

□ File No.: EXP202103933

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 March 31, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against ALQUILER SEGURO,
S.A.U. (hereinafter, the claimed party), through the Agreement that is transcribed:

<<

File No.: EXP202103933

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: D.A.A.A. (hereinafter, the claimant party) dated August 18,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against ALQUILER SEGURO, S.A.U. with CIF A85252500 (in
hereinafter, the claimed party or Secure Rental).

The grounds on which the claim is based are as follows:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

"The company Alquiler Seguro SA offered through InfoJobs a position for attorney.

The claimant signed up for that offer.

The company, immediately before calling me, previously made an inquiry to Asnef to know my situation in said file (in which it did not appear and for that reason then they called me).

Weeks later, after making some arrangements with Asnef, said entity sends a history of queries made in relation to my person, and in which appears, to my surprise, the consultation of Rent Insurance.

I consider that we are dealing with an access to the file for a purpose other than the planned.

Rent Insurance has consulted my personal data not to assess the situation patrimonial as a result of a future commercial relationship, credit or periodic payment or postponed (it is the purpose of the file treatment), but it has done so, within the of a personnel selection process.

In addition, Alquiler Seguro SA at no time obtained my consent to make the query, nor was I informed of what they made the query about. It was, As has been said, Asnef who sent a history of queries.

Consequently, the claimed entities have incurred an infringement by when the processing of personal data has been carried out for a purpose different from what was expected.

And, among other things, attach the following documentation:

Enrollment in the Secure Rental offer through Infojobs.

History of queries in the Asnef file, where the date 07/06/2021 19:51:39.2 is recorded

Entity: Rent Insurance, S.A. address: C/**ADDRESS.1.

Incoming call from Rent Insurance July 6 19:52 ***PHONE.1.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/14

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 October 28, 2021 as

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

On November 30, 2021, this Agency received a written response

stating the claimed party that the claim is made on a candidate in

a process of selection of the mercantile and that has been discarded later,

Therefore, once the selection process was completed, your personal data was destroyed.

Consequently, the only information to review the procedure carried out, as well as

such as the possible security breach consisting of unauthorized access to the data of the affected, are the annexes provided by the alleged affected.

They add that, within the selection procedures, consultations are established with

business files for positions of great responsibility or for positions of

collegiate persons, this treatment being lawful and customary in the case of

individual entrepreneurs and liberal professions, among which is the

advocacy.

Likewise, they state that this situation has been caused due to a possible error

human. The selection technician must have confused the section from the

Asnef platform, and instead of entering the candidate's DNI in "Asnef companies",

introduced in "Credit Bureau Service".

They indicate that they have adopted measures to prevent incidents from occurring

Similar.

And, it concludes that the claimant has not contacted the entity, so

The AEPD has not been notified in advance of said circumstance, nor has the

opportunity to detect the error prior to the present claim.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/14

THIRD: On the other hand, information was requested by this Agency from Asnef-Equifax,

Solvency and Credit Information Services on October 28, 2021.

Dated, November 24, 2021, this Agency received a written response

stating that beyond the obligations established in the contract of

provision of the Service, Equifax has no means or ability to know whether

some Entity is giving the file a purpose other than that of Solvency and under

what legitimate basis would. Therefore, Equifax is not and cannot be held responsible

of the inappropriate use of the data that may be carried out by the Client Entities, but

that it is the responsibility of the Entities to make correct use of the file, and to access

complying with the criteria established in the rules of operation of the same

and in the applicable regulations.

Likewise, they indicate that they have contacted the entity, with the purpose of warn you of the alleged irregular use you have made of the file, requesting the itself the cessation of said activity under the risk of early suspension of the contract and remind you of the commitments acquired at the time of signing the Contract of service.

And, they end by pointing out that although the interested party did not make any claim on the attention of the exercise of his right of access, however the same was attended in a timely manner on November 24, 2021, the date on which they answered the claimant.

FOURTH: On November 18, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOUNDATIONS OF LAW

Yo

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 www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

5/14

individuals with regard to the processing of their personal data and the free movement of these data and repealing Directive 95/46/EC

(General Data Protection Regulation, RGPD) recognizes each authority of control, 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 resolve this procedure.

Article 63.2 of the LOPDGDD provides that "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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 charged with the commission of an infraction for violation of Art.

Article 6.1 of the RGPD, due to lack of legitimacy in the treatment.

Article 6 of the RGPD, under the heading "Legality of the treatment", details in its section

1 the cases in which data processing 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 personal data

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;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/14

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 apply to the processing carried out by public authorities in the exercise of their functions.”

The infraction for which the claimed party is held responsible in this agreement of initiation is typified in article 83 of the RGPD that, under the rubric

“General conditions for the imposition of administrative fines”, states:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

The LOPDGDD, for the purposes of the prescription of the infraction, qualifies in its article 72.1. of very serious infraction, in this case the limitation period of three years, "b)

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 clear indications that the party claimed violated article 6 of the RGPD, since there is no legitimating basis for the processing of the personal data of the complaining party, given that the

responsible for the treatment indicates in its reply to this Agency dated 30

November 2021 "that within the selection procedures it is established

queries to business files for positions of great responsibility or for

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

7/14

charges of collegiate persons, this treatment being lawful and customary in the case of

individual entrepreneurs and liberal professions, among which is the

advocacy. It adds that a human error has occurred when consulting the Asnef file,

Credit Bureau Service section, instead of the "Asnef companies" file.

It must be taken into account that the part claimed in the selection processes of

candidates consult the Asnef companies file, being that article 20 (systems of

credit information) of the LOPDGDD, establish criteria of prevalence of interest

legitimate in the treatment of the data of natural persons in the systems of

credit information, whether they are liberal professionals, individual entrepreneurs or not. Of

here that in this specific case could not be the legitimate interest, because it is not

meet the criteria of art. 20 of the LOPDGDD, the person in charge does not indicate what his

legitimate interest nor does it provide a weighting that allows to prove the prevalence of the

legitimate interest and no information is provided to the claimant about the possibility of

consultation, so that within your reasonable expectations is not that

check your data.

Article 20 of the LOPDGDD, "Credit information systems", provides in its

section 1 e):

"1. Unless proven otherwise, the processing of personal data will be presumed lawful.

related to the breach of monetary, financial or credit obligations by

common credit reporting systems when the following are met

requirements:

e) That the data referring to a specific debtor can only be

consulted when the person consulting the system maintained a contractual relationship

with the affected party that implies the payment of a pecuniary amount or this would have

requested the conclusion of a contract that involves financing, deferred payment or

periodic billing, as happens, among other cases, in those provided for in the

legislation of consumer credit contracts and real estate credit contracts.

When the right to limit processing has been exercised before the system

of the data contesting its accuracy in accordance with the provisions of article 18.1.a) of the

Regulation (EU) 2016/679, the system will inform those who could consult it with

according to the previous paragraph about the mere existence of said circumstance, without

provide the specific data with respect to which the right has been exercised, in

Therefore, it is resolved on the request of the affected party.”

In short, it should be noted that respect for the principle of legality of the data requires

that it is accredited that the owner of the data consented to the treatment of the data

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/14

personal data or any other legitimizing cause of art. 6

RGPD and display a reasonable diligence essential to accredit that end.

Failure to act in this way would result in voiding the content of the principle of legality.

IV

In order to establish the administrative fine to be imposed, the following conditions must be observed:

provisions contained in articles 83.1 and 83.2 of the RGD, which indicate:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation 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, in addition to or as a 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 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 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;

C/ Jorge Juan, 6

28001 – Madrid

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, paragraph 2, have been

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

related 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 obtained or losses avoided, directly or

indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76,

“Sanctions and corrective measures”, establishes that:

"two. 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) 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 after the commission

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

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/14

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 in the present case for the infringement typified in article 83.5.a) of the RGPD for which the defendant is held responsible, in an initial assessment, it is estimated concurrent the following aggravating factors:

The evident link between the business activity of the defendant and the treatment of personal data of candidates in the selection processes, clients and third parties (article 83.2 K, of the RGPD in relation to article 76.2 b, of the LOPDGDD).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 6.1 of the GDPR allows you to set a penalty of 70,000 euros (seventy thousand euros).

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

HE REMEMBERS:

1.

START A SANCTION PROCEDURE against ALQUILER SEGURO, S.A.U.

with CIF A85252500, for the alleged violation of article 6.1. GDPR

typified in article 83.5.a) of the aforementioned RGPD.

2. 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

what is established in articles 23 and 24 of Law 40/2015, of October 1, of

Legal Regime of the Public Sector (LRJSP).

3.

claim

requirements

INCORPORATE to the disciplinary file, for evidentiary purposes, the

filed by the claimant and its attached documentation, the

information that the General Subdirectorate of Inspection of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/14

Data forwarded to

respective accusations of

entity claimed in the preliminary investigation phase, its

receipt and your reply.

Four.

october,

public, the

thousand euros), without

THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1
of the Common Administrative Procedure of the Administrations
sanction that could correspond would be 70,000 euros (seventy
prejudice to what results from the instruction.

5.

NOTIFY this agreement to ALQUILER SEGURO, S.A.U. with CIF
A85252500, granting a hearing period of ten business days to
formulate the allegations and present the evidence that you consider
your brief of allegations must provide your NIF and the number
listed at the top of this document.

that

convenient. In

procedural

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 56,000 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 56,000 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

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

12/14

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

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 42,000 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, 56,000 euros or 42,000 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.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/14

>>

SECOND: On April 5, 2022, the claimed party has proceeded to pay the sanction in the amount of 42,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment 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 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

Yo

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:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/14

"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 EXP202103933, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ALQUILER SEGURO, 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

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

C/ Jorge Juan, 6

28001 – Madrid

936-240122

www.aepd.es

sedeagpd.gob.es