

□ File No.: EXP202201686

## 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 June 7, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against PRODESSPA  
DECORATIUS I PINTURES, S.L. (hereinafter, the claimed party), through the  
Agreement that is transcribed:

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File No.: EXP202201686

### AGREEMENT TO START A SANCTION PROCEDURE

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

### FACTS

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated December 27  
2021 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against PRODESSPA DECORATIUS I PINTURES, S.L. with NIF  
B25810292 (hereinafter, the claimed party or Prodesspa). The reasons on which he bases  
the claim are as follows:

The claimant states that she has been a Prodesspa worker until May 26  
2021, date on which the employment contract was terminated.

Thus, after the termination of the employment relationship, the party  
claimed proceeded on June 4, 2021 to collect an alleged debt that was not

acknowledges the claimant, by means of a bank draft to the account of its ownership.

The claimant returned the invoice and the respondent proceeded to include her data in the Asnef credit information system.

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2/11

Along with the claim, provide the following relevant documentation:

- Laboral life.
- Act of conciliation, in relation to the termination of the employment contract.
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Proof of direct debit in your account by Prodesspa.

Invoice from the company whose receipt was debited to your account.

- Email sent by the respondent informing her that there was receipt returned.

- Letter from Asnef dated July 6, 2021, in which they inform you that with date July 5, 2021 the entity Prodesspa, has included your data in the Asnef Companies file for an unpaid invoice of XXXX.XX euros.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

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 February 17, 2022 as

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

On March 15, 2022, this Agency received a written response stating: "that on April 2, 2021, the claimant made the purchase of painting materials in our store, amounting to XXXX.XX euros, with the invoice number \*\*\*FACTURA.1, due on May 2, 2021, invoice that was handed over to her.

The inclusion of the claimant in the Asnef registry on July 5, 2021, and subsequently notified to the claimant by the Asnef entity. We have to say that the new Organic Law 3/2018, recognizes the legality of these files, called "credit information systems" and collected in article 20 of the aforementioned law, provided that certain requirements are met. First of all, that there is a debt that is of a "certain, due and payable" nature, in our case the invoice that amounts to the amount XXXX.XX euros, and greater than fifty euros. second Secondly, the claim for the debt has not been made through a judicial, administrative or or arbitrarily, since Prodesspa has not initiated any order for payment process against the claimant. Thirdly, that the affected party has been informed about the possibility of inclusion in a file. Fourthly, that no more five years from the expiration of the obligation. The debt incurred by the claimant is dated April 2, 2021, so the action to claim the debt has not yet prescribed.

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3/11

The claimant states that she worked for the entity claimed until May 26, 2021. On June 4, 2021, the entity claimed debited the current account of the claimant an invoice that the claimant does not recognize. The claimant returned the invoice and the claimed entity included its data in Asnef.

The inclusion of the claimant in Asnef on July 5, 2021, and subsequently notified to the claimant by the Asnef entity”.

THIRD: In accordance with article 65 of the LOPDGDD, when the a claim before the Spanish Agency for Data Protection, it must evaluate its admissibility for processing, and must notify the claimant of the decision on admission or non-admission for processing, within a period of three months from when the claim had input in this Agency. Yes, after this period, there will be no said notification, it will be understood that the processing of the claim continues with in accordance with the provisions of Title VIII of the Law.

In this case, taking into account the foregoing, and that the claim is presented in this Agency, dated December 27, 2021, was communicated on December 27, March 2022 that the claim had been admitted for processing after three months since it entered the AEPD.

#### FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

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

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

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

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4/11

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 treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in 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 override 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 be application to the treatment carried out by public authorities in the exercise of their functions”.

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

"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, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

a)

consent under articles 5,6,7 and 9.”

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following:

(...)

a)

The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

III

The documentation in the file offers evidence that the party

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5/11

claimed, violated article 6.1 of the RGPD, for processing data without legitimacy, by guarantee provided for in article 20.1 c) of the LOPDGDD so that the company can operate presumption iuris tantum of prevalence of legitimate interest, since it included the data of the claimant in the Asnef Companies file without informing him about the possibility of his inclusion in a credit information file.

The party claimed in his defense states in the first place: “that the communication that the company Prodesspa carried out with the worker by sending mail email to notify you of the non-payment of the invoice and how to proceed with the payment of the same, complies with the standards and requirements established in LO 3/2018, of 5 of December Protection of Personal Data and guarantee of digital rights.

Since a clear legal notice appears in the email, informed of how will proceed to the treatment of the data of the same, and even of the exercise of the rights”, and secondly it says that “The inclusion of the claimant in the registry Asnef Companies on July 5, 2021, and subsequently notified to the claimant by the entity Asnef Companies ”,

It cannot be appreciated, from all the above, that it is proven that the party

complained has informed the complaining party about the possibility of its inclusion in a credit information file. This is so, because at the time of requesting the payment by the claimed party, that is, neither in the invoice nor in the email informs of the possibility of inclusion in said credit information system.

Article 20.1 c) of the LOPDGDD establishes:

“That the creditor has informed the affected party in the contract or at the time of require payment about the possibility of inclusion in said systems, with indication of those in which it participates.

The entity that maintains the credit information system with data related to the Non-compliance with monetary, financial or credit obligations must notify the affected the inclusion of such data and will inform you about the possibility of exercising the rights established in articles 15 to 22 of Regulation (EU) 2016/679 within thirty days following notification of the debt to the system, remaining The data is blocked during that period.”

In short, the data was included in the Asnef file without previously informing about the possibility of its inclusion in a credit information file contravening the requirements contained in the LOPDGDD. The claimed party itself attaches the e-mails in which he urged payment and the warning did not appear.

Well, the inclusion in the file of Asnef Companies was on July 5, 2021 and was notified of such inclusion by Asnef-Equifax Information Services on Solvencia y Crédito S.L., but the party claimed in the transfer information develops how he met all the requirements of art. 20 except this one.

However, since there is no information, the elements for that treatment can be presumed protected by legitimate interest and therefore it has been carried out without legitimate basis. This would not prevent the existence of another eventual basis, although the respondent party does not allege it, much less prove it in its



argumentation.

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6/11

It is clear, and this is essential, the foregoing means that the treatment of the data of the claimant is not legitimate, given that the budgets established in the Article 20.1 c) of the LOPDGDD.

IV

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

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

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

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well 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 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

of articles 25 and 32;

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

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

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7/11

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

“Sanctions and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process 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 officer.
- 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 controversies between them and any interested party."

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case, the claimed party is considered responsible for an infringement typified in article 83.5.a) of the RGPD, in an initial assessment,

The following factors are considered concurrent.

As aggravating the following:

The link of the controller with the processing of personal data (article

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The duration of the illegitimate treatment of the data of the affected person carried out by the claimed party (article 83.2 a). Date of inclusion in the Asnef Companies file 5

July 2021.

-  
83.2.k, of the RGPD in relation to article 76.2.b. of the LOPDGDD)

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and set it at the amount of €15,000 for the infringement of article 6 of the RGPD.

Along with this, the corrective powers available to the Spanish Agency for Data Protection, as a control authority, are established in article 58.2 of the GDPR. Among them are the power to impose an administrative fine with in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the responsible or in charge of the treatment that the treatment operations are conform to the provisions of the GDPR, where appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, 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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8/11

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...”.

In such a case, in the resolution adopted, this Agency may require the

responsible so that within the period determined:

- Provide evidence that proves that you have a protocol that guarantees that

informs debtors of the possibility of including their data in the system or

credit information systems that are determined, if they do not face the

Certain, due and payable debt that they have subscribed with the claimed entity.

It is warned that not meeting the requirements of this organization may be

considered as an administrative offense in accordance with the provisions of the RGPD,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent sanctioning administrative proceeding.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST:

INITIATE SANCTION PROCEDURE against PRODESSPA

DECORATIUS I PINTURES, S.L. with NIF B25810292, for the alleged violation of the

article 6.1 of the RGPD, in relation to article 20.1 c) of the LOPDGDD, typified in

Article 83.5.a) of the aforementioned RGPD.

SECOND: APPOINT D. B.B.B. as instructor. and as secretary to Ms. C.C.C.,

indicating that any of them may be challenged, where appropriate, in accordance with the provisions

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

Public Sector Co (LRJSP).

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

claim filed by the claimant and its attached documentation, the

information requirements that the General Subdirectorate of Data Inspection

sent to the entity claimed in the preliminary investigation phase and their respective

acknowledgments of receipt

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-

tubre, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be 15,000 euros (fifteen thousand euros), without prejudice

cio of what results from the instruction.

FIFTH: NOTIFY this agreement to PRODESSPA DECORATIUS I

PAINTINGS, S.L. with NIF B25810292, granting a hearing period of ten days

able to formulate the allegations and present the evidence that it considers

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9/11

convenient. In your brief of allegations you must provide your NIF and the number of

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

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

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

the present procedure. With the application of this reduction, the sanction would be

established at 12,000 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 mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 12,000 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 9,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 12,000 euros or 9,000 euros, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity 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.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

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10/11

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On June 16, 2022, the claimed party has proceeded to pay the sanction in the amount of 9000 euros making use of the two reductions provided 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

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law



Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

## 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:

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11/11

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

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

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

competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202201686, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to PRODESSPA DECORATIUS I PAINTINGS, S.L.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

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