

□ File No.: EXP202102379

## 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 December 2, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanctioning proceedings against RECLAMADOR, S.L.  
(hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00540/2021

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before  
the entity, RECLAMADOR, S.L., with CIF.: B86474012 (hereinafter, "the party  
claimed"), by virtue of a complaint filed by D. A.A.A., (hereinafter, "the party  
claimant"), and based on the following:

### FACTS

FIRST: On 07/19/21, this Agency received a brief submitted by  
the complaining party, in which it indicated, among others, the following:  
"Report receipt of a commercial electronic communication, received in your  
mailbox dated 07/16/21, despite having exercised the  
right of suppression, dated 02/12/21".

Along with the written claim, provide a copy of the commercial communication received  
and a copy of a communication sent to hola@reclamador.es requesting the deletion  
of your personal data. There is no record of any response received or request for

any documentation by the claimed party to meet the exercised right.

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SECOND: On 09/24/21, this Agency transferred the claim

to the party claimed to respond to it, in accordance with the

stipulated in article 65.4 of Organic Law 3/2018, of December 5, of

protection of personal data and guarantee of digital rights, (“LOPDGDD”).

THIRD: On 11/08/21, by the Director of the Spanish Agency for

Data Protection agreement is issued to admit the processing of the complaint

filed by the claimant, in accordance with article 65 of the LPDGDD Law, to the

not receive any response to the requirements made by this Agency.

FOURTH: In view of the facts denounced, in accordance with the evidence of

that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that what is indicated above does not comply with current regulations,

Therefore, the opening of this sanctioning procedure proceeds.

## FOUNDATIONS OF LAW

### I-Competition

#### a) On the right to delete personal data:

It is competent to initiate and resolve this Sanctioning Procedure, the Director of

the Spanish Agency for Data Protection, by virtue of the powers that art 58.2

of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16,

regarding the Protection of Natural Persons with regard to the Treatment of

Personal Data and the Free Circulation of these Data (RGPD) recognizes each

Control Authority and, as established in arts. 47, 64.2 and 68.1 of the Law

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

Digital Rights (LOPDGDD),

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the

investigative and corrective powers that the supervisory authority may provide to the

effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the

treatment of alleged infringements of these Regulations" and in 2.i), that of:

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"impose an administrative fine under article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each

case."

a) Regarding the sending of advertising emails:

It is competent to initiate and resolve this Sanctioning Procedure, the Director of

the Spanish Agency for Data Protection, in accordance with the provisions of the

art. 43.1, second paragraph, of Law 34/2002, of July 11, on Services of the

Information Society and Electronic Commerce (LSSI).

II- Summary of the facts:

In the present case, the claimant indicates that, after attempting to exercise his right to

deletion of your personal data before the claimed entity, without obtaining a response

any, received another advertising email from the entity with the same

message.

III- On the right to suppress personal data exercised by the claimant:

Article 12 of the GDPR establishes the following:

1.- The person responsible for the treatment will take the appropriate measures to facilitate the interested all information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the interested party in the exercise of their rights in under articles 15 to 22. In the cases referred to in article 11, paragraph 2,

The person in charge will not refuse to act at the request of the interested party in order to exercise their

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rights under articles 15 to 22, unless you can show that you are not in conditions to identify the interested party.

3. The data controller will provide the interested party with information regarding their proceedings on the basis of a request under articles 15 to 22, and, in any case, within one month from receipt of the request. Saying

The term may be extended for another two months if necessary, taking into account the complexity and number of requests. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the

request by electronic means, the information will be provided by electronic means

when possible, unless the interested party requests that it be provided in another way.

For its part, article 17 of the RGPD, on the right to delete data

personal, ("the right to be forgotten"), establishes that:

1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the treatment the deletion of personal data that concerns you, which will be

obliged to delete personal data without undue delay when any

of the following circumstances: a) the personal data is no longer necessary in

relation to the purposes for which they were collected or otherwise processed; 4.5.2016

L 119/43 Official Journal of the European Union EN (b) the interested party withdraws the

consent on which the processing is based in accordance with article 6,

paragraph 1, letter a), or Article 9, paragraph 2, letter a), and this is not based on another

legal basis; c) the interested party opposes the treatment in accordance with article

21, paragraph 1, and other legitimate reasons for the treatment do not prevail, or the

interested party opposes the treatment in accordance with article 21, paragraph 2; (...)"

According to the evidence available at this time, and without

Prejudice to what results from the investigation, the exposed facts could suppose the

violation of article 17 of the RGPD, in application of article 12 of the aforementioned

Regulation, when it was found that the entity did not act diligently, by not eliminating the

personal data of the claimant from its databases, in a timely manner.

For its part, article 72.1.k) of the LOPDGDD considers it very serious, for the purposes of

prescription, "The impediment or the obstruction or the repeated non-attention of the

exercise of the rights established in articles 15 to 22 of the Regulation".

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This infraction can be sanctioned with a maximum fine of €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, in accordance with article 83.5.b) of the RGPD.

The balance of the circumstances contemplated when violating what is established in its article 17 of the RGPD, in relation to article 12 of the aforementioned Regulation, allows setting a initial penalty of 1,000 euros, (one thousand euros).

IV.- Regarding the sending of emails with advertising messages:

In the present case, the claimant indicates that he has received an email advertising of the claimed entity without having given its consent to do so.

In this sense, article 21 of the LSSI provides the following:

"1. The sending of advertising or promotional communications by email or other equivalent means of electronic communication previously they had not been requested or expressly authorized by the their recipients.

2. The provisions of the preceding section shall not apply when there is a prior contractual relationship, provided that the provider had legally obtained the contact details of the recipient and will use them to send communications commercial references to products or services of your own company that are similar to those initially contracted with the client.

In any case, the provider must offer the recipient the possibility of opposing the processing of your data for promotional purposes through a simple procedure and free, both at the time of data collection and in each of the commercial communications addressed to you.

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When the communications have been sent by email, said

means must necessarily consist of the inclusion of an email address

electronic or other valid electronic address where this right can be exercised,

sending communications that do not include said address is prohibited.”

Therefore, according to the evidence available at this time,

and without prejudice to what results from the investigation, the facts exposed could

suppose the violation of article 21 of the LSSI, by the claimed party, by

send advertising emails without the prior consent of the recipient.

The aforementioned infraction is typified as "minor" in art. 38.4.d) of said

standard, which qualifies as such, "The sending of commercial communications by e-mail

electronic or other equivalent means of electronic communication when in said

shipments do not meet the requirements established in article 21 and do not constitute

Serious offense".

Pursuant to the provisions of article 39.1.c) of the LSSI, minor infractions

may be sanctioned with a fine of up to €30,000.

The balance of the circumstances contemplated when violating what is established in its article

21 of the LSSI, allows setting an initial penalty of 1,000 euros, (one thousand euros).

V- Total initial sanction:

In accordance with the criteria indicated in the previous points, it is considered appropriate

impose a total initial penalty of 2,000 euros (two thousand euros): 1,000 euros for the

infringement of article 17 of the RGPD and 1,000 euros for the infringement of article 21 of the

LSSI.

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

Spanish Data Protection,

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HE REMEMBERS:

START: SANCTION PROCEDURE against the entity RECLAMADOR, S.L., with

CIF.: B86474012, by:

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Infringement of article 17 of the RGPD, in relation to article 12 of the aforementioned

Regulation, for not responding to the request for deletion of personal data

of the claimant from its databases.

Violation of article 21) of the LSSI, regarding the sending of emails

advertising emails without the mandatory consent of the recipient.

APPOINT: Mr. R.R.R. as Instructor, and Secretary, if applicable, Ms. 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 Legal Regime

of the Public Sector (LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the claim

filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the

investigations, all of them part of this administrative file.



WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be:

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1,000 euros (one thousand euros), for the infringement of article 17 of the RGD.

1,000 euros (one thousand euros), for the infringement of article 21 of the LSSI.

NOTIFY: this agreement to initiate sanctioning proceedings to the entity

RECLAMADOR, S.L., granting a hearing period of ten business days for

formulate the allegations and present the evidence that it deems appropriate.

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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

period granted for the formulation of allegations to this initial agreement; what

will be accompanied by a reduction of 20% of the sanction to be imposed in the

present procedure, equivalent in this case to 400 euros. With the application of

this reduction, the sanction would be established at 1,600 euros, resolving the problem

ceding 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 supposes

There will be a reduction of 20% of the amount of this, equivalent in this case to 400 euros.

ros. With the application of this reduction, the sanction would be established at 1,600 euros.

ros 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

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at 1,200 euros (one thousand two hundred euros).

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

conditioned to the withdrawal or waiver of any action or resource in the administrative process.

deal against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it in account N° ES00

0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the item the reference number

ence of the procedure that appears in the heading of this document and the cause

of reduction of the amount to which it avails itself.

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Likewise, you must send proof of income to the General Subdirectorate of Ins-  
request to continue with the procedure in accordance with the amount entered.  
gives.

The procedure will have a maximum duration of nine months from the date of  
page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-  
do this period will produce its expiration and, consequently, the filing of actions;  
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 LPA-  
CAP, against this act there is no administrative appeal.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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SECOND: On January 27, 2022, the claimed party has proceeded to pay  
of the sanction in the amount of 1,600 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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In accordance with the provisions of article 43.1 of Law 34/2002, of July 11, of  
services of the information society and electronic commerce (hereinafter  
LSSI), the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation  
General Data Protection, hereinafter RGPD), grants each authority of  
control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter, LOPDGDD), is competent to initiate and resolve this

procedure the Director of the Spanish Data Protection Agency.

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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."

Finally, the fourth additional provision "Procedure in relation to the

competences attributed to the Spanish Data Protection Agency by other

laws" establishes that: "The provisions of Title VIII and its implementing regulations

will apply to the procedures that the Spanish Agency for the Protection of

Data would have to be processed in the exercise of the powers attributed to it by

other laws."

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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202102379, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to RECLAMADOR, S.L.

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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