reductions provided for in the Start Agreement transcribed above. Therefore, it has not acknowledgment of responsibility has been confirmed.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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:

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"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."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00536/2021, of

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

SECOND: NOTIFY this resolution to SFAM ESPAÑA GENERAL SL.

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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