

□ Procedure No.: PS/00278/2020

RESOLUTION R/00565/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT  
VOLUNTEER

In sanctioning procedure PS/00278/2020, instructed by the Spanish Agency for  
Data Protection to A.A.A., in view of the complaint filed by B.B.B., and based on  
the following,

BACKGROUND

FIRST: On October 19, 2020, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,  
the claimed), through the Agreement that is transcribed:

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Procedure No.: PS/00278/2020

935-200320

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: B.B.B. (hereinafter, the claimant) filed a claim on 12/20/2019  
before the Spanish Agency for Data Protection. The claim is directed against A.A.A.  
with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are:  
- On 10/26/2019 a person (C.C.C.) was contacted through the social network  
INSTAGRAM, informing him by message, that a third party has impersonated him, with the  
name D.D.D. on the TINDER social network, using their photos to create a profile on the network  
social TINDER, and that in communicating with her "he had used her photos as "profile" photos  
WhatsApp with the phone number \*\*\*TELEFONO.1."

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In the message, C.C.C. tells her that he "tried to flirt with her" and "sent her through WhatsApp several photos of me alleging that it was the "" photos stolen from the social network INSTAGRAM, from FACEBOOK", and "three photos in particular that I don't know where he got them from, since they are photos that I have not had on any social network, including two of them that They belong to me but I do appear".

Indicates that, later, to collect more information «I decide to use a profile mine truth in the TINDER social network as B.B.B. putting the 17th of november on my description, that I am looking for information about my photos since they have been stolen”, and that “Several girls get in touch with me through said network and send me data to through WhatsApp as well as photos shared by the individual, and sexual conversations with these women. In those conversations they alter photos of me with half-naked photos of other people I don't know where you got them from. This is done from the WhatsApp line phone number \*\*\*PHONE.1. “

- It states that “The defendant is supposedly the owner of the line \*\*\*TELEFONO.1 which “After an anonymous call, it is supposedly the claimed person” who he identifies with name and surnames, and that on 11/27/2019 he filed a complaint at the Police Station Nacional de las Palmas de Gran Canaria, certificate number XXXXX/19, does not provide a copy Of the same.

Along with the claim, provide:

1)

(folios 7 to 36/141 “conversation denounced with E.E.E.”)

Includes WhatsApp screenshots, only the date is seen on the first

screen 08/20/2019 and on another at 11:22 p.m.

At the top is the line \*\*\*PHONE.1, parts of the conversation

indicated, it would be that the conversation is started by the girl with "Hello D.D.D.", and answer. In

the conversation E.E.E. mentions the location of \*\*\*LOCALIDAD.2, and how is it that I

Does the app say that you are 4 km away?, the girl indicates that she is a teacher and the "I am also a teacher"/

Didn't you put that you were a pilot?, teacher of what, / answering flight instructor in test and of

combat-In addition to military controller-I have several positions, the girl says that "I am in

\*\*\*LOCATION.2 -I will return to \*\*\*LOCATION.3 tonight", indicating D.D.D. "You're going to

No because in September I stay in

\*\*\*LOCATION.4?, answering "

\*\*\*LOCALITY.5"

E.E.E.: You stay here until Sep.

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D.D.D.: no, I stay in \*\*\*LOCATION.1

E.E.E.: but are you the one in the photo?

E.E.E. (23 23) Everything seems strange to me. And you don't inspire confidence in me. The app follows giving me at 6 km you will tell me I don't know who you are if you have a partner or I don't know.

E.E.E. 23 30 There is nothing to prove that you are where you say you are, or that you are the

Of the photos .

Photographs, the first where you see a person with a beard, a helmet on his head

with the caption of the photo that appears in all those provided by E.E.E., "D.D.D.. Piloto de las

Air forces. A 4Km away" In the rest of the photos you can see your image clearly being clearly recognizable, thus, figure one in the case of an individual dressed in a suit green, military with a background image of a hangar with an airplane (photo H hereinafter), three different ones, up close inside a vehicle dressed for the street, and in one he appears in a jet ski "shares the profile of D.D.D. Tap to send it to your friends." being able to see in the upper left round the image of photo H.

- It follows as attached documentation (folios 37/141 to 48/141, which is called the claimant in the claim document "Profile E.E.E. and conversation of mine" or "E.E.E. compressed" in the input pdf record, appearing in it as highlights:

On folio 36/141 there is a photo of "E.E.E. Teacher in Junta de Galicia and in the part above, the URL impression of two web address references, one on TINDER, one on facebook.com E.E.E.

-E.E.E.: "all this sounds strange / answer: Yes it is, if you can help me I will appreciate)." me.

-E.E.E : I still have the conversation and the phone number

-E.E.E.-Can you prove that you are B.B.B. , answer Well, look for B.B.B. that I am

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E.E.E.: Are you a flight instructor? Answer: "It was, now I work at Iberia. I know that

He has a phone number with my photo, the very unfortunate."

E.E.E., a question, ...they no longer have his profile on Tinder, right?, answer, not anymore

no this. You can tell TINDER that you had a conversation with me between 08/21-22

E.E.E.: The conversation seemed false to me and I deleted it.

On folio 55/141, the claimant shows the DNI in an image, in the conversation that it maintains with E.E.E., although the data is not clearly visible, if the photo, being able to correspond to the same as those of the pilot.

1)

Conversation of the accused (...) through copies of impressions of WhatsApp screens dated 08/27/2019.

Photo H is seen in the upper part, the name with which it appears is D.D.D., which starts the conversation, stating D.D.D. who was in the village, had dinner with old friends. Indicates the girl who was in the carnivals of \*\*\*LOCALIDAD.6, and D.D.D. that when he was a teenager that didn't exist, so when he was 18 years old he moved to \*\*\*LOCATION.7, the girl asks, so you don't live around here?

\*\*\*LOCALITY.1 and I am here on vacation" I have the base in \*\*\*LOCALITY.4"" but

Now I am going to stay for a month at the seaplane base of \*\*\*LOCALIDAD.5",

"I will continue to live in \*\*\* LOCATION.1", just one month.

The conversation continues on another day, but it does not put the date, it is indicated "we did not return to talk since summer I thought we would continue talking about our things" and asks, do you still are you in \*\*\*LOCATION.5? and answers that he is in \*\*\*LOCALIDAD.2 for a matter of inheritance. The girl asks me to send her a photo, and after sending one that shows a male torso, attached another where you see and recognize three people next to a plane, around 10:22 p.m., the pilot being able to be the one in the center. Later, D.D.D. he says no Send body-to-face photos."

3) CCC profile. and my conversation (folio 89/141) with the following conversation providing screen print, date 10/26:

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– “Hello, sorry that I am writing to you without knowing you, but there was a person impersonate you on TINDER. Use your photographs, as for some reason I did not trust I have done an image search and that's why I found you. I have already reported the profile of this person, has not provided me with any social network but a few photographs that now I see in your profile.” . Attach photos in the military outfit against the background of a hangar with an airplane.

-The answer is and where is it if you can find out?

-I live in \*\*\*LOCALITY.3 this boy tells me that he lives near \*\*\*LOCALITY.2 when he is here on vacation and that he usually lives in \*\*\* LOCATION.4 but of course I see that it is all ball.

-Can you send me a conversation please if it's not too inconvenient?

-I deleted it from TINDER. But I have more photos of your profile waiting. sends you various photographs, almost all coincide with those of point 1.

-And any other information?

-I have your mobile number

-She has a lot of Instagram photos from a long time ago that I already removed, so she takes a long time.

-In the last photo you have your phone WhatsApp photos and everything. I think he does not live where it said for the location, surely you live in the area of \*\*\*LOCALIDAD.8, very close from \*\*\* LOCATION.3, that's why I was a bit fly to be honest.

SECOND: On 01/20/2020, the CNMC registry is consulted and reflects that the Current operator of the line \*\*\*TELEFONO.1 is XFERA.

THIRD: The claim is admitted for processing on 02/04/2020.

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FOURTH: Within the previous inspection actions E/01242/2020, the following events:

To the operator, XFERA MÓVILES, S.A. who is assigned the number

1)

\*\*\*TELEFONO.1, the owner's data is requested.

On 06/22/2020, a response was received informing:

“The telephone number \*\*\*TELEFONO.1 in prepaid mode, was activated with date 07/02/2019 by:

F.F.F.” indicating your NIF.

“This card was activated with an initial credit of 5 euros, of which no payment was made. use, since the line does not record consumption. This line had no recharges.

Given the lack of use, in October 2019 a text message was sent informing suspension of the service due to inactivity, finally blocking the numbering dated 11/18/2019.”

1)

The State Tax Administration Agency is requested to provide the fiscal domicile of the claimed, and dated 07/06/2020, a response is received, joining the procedure.

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 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 resolve this

process.

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II

Allegedly, the defendant creates a profile, adding images that are not his ownership, exposes them and makes them known to the users of the network in which they are shared, also appreciating said image in WhatsApp conversations, for which reason they would be treating the personal data of the owner, claimant, by the claimed party.

The legal bases of data processing detailed in article 6.1 RGPD are related to the broader principle of legality of article 5.1.a) of the RGPD, pre-concept that provides that personal data will be treated in a "lawful, loyal and transparent" manner. in relation to the interested party".

The facts revealed in the claim could imply, on the part of the claimed the alleged infringement of the aforementioned article 5.1.a) of the RGPD.

Article 58 of the RGPD indicates:

III

"two. Each control authority will have all the following corrective powers indicated-two below:

i) 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 particular;"

Article 83.5 of the RGPD indicates:

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



section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount:

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

Regarding the amount of the sanction of administrative fine that would proceed to impose, must comply with the provisions of articles 83.1 and 83.2 of the RGPD, precepts that point out:

"Each control authority will guarantee that the imposition of fines administrative actions under this article for infringements of this Regulation

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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 referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine 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 treatment operation in question as well as the number of interested parties affected and the level of 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 they have applied under the articles 25 and 32;

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

the infringement and mitigate the possible adverse effects of the infringement;

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

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.”

In relation to 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.

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

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 delegate.

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 such controversies between those and any interested party.”

The alleged infringement of the RGPD for which the claimed party is responsible must be consider:

The deliberate attitude in collecting the image of which it is not the owner, which is used with some purposes of deception, supposes that an administrative sanction has to be resorted to, and the use of the data on at least two occasions and the context of use to relate to other people.

nas making the image of the claimant as their own 83.2.a) RGPD.

-The patent intention in said use, 83.2.b) RGPD.

Without prejudice to what results from the instruction of this procedure, quantifies the amount of the alleged infringement at 2,000 euros.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTIONING PROCEDURE against A.A.A., with NIF \*\*\*NIF.1, for the alleged infringement of article 5.1.a) of the RGPD, in accordance with article 83.5.a) of the GDPR.

SECOND: APPOINT instructor to R.R.R. and, as secretary to S.S.S., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of 1/10, on the Legal Regime of the Public Sector (LRJSP).

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THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and their documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase, as well as such as the report of previous inspection actions.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations, (hereinafter, LPACAP), the corresponding sanction would be an administrative fine of 2,000 euros.

FIFTH: NOTIFY this agreement to A.A.A., with NIF \*\*\*NIF.1, granting it a term hearing of ten business days to formulate the allegations and present the evidence that you consider convenient. In your statement of allegations you must provide your NIF and the procedure number at the top 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 the 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 acknowledge its responsibility within the term granted for the formulation of allegations to this initial agreement; what it will take coupled with a reduction of 20% of the sanction to be imposed in the present process. With the application of this reduction, the sanction would be established in 1,600 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 entail the reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1,600 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted

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to formulate arguments at the opening of the procedure. The voluntary payment of the amount referred to in the previous paragraph may be made 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 euros.

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

will be conditioned to the withdrawal 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 previously indicated 1,600 euros or 1,200 euros, you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Department of 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 cause of reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to continue with the procedure in accordance with the amount 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. elapsed that term will produce its expiration and, consequently, the filing of proceedings; of 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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: On November 3, 2020, the claimant has proceeded to pay the

SECOND

the sanction in the amount of 1200 euros making use of the two reductions provided

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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.

## FOUNDATIONS OF LAW

Yo

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.

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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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/00278/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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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