

□ File No.: EXP202211726

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 15, 2022, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against FINCAS MARTIN
2, S.L. (hereinafter, the claimed party), through the transcribed Agreement:

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File No.: EXP202211726

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 September 25, 2022 A.A.A. (hereinafter the part
claimant) filed a claim with the Spanish Data Protection Agency
against FINCAS MARTIN 2, S.L. with NIF B26279489 (hereinafter, the part
claimed) for not providing users with the information provided for in article 13 of the
Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27,
2016, regarding the protection of natural persons with regard to the treatment
of personal data and the free movement of such data, despite the fact that they are collected
personal data through a contact form.

SECOND: On November 3, 2022 in accordance with article 65 of
the LOPDGDD, the claim presented by the claimant party was admitted for processing

upon verifying that despite the transfer carried out by this Organization on October 6, 2021, the necessary measures had not been adopted to adapt the aforementioned website to what is legally established.

FUNDAMENTALS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of

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2/10

natural persons with regard to the processing of personal data and the free circulation of this data (General Data Protection Regulation, hereinafter GDPR) recognizes each control authority, and as established in articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of the 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

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016, regarding the protection of natural persons in what
regarding the processing of personal data and the free movement of such data
(General Data Protection Regulation, hereinafter GDPR), under the heading
"Definitions" provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data" means 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;"

II

Article 13 of the GDPR, precept that determines the information that must be
provided to the interested party at the time of data collection, provides:

"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;
- b) the contact details of the data protection officer, if applicable;

c) the purposes of the processing for which the personal data is intended and the legal basis of the treatment;

d) 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;

e) the recipients or categories of recipients of personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision of adequacy of the Commission, or, in the case of the transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second subparagraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of these or to the fact that they have been lent.

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;

b) the existence of the right to request the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of their treatment, or to oppose the treatment, as well as the right to portability

of the data;

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

9, paragraph 2, letter a), the existence of the right to withdraw consent in

at any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

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

e) 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 of not

provide such data;

f) the existence of automated decisions, including profiling, to which

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

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.

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.

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4/10

4. The provisions of sections 1, 2 and 3 will not be applicable when and in the

to the extent that the interested party already has the information”.

For its part, article 11 of the LOPDGDD provides the following:

"1. When personal data is obtained from the data subject, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679 providing the affected party with basic information to the referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if applicable.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or him significantly affect in a similar way, when this right occurs according to with the provisions of article 22 of Regulation (EU) 2016/679."

IV.

Pursuant to the provisions of article 58.2 of the GDPR, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infringement of the precepts of the GDPR.

Article 58.2 of the GDPR provides the following:

"2 Each control authority will have all the following corrective powers indicated below:

(...)

"d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this paragraph, according to the circumstances of each particular case;"

Article 83.5.b) of the GDPR establishes that:

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

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5/10

paragraph 2, with administrative fines of maximum EUR 20,000,000 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:

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

In turn, article 72.1 h) of the LOPDGDD, under the heading "Offences considered very serious provides:

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

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of Regulation (EU)

2016/679 and 12 of this organic law.”

V

In this case, this Agency has verified that following the link ***URL.1

ownership of the claimed party, this could be violating the regulations of

data protection, because it lacks a data protection policy, despite

to collect personal data through a contact form, which would violate

Article 13 of the GDPR, indicated in the legal basis III.

Therefore, since the defendant does not comply with the information required in the aforementioned article

13 of the GDPR, this Agency considers that the complaining party could incur in a

GDPR violation.

SAW

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

"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 effective in each individual case,

proportionate and dissuasive.”

"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

such as the number of interested parties affected and the level of damages that

have suffered;

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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, 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.”

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

"Sanctions and corrective measures", provides:

"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.

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7/10

- 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."

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of
fine to be imposed in the present case on the entity claimed as responsible for a
infringement typified in article 83.5.b) of the GDPR, the
following mitigating factors:

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The claimed entity is not considered a large company.

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of €5,000 in accordance with article 58.2 of the GDPR.

Likewise, when confirming the existence of an infringement, in accordance with the provisions of the aforementioned article 58.2.d) of the GDPR, in the resolution the defendant is ordered, as responsible for the treatment, that prepares an adequate privacy policy, of so that the information required in the aforementioned article 13 of the GDPR.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against FINCAS MARTIN 2, S.L., with NIF B26279489, in accordance with the provisions of article 58.2.b) of the GDPR, for the alleged infringement of article 13 of the GDPR, typified in article 83.5.b) of the GDPR.

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

THIRD: 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 in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, a sanction of €5,000 (five thousand euros) would correspond, for the infringement of article

13 of the GDPR, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to FINCAS MARTIN 2, S.L., with NIF

B26279489, granting a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

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8/10

allegations must provide your NIF and the procedure number 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, this sanction would be established at €4,000, resolving the

procedure with the imposition of this sanction.

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 €4,000 and its payment will imply the termination of the

procedure with the imposition of the corresponding measures.

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 this case, if both reductions were to be applied, the amount of the penalty would remain set at 3,000 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 previously indicated €4,000 or €3,000 must be paid through your deposit in the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at 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 reason for reducing the amount to which welcomes.

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.

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9/10

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.

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SECOND: On January 4, 2023, the claimed party has proceeded to pay the sanction in the amount of 3,000 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.

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.

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10/10

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.

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 EXP202211726, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FINCAS MARTIN 2, 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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