

□ File No.: EXP202209204

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 January 13, 2023, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against CORREDURÍA DE
SEGUROS DE MADRID, S.L (hereinafter, the claimed party), through the Agreement
which is transcribed:

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File No.: EXP202209204

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: D.A.A.A. (hereinafter the claimant) on 07/05/2022 filed
claim before the Spanish Data Protection Agency. The claim is
directed against CORREDURÍA DE SEGUROS DE MADRID, S.L., with NIF B78898822
(hereinafter the claimed). The reasons on which the claim is based are the following:
following: the claimant states that he worked with the respondent until 2017, and
adds that, in addition, he had some insurance contracted through said entity, but
that they were all discharged in 2017; from the month of July 2021
began to receive charges in his bank account from insurance underwritten by third parties with
two insurers (Axa and Allianz), the claimant not appearing as a policyholder in

none of them. After blocking the charges, he contacted the two insurers, receiving a response indicating (in both cases) that the policies had been issued by the claimed party (insurance brokerage), on behalf of other persons, but with the Claimant's account number.

Proof of ownership of the bank account is provided, screenshot of the charges carried out (the last one on 03/29/2022), screenshots related to 5 policies contracted with Axa in which third parties, e-mails exchanged with the insurer Axa and response from said insurer (of

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06/24/2022). It also provides a copy of the e-mail of the lawyer of the Brokerage (claimed), of 06/24/2022, transferring his apologies to the claimant, indicating that the policies were mistakenly domiciled in his account and adding: "This error has been provoked by one of the workers of the brokerage, regarding which, I report that the appropriate measures are being taken."

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), said claim was transferred to the party claimed/ALIAS, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on 10/07/2022 as stated in the acknowledgment of receipt in the file.

On 09/08/2022, this Agency received a written response in which the reports that in 2017 the claimant ceased his employment relationship as responsible from the Almería office of the defendant, where he met the person who would relieve him of his position.

This worker, by virtue of the functions attributed to her, allows her to access the customer and former customer information, including data that is currently blocked, in order to expedite daily operations in case of receiving any request of information from any administration, claims, accidents, etc.

By email, the defendant informed his workers about the obligation to include in the client's file a direct debit order

Direct SEPA to comply with EU Regulation 260/2012 of the European Parliament and of the Council of March 14, 2012 that establishes the technical requirements and for transfers and direct debits in euros that have place among the participating countries in the SEPA area (Single Euro Payments Area),

Policyholders must complete and sign the DOMICILIATION ORDER OF SEPA DIRECT DEBIT or at least the customer's email indicating

Bank account number. From the evidence provided, it can be deduced that the person who relieved the claimant did not comply with the guidelines of the brokerage to despite committing to it.

At the time that the brokerage was notified through the services of attention to complaints and claims from two insurance companies (AXA and ALLIANZ), contacted the claimant to inform him that after inquiries timely, this situation had foreseeably been created by a worker requesting his apologies and informing him that in the event of receiving a new position,

addressed directly to the director of the brokerage, with the intention of resolving in the any inconvenience that may arise in the shortest possible time.

Given that after the inquiries made by the management, more cases of Clients recruited by the same external collaborator and all of them directed to the branch from Almeria. Upon receipt of the information request by the Agency, the brokerage has filed a complaint at the police station for contractual bad faith so that the State Security Forces and Bodies are the ones to investigate if there has been intention of fraud in the actions of this employee.

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THIRD: On 10/05/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FUNDAMENTALS 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 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 of Regulation (EU) 2016/679, in this organic law, for the regulatory provisions dictated in its development and, as soon as they are not contradict, on a subsidiary basis, by the general rules on the administrative procedures."

The denounced facts materialize in the treatment without legitimacy of the data of the claimant, materialized in the charges made in his bank account related to insurance subscribed by third parties with insurers, not including the claimant as policyholder (contracting party) in any of the policies.

II

Article 5, Principles relating to treatment, of the GDPR establishes in its paragraph 1 that:

"1. Personal data will be:

a) treated in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with said purposes; according to

Article 89(1), further processing of personal data for the purpose archiving in the public interest, for scientific and historical research purposes or for statistics will not be considered incompatible with the initial purposes ("limitation of the purpose");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are processed ("data minimization");

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the personal data to be deleted or rectified without delay that are inaccurate with respect to the purposes for which they are processed

("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than necessary for the purposes of data processing

personal; personal data may be retained for longer periods

long as long as they are processed exclusively for archival purposes in the interest

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public, scientific or historical research purposes or statistical purposes, of

in accordance with article 89, paragraph 1, without prejudice to the application of the

appropriate technical and organizational measures imposed by this

Regulations in order to protect the rights and freedoms of the interested party

("retention period limitation");

f) processed in such a way as to guarantee adequate security of the

personal data, including protection against unauthorized processing or

illicit and against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality").

For its part, article 6, Legality of the treatment, of the GDPR establishes that:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

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

personal for one or more specific purposes;

b) the processing is necessary for the performance of a contract in which the

interested party or for the application at the request of this of measures

pre-contractual;

c) the processing is necessary for compliance with a legal obligation

applicable to the data controller;

d) the processing is necessary to protect vital interests of the data subject or

of another physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers conferred on the person responsible

of the treatment;

f) the processing is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

such interests are not overridden by the interests or the rights and freedoms

of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the

treatment carried out by public authorities in the exercise of their functions.

(...)"

Article 4 of the GDPR, Definitions, in sections 3 and 11, states that:

"1) "personal data" means any information about an identified natural person

or identifiable ("the data subject"); Any identifiable natural person shall be considered

person whose identity can be determined, directly or indirectly, in particular

by means of an identifier, such as a name, an identification number,

location data, an online identifier or one or more elements of the

physical, physiological, genetic, psychological, economic, cultural or social identity of said

person;

"2) "processing": any operation or set of operations carried out

on personal data or sets of personal data, either by procedures

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automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction”

"11) "consent of the interested party": any manifestation of free will, specific, informed and unequivocal for which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him."

II

The infringement attributed to the defendant is typified in the Article 83.5 a) of the GDPR, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the terms of the Articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, of an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the one with the highest amount”.

The LOPDGDD in its article 71, Violations, states that: "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

And in its article 72, it considers for the purposes of prescription, which are: "Infractions considered very serious:

1. Based on what is established in article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particular, the following:

(...)

b) 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.

(...)

In the present case, from the documentation in the file,

evidence that the defendant violated article 6 of the GDPR, since I treat the data

of the claimant without any of the conditions provided for in the

essential norm for the treatment to be lawful.

IV.

The processing of personal data requires the existence of a database

law that legitimizes it.

In accordance with article 6.1 of the GDPR, in addition to consent, there are

other possible bases that legitimize the processing of data without the need for

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the authorization of its owner, in particular, when necessary for the execution of a contract to which the data subject is a party or for the application, at his request, of pre-contractual measures, or when necessary for the satisfaction of interests legitimate persecuted by the person in charge of the treatment or by a third party, provided that such interests are not overridden by the interests or the rights and freedoms of the data subject that require the protection of such data. The treatment It is also considered lawful when necessary for the fulfillment of a legal obligation applicable to the controller, to protect interests of the data subject or of another natural person or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment.

In the present case, there is no accredited basis of legitimacy for the treatment of the data of the affected party, as the data of the claimant is associated with the contracting of insurance policies in which he does not appear as policyholder themselves and whose amounts are charged to your bank account, causing a treatment without legitimation

In order to establish the administrative fine that should be imposed, the observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which point out:

V

"1. Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this Regulations indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an addition to or substitute for 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 the number of stakeholders affected and the level of damage and

damages they 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 the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

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

treatment;

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

remedy the breach and mitigate the potential adverse effects of the breach;

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

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

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or in charge in question

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 the financial benefits obtained or the losses avoided, direct

or indirectly, through the infringement”.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing

of personal data.

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 process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character

voluntary, alternative conflict resolution mechanisms, in those

cases in which there are controversies between those and any

interested."

data.

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 fine to impose in the present case for the infringement typified in article 83.5 of the GDPR of which the defendant is held responsible, in an initial assessment, it is estimated concurring the following factors:

- The nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the processing operation in question; there is no forgetting that we are dealing with an infringement affect a basic principle in the treatment of personal data, such as legality, that the standard penalizes with the greatest severity; damages caused as a result of the intrusion into the privacy sphere of the claimant, since we must not forget that we are facing the infringement of a fundamental right to the protection of Personal information; the claimant was forced to address both the insurers that raised the respective charges to his bank account, with the obvious detriment

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patrimonial, as well as the one claimed as a consequence of the facts reported manifesto, as well as the presentation of the claim before this organism.

On the other hand, it is necessary to question the treatment carried out and the purpose of the same, such as the collection of policies without appearing as policyholder or insured in the same; In addition, the treatment operation(s) were carried out when the affected did not have any relationship with the defendant, having ceased his functions in the year 1917, with the data being processed blocked

(Article 83.2. a) of the GDPR).

- The intentionality or negligence in the infraction; there is no doubt that the entity has committed a serious lack of diligence in linking the claimant with the subscription of insurance policies of different insurers, policies that had not been contracted, in addition to processing your personal data without maintaining any contractual relationship upon its termination.

Connected with the degree of diligence that the data controller is obliged to deploy in compliance with the obligations imposed by the data protection regulations, the SAN of 10/17/2007 can be cited. although it was issued before the entry into force of the GDPR, its pronouncement is perfectly extrapolated to the assumption that we analyse. The ruling, after alluding to the fact that the entities in which the development of their activity entails a continuous treatment of data of clients and third parties must observe an adequate level of diligence, specified that "(...) the Supreme Court has been understanding that there is imprudence whenever a legal duty of care is neglected, that is, when the offender does not behaves with the required diligence. And in assessing the degree of diligence must especially the professionalism or not of the subject should be considered, and there is no doubt that, in the case now examined, when the appellant's activity is constant and copious handling of personal data must insist on rigor and Exquisite care to comply with the legal provisions in this regard" (article 83.2. b) of the GDPR).

- The continuous nature of the infringement since the processing activity It has been developing since July 2021, when it began to receive charges in your bank account, the last one being dated 03/29/2022 (article 76.2.a) of the LOPDGDD in relation to article 83.2.k).

- The activity of the allegedly infringing entity is linked to the

data processing of both clients and third parties. In the activity of the entity denounced, it is essential to process personal data, so the significance of his conduct that is the subject of this complaint is undeniable (article 76.2.b) of the LOPDGDD in relation to article 83.2.k).

In accordance with these factors, it is deemed appropriate to impose on the defendant a penalty of 10,000 euros.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

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HE REMEMBERS:

FIRST: INITIATE SANCTIONING PROCEDURE against

SEGUROS DE MADRID, S.L., with NIF B78898822, for the alleged infringement of the

Article 6.1 of the GDPR, sanctioned in accordance with the provisions of Article 83.5.a) of the cited GDPR.

SECOND: APPOINT Instructor to R.R.R. and Secretary to S.S.S., indicating that

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

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

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

complaint filed by the complainant and its documentation, the documents

obtained and generated by the Inspection Services during the investigation phase

prior, all documents that make up the file.

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 (LPACAP), and art. 127 letter b) of the RLOPD, the sanction that could correspond for the offense described would be 10,000 euros (ten thousand euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to CORREDURÍA DE SEGUROS DE MADRID, S.L., with NIF B78898822, granting it a hearing period of ten days able to formulate the allegations and present the evidence that it considers convenient. In your statement of allegations you must provide your NIF and the number of procedure that appears in the heading of this document

Likewise, in accordance with articles 64.2.f) and 85 of the LPACAP, you will be informs that, if it does not make allegations within the term to this initiation agreement, the It may be considered a resolution proposal.

You are also informed that, in accordance with the provisions of article 85.1 LPACAP, may acknowledge its responsibility within the term granted for the formulation of allegations to this initiation agreement, which will entail a reduction of 20% of the sanction that proceeds to impose in the present procedure, equivalent in this case to 2,000 euros. With the application of this reduction, the sanction would be established at 8,000 euros, 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, in accordance with the provisions of article 85.2 LPACAP, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 2,000 euros.

With the application of this reduction, the sanction would be established at 8,000 euros and

Your payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment

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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 6,000 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 (8,000 euros or 6,000 euros), in accordance with the provisions of the Article 85.2 referred to, we indicate that you must make it effective by entering it in the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection at Banco 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 Subdirectorato 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.

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Mar Spain Marti

Director of the Spanish Data Protection Agency

SECOND: On January 25, 2023, the claimed party has proceeded to pay of the sanction in the amount of 8000 euros using one of the two reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not The acknowledgment of responsibility has been accredited.

THIRD: The payment made entails the waiver of any action or resource in the against the sanction, in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

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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.

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 EXP202209204, in accordance with the provisions of article 85 of the LPACAP.

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SECOND: NOTIFY this resolution to CORREDURÍA DE SEGUROS DE MADRID, 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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Director of the Spanish Data Protection Agency

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