

□ File No.: EXP202208440

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 13, 2022, the Director of the Spanish Agency
of Data Protection agreed to start a sanctioning procedure against CONSULTING
PERITACIONES ALMERIENSE, S.L. (hereinafter, the claimed party), through the
Agreement transcribed:

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File No.: EXP202208440

AGREEMENT TO START THE SANCTION PROCEDURE

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

FACTS

FIRST: On 07/11/2022, two documents entered this Agency
Presented by A.A.A. (hereinafter, the complaining party), through which it formulates
claim against CONSULTORÍA PERITACIONES ALMERIENSES, S.L. with NIF
B04855128 (hereinafter, the claimed party), for a possible breach of the
provided in the personal data protection regulations.

The reasons on which both claims are based are the following:

"The right of access to my personal data was requested, being delivered a burofax
on 06/03/2022, but no response has been received.

Likewise, on its website it offers a contact form, and does not indicate any

information on data processing or the person responsible for the file, attached

Delivery test."

"The company website <http://www.peritacionesmarcelino.com/contacto/> offers

contact, but at no time notifies the processing of the data, nor the

responsible for the file.

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2/12

Nor does it provide information on their right of access, or their withdrawal or

modification.

Neither about cookies."

Attach the following documentation:

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Photograph of acknowledgment of receipt of the burofax sent to the claimed party in

dated 06/02/2022, which was delivered on 06/03/2022.

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

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

forward LOPDGDD), on 08/03/2022 the claim was transferred to the party

claimed, so that it proceeds to its analysis and informs 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) by electronic notification, was not collected by

the person in charge, within the period of availability, understood as rejected

in accordance with the provisions of art. 43.2 of the LPACAP dated 08/14/2022, as stated

in the certificate in the file.

Although the notification was validly made by electronic means, assuming that

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under

informative, a copy was sent by postal mail that was "Returned to origin by

surplus (not withdrawn in the office)" on 09/19/2022. In said letter, he was reminded

their obligation to interact electronically with the Administration, and they will be

informed of the means of access to said notifications, reiterating that, as far as

successively, you will be notified exclusively by electronic means.

No response has been received to this letter of transfer.

THIRD: On 10/11/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 12/07/2022, this Agency accessed the website

www.peritacionesModulemarcelino.com, being verified that it continues without incorporating

the proper privacy policy and that cookies are not reported. only facilitates

in the "Contact" section your phone and email.

Regarding the collection of personal data, on the website there is a form of

contact that allows any user to make the queries they deem appropriate,

having to complete a series of sections that collect the following data:

name and email.

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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: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

breached obligation

The purpose of the GDPR is to guarantee the right to data protection of the Physical persons. Article 4.1 of the GDPR understands by "personal data": "all information about an identified or identifiable natural person ("the data subject"); HE 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 for example a name, an identification number, location data, a online identifier or one or more elements of physical identity, physiological, genetic, psychological, economic, cultural or social of said person;".

Article 4.2 of the GDPR defines "processing" as "any operation or set of

of operations carried out on personal data or sets of personal data,
whether by automated procedures 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, comparison or interconnection, limitation, deletion or destruction;”.

Treatment must be governed by the principles listed in article 5 of the
GDPR, which provides:

“The personal data will be:

a) Treated in a lawful, loyal and transparent manner in relation to the interested party

("lawfulness, loyalty and transparency");

(...)”.

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4/12

Manifestation of the principle of transparency is the obligation incumbent on the
data controllers to inform, under the terms of article 13 of the GDPR, the
owner of the personal data when they are obtained directly from the interested party:

"1. When personal data relating to him or her is obtained from an interested party, the
responsible for the treatment, at the time they are obtained, will provide you with
all the information listed below:

a) The identity and contact details of the person in charge and, where appropriate, their
representative;

to)

b)

the contact details of the data protection officer, if applicable;

the purposes of the processing for which the personal data is used and the basis

legal treatment;

c) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

d)

recipients or categories of recipients of personal data, in

Their case;

e) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to the adequate or appropriate guarantees and to the means to obtain

a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will provide the interested party, at the time the data is obtained

personal data, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this term;

to)

the existence of the right to request the data controller access to

personal data relating to the interested party, and its rectification or deletion, or the

limitation of your treatment, or to oppose the treatment, as well as the right

to data portability;

b) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9(2)(a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

c) the right to file a claim with a control authority;

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5/12

d) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences

not to provide such data;

and)

the existence of automated decisions, including profiling, to

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

expected consequences of such processing for the data subject.

3. When the person responsible for the treatment plans the subsequent processing of data personal information for a purpose other than that for which it was collected, will provide the data subject, prior to said further processing, information about that other purpose and any additional information relevant under section 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

In this sense, Recital 60 of the GDPR says that "The principles of treatment

fair and transparent demand that the interested party be informed of the existence of the

treatment operation and its purposes. The data controller must provide the interested party, as much complementary information as is necessary to guarantee a fair and transparent treatment, taking into account the circumstances and context in which the personal data is processed. You must also inform the concerned of the existence of profiling and the consequences of said elaboration. If personal data is obtained from data subjects, it is also must inform them of whether they are obliged to provide them and of the consequences in case that they didn't."

Classification and classification of the offense

II

The facts revealed by the complaining party materialize in the lack of privacy policy and information about cookies on the web

<http://www.peritacionesmcarcelino.com>. In advance, he sent a burofax to the party claimed exercising the right of access to your personal data, without obtaining answer.

In light of the documents in the administrative file, it is evident that the website in question lacks the proper privacy policy. In this case, it is mandatory to incorporate it since the claimed party, through the contact, can collect personal data (name and email) and, therefore, make a treatment of them.

In accordance with article 13 of the GDPR, the claimed party, in its capacity as responsible of the treatment, you must provide various information that you have dispensed with in your whole. Specifically, it is obliged to inform about its contact information, being those that appear on the website are insufficient since only the mobile phone and email appear electronic. Nor does it inform about the legal basis of the treatment, the recipients

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6/12

of the personal data, the period during which it will keep them or, not being

possible to fix it, on the criteria used to determine it. nor that the users

They can exercise the rights of access, rectification, deletion, limitation of their

treatment, opposition to the treatment and portability of the data; or submit a

complaint to the control authority.

However, regarding the question of cookies, this Agency has used the

EDPS (Website Evidence Collector) tool for website analysis

<https://www.peritacionesmarcelino.com/>. The results obtained, in summary,

warn of the following: "The evidence collection tool analyzed the

persistent cookies after the browsing session (...). ordered cookies

according to expiration in days. No cookies found. Local storage is

empty". In this way, in view of the report, it does not appear that cookies are installed and, therefore,

Therefore, you should inform yourself about them.

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

instruction, it is considered that the conduct of the claimed party violates article 13

of the GDPR, for which reason it could imply the commission of an infraction classified in the

Article 83.5.b) of the GDPR which provides: "Infringements of the provisions

following 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, of an amount

equivalent to a maximum of 4% % of the total global annual turnover of the

previous financial year, opting for the highest amount:

to)

(...)

a) The rights of the interested parties in accordance with articles 12 to 22;"

For the purposes of the statute of limitations for offences, article 72.1 h) of the

LOPDGDD qualifies as very serious "The omission of the duty to inform the affected party about

of the processing of your personal data in accordance with the provisions of articles 13 and

14 of Regulation (EU) 2016/679 and 12 of this Organic Law". The limitation period

of the very serious infringements provided for in Organic Law 3/2018 is three years.

IV.

Sanction proposal

The corrective powers available to the Spanish Agency for the Protection of

data, as a control authority, are established in article 58.2 of the GDPR. Between

they have the power to impose an administrative fine in accordance with the

article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or

processor that the processing operations comply with the

provisions of the GDPR, where applicable, in a certain way and within a certain

specified term -article 58. 2 d)-.

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

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7/12

In the present case, taking into account the facts exposed and without prejudice to what

results from the instruction of the procedure, it is considered that the sanction that

It would be appropriate to impose an administrative fine. The fine imposed shall

be, in each individual case, effective, proportionate and dissuasive, in accordance with the

Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed,

to observe the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

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

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

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

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

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

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8/12

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

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

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing. personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.

- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated makes it possible to establish as an initial assessment a fine of €2,000.00 (two thousand euros) for the violation of article 13 of the GDPR.

V

adoption of measures

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

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

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9/12

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE a CONSULTANCY

PERITACIONES ALMERIENSES, S.L., with NIF B04855128, for the alleged infringement of article 13 of the GDPR, typified in article 83.5.b) of the GDPR.

SECOND: THAT for the purposes provided in article 64.2.b) of LPACAP, the sanction that could correspond would be an ADMINISTRATIVE FINE of 2,000.00 euros (two thousand euros), without prejudice to what results from the instruction.

Likewise, the imputed infringement, if confirmed, may lead to the imposition of measures in accordance with the provisions of article 58.2 d) of the GDPR.

THIRD: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating that any of them may be challenged, if applicable, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

FOURTH: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Sub-directorate General of Inspection of Data.

FIFTH: NOTIFY this agreement to CONSULTING EXPERTS

ALMERIENSES, S.L., with NIF B04855128, granting it a hearing period of ten business days for him to formulate the allegations and present the evidence he deems convenient. In your statement of allegations you must provide your NIF and the number of procedure that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 1,600.00 euros, resolving the procedure with the imposition of this sanction, without prejudice to the imposition of the corresponding measures.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1,600.00 euros and its payment will imply the termination of the procedure, without prejudice to the imposition of the corresponding measures.

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10/12

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

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

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (1,600.00 euros or 1,200.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in the bank

CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

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

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

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 30, 2023, the claimed party has proceeded to pay

of the sanction in the amount of 1200 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

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11/12

FOURTH: In the previously transcribed initiation agreement, it was indicated that, if

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

Having recognized the responsibility for the infringement, the imposition of the measures included in the Initiation Agreement.

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: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

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

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

2. When the sanction has only a pecuniary nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature but the inadmissibility of the second, the voluntary payment by the presumed perpetrator, in any moment prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the offence.

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12/12

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

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

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

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202208440, in

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

SECOND: TO ORDER CONSULTORÍA PERITACIONES ALMERIENSES, S.L.

so that within one month it notifies the Agency of the adoption of the measures that

are described in the foundations of law of the Commencement Agreement transcribed in the

present resolution.

THIRD: NOTIFY this resolution to CONSULTING EXPERTS

ALMERIENSES, S.L.

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

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

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

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

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the referred Law.

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