

□ File No.: EXP202103411

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on August 26,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against ALPA 57 PRODUCCIONES, S.L. with NIF B13512892 (in
below, the claimed party). The reasons on which the claim is based are the following:
following:

The complaining party states that they received a call from Mas Luz Energía
posing as its operator Naturgy. Resulting, they had their data
personal since they only requested confirmation of them.

Subsequently, he receives a call from Naturgy informing him of his withdrawal from said
company and invoices from the supplier Suministrador ibérico de
Energy - More Light Energy.

Together with the claim, screenshots of the sending of two invoices for
part of Más Luz Energía - Suministrador Ibérico de Energía S.L., for an amount of
XX.XX and XX.XX euros and claim before the General Directorate of Commerce and
Consumption of Madrid.

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
hereafter LOPDGDD), said claim was forwarded to Suministrador Ibérico de
Energía S.L, to proceed with its analysis and inform this Agency within the term
of one month, of the actions carried out to adapt to the foreseen requirements

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 October 21, 2021 as

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

On November 18, 2021, this Agency received a written response

stating: "that the procedures for the formalization of the supply contract

electricity at SUMINISTRADOR IBÉRICO DE ENERGÍA require, as is logical,

the verification and authentication of the manifestation of the client's willingness to proceed

upon signing the contract. This implies that, when a service provider

telemarketing formalizes a supply contract on behalf of SUPPLIER

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IBÉRICO DE ENERGÍA must provide a recording of the sales process. of this

In this way, SUMINISTRADOR IBÉRICO DE ENERGÍA can verify that the contracting

has been carried out properly. After reviewing the recordings of the

phone call, we have been able to verify that the commercial at no time said

that he worked for the third company in question, but went through the process of

contract indicating to the Claimant that such contracting would be carried out with

IBERIAN ENERGY SUPPLIER, identifying itself correctly and without

mislead the interested party.

Additionally, the procedure provided for the formalization of the contract of

electricity supply is completed by sending an SMS message to the customer that

contains a link to the pre-contractual information and the contract (information to which is accessed after entering the NIF), as well as confirmation of said terms for the perfection of the contract. This procedure also allows proof of the day and time the SMS was sent, its content, and the day and time in which, if applicable, the client accepted the contractual terms. In the case of the Complainant, it has been possible to verify that: - The SMS was delivered to his telephone number telephone on July 22, 2021 at 6:48 p.m.; - The website with the pre-contractual information to which the SMS link led was accessed on 22 July 2021 at 6:54 p.m., prior introduction by the Claimant of their NIF. - The "I accept" button contained in the mentioned web page was clicked on the 22nd of July 2021 at 6:54 p.m., also recording the IP address from which was done. We are not aware that the Claimant has exercised any of the rights regulated in articles 15 to 22 of the GDPR before this person in charge of the treatment; nor does the Claimant herself refer to the fact that she has completed any request for the exercise of rights before this person in charge. Referring to origin of the personal data, the following considerations should be made about the hiring process when it is done by a company telemarketing service provider: - The telemarketing service provider transfers to SUMINISTRADOR IBÉRICO DE ENERGÍA the personal data of interested parties to whom the SUPPLIER products and services will be offered IBERIAN ENERGY. Subsequently, the telemarketing service provider acts as the person in charge of the treatment of SUMINISTRADOR IBÉRICO DE ENERGY to carry out the activities of offering its products and services and contracting of the corresponding products and services. - However, it above, the telemarketing service provider can only carry out commercial actions on those interested parties who have provided their

Consent for the transfer of your personal data to SUMINISTRADOR IBÉRICO

OF ENERGY for said purpose.

Taking into account the foregoing, SUMINISTRADOR IBÉRICO DE ENERGÍA does not

can determine where the telemarketing service provider obtained the

Claimant's personal data, since the Claimant obtained them as a

responsible for the independent treatment of SUMINISTRADOR IBÉRICO DE

ENERGY. However, at the time of signing the contract for the provision of

services, said telemarketing service provider undertook to

transfer only the personal data of those interested parties who have given their

consent for said purpose. Additionally, the service provider

promised to inform the interested parties duly and in accordance with the regulations

in terms of data protection regarding the transfer to SUMINISTRADOR IBÉRICO

OF ENERGY of your data. For all these reasons, and in order to prevent the occurrence of

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similar incidents, from SUMINISTRADOR IBÉRICO DE ENERGÍA we have

increased control and monitoring of the actions that in terms of

contracting are being carried out by our suppliers”.

According to the representatives of Suministrador Ibérico de Energía, the data from

the claimant were communicated by the telemarketing service provider Alpa

57 Productions, SL with NIF: B13512892.

They provide a copy of the "Telemarketing services provision contract" formalized

between Suministrador Ibérico de Energia, SL and Alpa 57 on February 3, 2021.

THIRD: In accordance with article 65 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), when submitted to the Spanish Data Protection Agency

(hereinafter, AEPD) a claim, it must evaluate its admissibility for processing,

must notify the claimant of the decision on the admission or non-admission to

procedure, within three months from the date the claim was entered into this

Agency. If, after this period, there is no such notification, it will be understood

that the processing of the claim continues in accordance with the provisions of Title

VIII of the Law.

Said provision is also applicable to the procedures that the AEPD

would have to process in exercise of the powers attributed to it by other

laws. In this case, taking into account the above and that the

claim was filed with this Agency, on August 26, 2021, it was

communicates that your claim has been admitted for processing, on November 26,

2021, as three months have elapsed since it entered the AEPD.

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:

RESULT OF INVESTIGATION ACTIONS

In relation to the contracting of supplies

The representatives of Suministrador Ibérico de Energía carry out the following

considerations about the contracting process when it is carried out by a

telemarketing service provider company:

The telemarketing service provider transfers to Suministrador Ibérico de Energía the personal data of interested parties to whom the products and services of Iberian Energy Supplier.

Subsequently, the telemarketing service provider acts as in charge of the treatment of Suministrador Ibérico de Energía for the realization of

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the activities of offering its products and services and contracting of the applicable products and services.

Notwithstanding the foregoing, the telemarketing service provider can only carry out commercial actions on those interested parties who have provided them with your consent for the transfer of your personal data to Suministrador Ibérico de Energy for said purpose.

Bearing in mind the foregoing, Suministrador Ibérico de Energía cannot determine where the telemarketing service provider obtained the data from personal information of the claimant, since he obtained them as the person responsible for the independent treatment of Suministrador Ibérico de Energía.

They provide a file in mp3 format that contains the recording of the hiring process

of the claimant.

In the recording provided, the telemarketing service provider introduces himself as the "Energy Consulting", and offers the claimant the services of Mas Luz Energía-

Iberian Energy Supplier with a certain discount. In the recording

It says that the data has previously been transferred by both address and bank details. In the recording clearly accepts the contracting of services.

Provide a copy of the invoices issued by the electricity supply points and
Of gas:

Electricity bill ***BILL.1 for the amount of XX.XX€; corresponding to the pe-

Billing period from 08/06/2021 to 08/11/2021. Unpaid invoice.

Gas invoice ***INVOICE.2 for the amount of XX.XX€; corresponding to the period of billing from 07/30/2021 to 08/09/2021. Unpaid invoice.

For commercial deference, the following invoices have been issued:

Electricity bill ***BILL.3 for the amount of XX.XX€. This invoice cancels the invoice ***INVOICE.1.

Gas invoice ***INVOICE.4 for the amount of XX.XX€. This invoice completely cancels-

Mind the invoice *** INVOICE.2.

With this, the claimant does not owe any amount to Suministrador Ibérico de Energía.

In relation to the origin of the claimant's data

According to the representatives of Suministrador Ibérico de Energía, the data from the claimant were communicated by the telemarketing service provider Alpa 57 Productions, SL with NIF: B13512892.

They provide a copy of the "Telemarketing services provision contract" formalized between Suministrador Ibérico de Energia, SL and Alpa 57 on February 3, 2021.

The entity Alpa 57 Producciones, SL has been requested to provide information

Relative to:

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1. Details of the claimant's data (name, address, bank account, etc.)

prior to the commercial call in which the electricity supply was contracted to claimant's name.

2. Origin of the aforementioned data.

3. All documentation justifying the consent to obtain the aforementioned information prior to the commercial call.

This information requirement is recorded as correctly delivered on date 5

May 2022, by not providing a response, it has been reiterated and delivered again on June 14, 2022 without having provided a response.

CONCLUSIONS

Suministrador Ibérico de Energía cannot determine where the provider obtained it from of telemarketing services the personal data of the claimant.

The telemarketing service provider is Alpa 57 Producciones, SL.

They provide a recording of the contract where the telemarketing service provider presents itself as the "Energy Consulting", and offers the claimant the services of

Mas Luz Energía-Iberian Energy Supplier with a certain discount. In

recording it is said that the data has previously been given by both management and

Bank data. The recording clearly accepts the contracting of services

by the interlocutor.

The entity ALPA 57 PRODUCCIONES, SL has been required on two occasions to

that provides information regarding the details of the claimant's data (name,

address, bank account, etc.) prior to the commercial call in which the

electrical supply. No response has been received to date.

FIFTH: On October 26, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of Article 6.1 of the GDPR, typified in

Article 83.5 of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations in which, in summary, he stated that: "It is flatly denied that

this company carry out any treatment of the personal data of the party

claimant, without standing to do so.

As this company knows, the claimant's data was in the database

of the company AIMART MARKETING S.L.

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The claimant's telephone contracting was carried out by said company, in

as our subcontractor and once said contracting has been carried out, we

we inform the new operator Suministrador Ibérico de Energía S.L: the new

hiring.

Having said the above, we consider that the processing of the personal data of

the complaining party, carried out by the complained party is legitimate, since it was made under the legitimizing basis of art. 6.1.b) and 6.1.f) of the GDPR.

It is proposed as evidence that the company Aimart Marketing be required S.L., to provide the following documentation:

1. Details of the claimant's data prior to the commercial call in which contracted the electricity supply in the name of the claimant.
2. Origin of the aforementioned data of the claimant.
3. Any documentation that justifies the consent to obtain the aforementioned information prior to the commercial call”.

SEVENTH: On November 17, 2022, the instructor of the procedure agreed practice the following tests: "Request AIMART MARKETING S.L. 1. Detail of the data of the complaining party Ms. A.A.A. (name, address, bank account, etc.) prior to the commercial call in which the electricity supply was contracted to name of the claimant.2. Origin of the aforementioned data of the claimant.3. All the documentation that justifies the consent to obtain the aforementioned Information prior to the commercial call.4. Contract signed between AIMART MARKETING S.L. and ALPA 57 Productions S.L."

EIGHTH: On November 17, 2022, the Support service of the Electronic Notifications and Authorized Electronic Address certifies that the notification to: AIMART MARKETING SL - B16960718

Subject: "Notification of trial period" with the following result: Date of made available: 11/17/2022 11:30:17 Acceptance date: 11/17/2022 11:38:05.

This notification is recorded as correctly delivered on November 17, 2022. AIMART MARKETING SL has not sent any response to this Agency Spanish Data Protection.

NINTH: On January 25, 2023, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency
sanction ALPA 57 PRODUCCIONES, S.L. with NIF B13512892 for an infraction
of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR, with a fine of
10,000 euros (ten thousand euros).

TENTH: Once the proposed resolution was notified, the claimed party submitted a written
allegations being ratified in those made to the Initiation Agreement, stating: "we were
reproach in the content of that resolution, that this company is not capable of
certify how it obtained the data from the complaining party, due to lack of contribution of
any document, scolding us for limiting ourselves to mentioning exclusively the
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company AIMART MARKETING S.L. We show our absolute opposition to
this argument, because if we no longer maintain any collaboration with the
indicated commercial and we cannot access your information system (it is
more, nor should we be able to access), it is impossible for this company to provide the
information that is required of us.

The only document that is in our possession is provided, since the contracting
controversial telephone, was carried out by the company AIMART MARKETING S.L., in
quality of our subcontractor - as accredited by means of "Provision contract
of telemarketing services" formalized between AIMART MARKETING S.L. and ALPA
57 PRODUCCIONES, S.L., which I provide as DOCUMENT N°1-, and once the
said contracting, notifies us of the signed contract and the personal data of the
complaining party, so that we can proceed to communicate that information to the

new operator SUMINISTRADOR IBÉRICO DE ENERGÍA S.L..

Having said the above, we consider that the processing of the personal data of the complaining party, carried out by ALPA 57 PRODUCCIONES, S.L. it is legitimate, given which was carried out under the following legitimizing bases: 1) the treatment is necessary for the performance of a contract to which the claimant is a party (Art. 6.1.b. of Regulation (EU) 2016/679); 2) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller (Art. 6.1.f. of the Regulation (EU) 2016/679)".

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claiming party, on August 26, 2021, filed a claim before this Agency, for having received a call from Mas Luz Energía making go through your operator Naturgy. Given the circumstance, they had your data personal because they only asked for confirmation of these.

Subsequently, he received a call from Naturgy informing him of his withdrawal from the entity and invoices dated 07/30/2021 and 08/06/2021 from the Supplier are sent to the collection Iberico de Energía - Mas Luz Energía.

SECOND: It is accredited by Suministrador Ibérico de Energía that the data of the part claimant were assigned by the telemarketing service provider company Alpa 57 Productions, SL.

THIRD: "Contract for the provision of telemarketing services" formalized between Suministrador Ibérico de Energia, SL and Alpa 57 on February 3, 2021.

FOURTH: It is verified that notification was sent to AIMART MARKETING S.L, subcontractor of the claimed party, is recorded as correctly delivered on the 17th November 2022. AIMART MARKETING SL has not sent any response to

this Spanish Data Protection Agency.

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FIFTH: "Contract for the provision of telemarketing services" formalized between AIMART MARKETING S.L. and ALPA 57 PRODUCCIONES, S.L., and signed in dated September 19, 2021, and its eleventh clause states "the contract It will enter into force at the time of its signature.

SIXTH: In the recording provided by Mas Luz Energía-Suministrador Ibérico de Energy, it is verified that the telephone operator states: "that today is July 22, 2021".

FUNDAMENTALS OF LAW

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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: "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

breached obligation

The defendant is accused of committing an infraction for violation of article 6 of the RGPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which that the processing of data by third parties is considered lawful:

"1. Processing 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 personal data for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;
- c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;
- d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

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- e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested is a child. The provisions of letter f) of the first paragraph shall not apply. application to processing carried out by public authorities in the exercise of their functions”.

On the other hand, article 4 of the GDPR, Definitions, in its sections 1, 2 and 11, indicates that:

“1) «personal data»: 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;

"11) "consent of the interested party": any expression of free, specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the processing of personal data that concern”.

Classification of the infringement of article 6 of the GDPR

II

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"5. Violations of the following provisions will be penalized, in accordance with the 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 total annual global business volume of the previous financial year, opting for the highest amount:

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

consent in accordance with articles 5,6,7 and 9."

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1

very serious infringement, in this case the limitation period is three years,

<<b) The processing of personal data without the fulfillment of any of the conditions

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of legality of the treatment established in article 6 of the Regulation (EU)

2016/679>>.

In the present case, it is proven that the claimed party violated article 6.1

of the GDPR. every time it processed the personal data of the party

claimant (NIF, address, universal supply point code, email,

mobile number, bank details), without legitimacy for it. Personal information

were incorporated into the company's information systems, without any

accredited that had a legal basis for the collection and subsequent processing of

your personal information.

Consequently, it has processed personal data without having

accredited that has the legal authorization to do so.

In this regard, and this is the essential, the defendant does not prove the legitimacy for the treatment of the claimant's data.

The claimed party in its defense states that the data of the claiming party were in the database of the company AIMART MARKETING S.L.

Well, on November 17, 2022 it was agreed to practice the following evidence: "Request AIMART MARKETING S.L. 1. Details of the party's data claimant Ms. A.A.A. (name, address, bank account, etc.) prior to the call business in which the electricity supply was contracted in the name of the claimant.2. Origin of the aforementioned data of the claimant.3. All supporting documentation the consent to obtain the aforementioned information prior to the call commercial.4. Contract signed between AIMART MARKETING S.L. and ALPA 57 Productions S.L."

This notification is recorded as correctly delivered on November 17, 2022. AIMART MARKETING SL has not sent any response to this Agency Spanish Data Protection.

Well then, the claimed party must be able to prove how they obtained the data from the complaining party, which it has not done. Since you have only provided the contract for provision of formalized telemarketing services between the company AIMART MARKETING SL and the claimed party. Resulting in the signing of the aforementioned contract carried out by both parties on September 19, 2021, the date after the telephone contracting made by the claimant which was on July 22, 2021 and the invoices issued by Mas Luz Energía, the dates of their issuance being: Electricity bill ***BILL.1 for the amount of XX.XX€; corresponding to billing period from 08/06/2021 to 08/11/2021. Gas bill ***BILL.2 for the amount of XX.XX€; corresponding to the billing period from 07/30/2021 to

08/09/2021.

In short, the contract entered into between the claimed party and AIMART MARKETING S.L. (subcontracted from the previous one), is after the contracting of the electricity services and gas by the claimant.

Respect for the principle of legality that is in the essence of the fundamental right of protection of personal data requires that it be proven that the responsible for the treatment displayed the necessary diligence to prove that

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extreme. If they do not act in this way - and if this Agency does not demand it in this way, which is responsible for ensuring for compliance with the regulations governing the right to data protection of personal character - the result would be to empty the content of the principle of legality.

Thus, it is estimated that the facts that are submitted to the evaluation of this Agency they constitute a violation of article 6.1 of the GDPR.

IV.

Sanction

The determination of the sanction that should be imposed in the present case requires observe the provisions of articles 83.1 and 2 of the GDPR, precepts that, respectively, provide the following:

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

"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 person in charge or in charge of the treatment to

settle 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, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

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;

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j) adherence to codes of conduct under article 40 or to 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.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sanctions and corrective measures":

"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 led to the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.
- f) The 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.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679.”

In accordance with the precepts transcribed for the purpose of setting the amount of the sanction of

fine to be imposed on the entity claimed as responsible for a classified offense

in article 83.5.a) of the GDPR, the following are considered concurrent in the present case:

following factors:

As aggravating circumstances:

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That the facts that are the object of the claim are attributable to a lack of

diligence of the requested party, since it has not provided any document

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explaining the origin of the claimant's data that have been subject to

treatment. (article 83.2.b, GDPR). The judgment of the National Court of

10/17/2007 (rec.63/2006), in which, with respect to entities whose activity carries out

coupled with the continuous processing of customer data, indicates that <<...the Court

Supreme Court has understood that there is imprudence whenever a

legal duty of care, that is, when the offender does not behave with due diligence

callable. And in assessing the degree of diligence, special consideration must be given to the

professionalism or not of the subject, and there is no doubt that, in the case now examined,

when the activity of the appellant is constant and abundant handling of data from personal character must insist on rigor and exquisite care to adjust to the legal precautions in this regard>>.

The link of the controller with the processing of personal data

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(Article 83.2 k of the GDPR in relation to article 76.2b of the LOPDGDD).

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 10,000 € for violation of article 83.5 a) GDPR.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ALPA 57 PRODUCCIONES, S.L. with NIF B13512892 for a violation of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR, a fine of 10,000 euros (ten thousand euros).

SECOND: NOTIFY this resolution to ALPA 57 PRODUCCIONES, S.L. with NIF B13512892.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:

XXXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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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 in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count from the day following the notification of this resolution or directly

contentious-administrative appeal 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 for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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