

□ Procedure No.: PS/00061/2021

RESOLUTION R/00197/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00061/2021, instructed by the Spanish Agency for
Data Protection to NBQ TECHNOLOGY, S.A.U., given the complaint filed by
COURT OF FIRST INSTANCE AND INSTRUCTION NUMBER 1 OF

***LOCATION.1, and based on the following,

BACKGROUND

FIRST: On February 26, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against NBQ TECHNOLOGY,
S.A.U. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00061/2021

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: The Court of First Instance and Instruction No. 1 of ***LOCATION.1,
transferred to the Spanish Data Protection Agency, dated December 18,
2019, judgment No. ***SENTENCIA.1 in relation to identity theft
in contracting a microcredit, which took place on ***DATE.1.

The claim is directed against NBQ TECHNOLOGY, S.A.U. with NIF A-65559296 (in
later, the claimed one).

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A Judgment is transferred, dated December 18, 2019 for impersonation of identity. Judgment No. ***SENTENCIA.1, against D. A.A.A. with NIE ***NIE.1 for the crime of fraud in obtaining a microcredit through the web portal ***URL.1, being the lender the claimed party, and for which D. A.A.A. made use of the personal data of a third party.

Documentation provided by the Court:

- Sentence nº ***SENTENCIA.1 on minor crimes of fraud.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed one.

In addition, the following extremes are noted:

- It is proven, according to Judgment No. ***SENTENCIA.1, that on the date ***DATE.1, DAY YYYY used data from third parties to apply for a microcredit to through the web portal ***URL.1, the lender being the claimed party.
- The deposit was made in the D. AAA account, of which he is the owner.

- D.A.A.A. provided the telephone number ***TELEPHONE.1 to the lender

to verify the requested operation (a code is sent to said telephone number verification), being the holder of the line his mother.

- As an email, you provided the following ***EMAIL.1, and the email is sent to that address.

signed contract model, this address being the one that D. A.A.A. facilitated the

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Caja Rural entity of ***LOCALIDAD.2 to receive communications from it (contact address).

On February 17, 2020, this Agency received a written response to the request for information from the AEPD, requesting the claimed party to proceed to inform if the data provided in the loan application had been included to any asset and credit solvency file, making the following statements:

“The data provided in the loan application have not been included in any file capital solvency and credit.

- The loan was requested on ***DATE.1.

- The loan was requested for a period of 30 days.

- The loan matured on May 16, 2019.

- On May 24, 2019, a police report of the alleged fraud was received.

- On May 24, 2019, our framework entity in the information systems

information the specific case as FRAUD what this entails

automatically that the data cannot be registered in any file

delinquency.

- Our process of inclusion in delinquency files is based on the Equifax "NOTIFIES RP" service. In this sense, making use of such service, our entity does not include any delinquent customer in any delinquency file until at least 75 days have elapsed from the loan maturity date.

In view of the foregoing, it is for this reason that our entity did not include, and continues not to include, the data provided in the loan application in any asset solvency file and credit.

In any case, we attach a screenshot where it can be seen that the data provided in the loan application have the label of "FRAUD" since the 24 of May 2019 (date on which this party received the police letter and access to any type of delinquency file)".

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The RGPD deals in its article 5 with the principles that must govern the treatment of personal data and mentions among them that of "lawfulness, loyalty and

transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

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

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

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)"

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

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

a) The basic principles for the treatment, including the conditions for the 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 the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly 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 the Regulation (EU) 2016/679.”

III

In accordance with the evidence available in this moment of agreement to initiate the sanctioning procedure, and without prejudice to what result of the instruction, it is considered that the claimed violated Art. 6.1 of the RGPD, whenever he processed the personal data without having any legitimacy to do so.

The personal data was incorporated into the information systems of the company, without proving that it had contracted legitimately, had of legal authorization for the collection and subsequent processing of personal data of a third party, or there was any other cause that made the treatment carried out lawful.

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It is important to highlight that, according to Judgment No. ***SENTENCIA.1, which on date ***DATE.1, D. Y.Y.A. used the data of third parties for the request of a microcredit through the web portal ***URL.1, with the lender being the party claimed.

- The deposit was made in the D. AAA account, of which he is the owner.
- D.A.A.A. provided the telephone number ***TELÉFONO.1 to the entity lender to verify the requested operation (it is sent to said telephone number a verification code), being the owner of the line his mother.
- As an email, you provided the following ***EMAIL.1, and to that address sends the signed contract model, this address being the one that D. A.A.A. facilitated the Caja Rural entity of ***LOCALIDAD.2 to receive communications from it (contact address).

Well, with respect to the facts that are the subject of this claim,

We must emphasize that the defendant has recognized said error and thus in its letter dated February 17, 2020 has stated that the denounced loan has been classified as fraudulent contracting, and that it did not include the data provided in the loan application in any asset and credit solvency file. So therefore, the defendant, when contracting, did not have the necessary precautions to prove the legitimacy of the contractor.

The lack of diligence displayed by the entity in complying with the obligations imposed by the personal data protection regulations it is therefore evident. Diligent compliance with the principle of legality in the treatment of third-party data requires that the data controller be in a position to prove it (principle of proactive responsibility).

According to the evidence currently available

procedural, and without prejudice to what results from the investigation of the procedure, it is estimated that the conduct of the complained party could violate article 6.1 of the RGPD being able to constitute the infraction typified in article 83.5.a) of the aforementioned Regulation 2016/679.

In this sense, Recital 40 of the GDPR states:

“(40) For the processing to be lawful, the personal data must be processed with the consent of the interested party or on some other legitimate basis established in accordance with Law, either in these Regulations or by virtue of another Law

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of the Union or of the Member States referred to in this Regulation, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.”

IV

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

“Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations 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 as the number of stakeholders affected and the level of damage and damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;

e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question

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in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates 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 realized or losses avoided, direct

or indirectly, through infringement.”

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 treatments
of personal data.

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 delegate.

h) The submission by the person in charge or person in charge, with
voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those 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 on the claimed entity as responsible for an infraction typified in article 83.5.a) of the RGPD, in an initial assessment, they are considered concurrent in the present case the following factors:

As a mitigating factor:

- Any measure taken by the person in charge or in charge of the treatment to alleviate the damages suffered by the interested parties (art. 83.2.c) of the RGPD)

As aggravating factors:

- That the facts object of the claim are attributable to a lack of diligence of the claimed party (article 83.2.b, RGPD).

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- Basic personal identifiers are affected (personal data (art.83.2. g) of the RGPD).

- The obvious link between the business activity of the defendant and the processing of personal data of clients or third parties (article 83.2.k, of the RGPD in relation to article 76.2.b, of the LOPDGDD)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

FIRST: START SANCTION PROCEDURE against NBQ TECHNOLOGY, S.A.U. with NIF A-65559296, for the alleged violation of article 6.1. GDPR typified in article 83.5.a) of the aforementioned RGPD.

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

indicating that any of them may be challenged, as the case may be, in accordance with 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 to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirector for Data Inspection.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 20,000 euros (twenty thousand euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to NBQ TECHNOLOGY, S.A.U. with NIF A-65559296, granting him a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header 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

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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 16,000 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 16,000 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 12,000 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, 16,000 euros or 12,000 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

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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.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On March 9, 2021, the claimant has proceeded to pay the

SECOND

sanction in the amount of 12,000 euros making use of the two planned reductions 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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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

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

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

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is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

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

2. When the sanction is solely pecuniary in nature or it is possible to impose a

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

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

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

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

In accordance with the above, the Director of the Spanish Agency for the Protection of Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00061/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to NBQ TECHNOLOGY, S.A.U.

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

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Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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