 File No.: EXP202207418

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 23, 2023, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against ENFOKA SISTEMAS

GLOBAL, S.L. (hereinafter, the claimed party), through the Agreement that

transcribe:

<<

Procedure No.: EXP202207418 (PS/0533/2022)

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 06/11/22, Mrs. A.A.A. (hereinafter, the claiming party)

filed a claim with the Spanish Data Protection Agency. The

The claim was directed against the entity, ENFOKA SISTEMAS GLOBALES, S.L. with

CIF.: B87671186 (hereinafter, the claimed party), for the alleged violation of the

data protection regulations: Regulation (EU) 2016/679, of the Parliament

European Union and of the Council, of 04/27/16, regarding the Protection of Physical Persons

regarding the Processing of Personal Data and the Free Movement of

these Data (GDPR), Organic Law 3/2018, of December 5, Protection of

Personal Data and Guarantee of Digital Rights (LOPDGDD).

The claim is directed against the real estate company: ENFOKA ASSET

MANAGERS SL., in the following terms:

On April 7th I see a charge in my account of XXX, XX € from a company

electricity that I did not know (more than double what I usually pay) and I return the receipt

because I think it's a scam. I immediately call the real estate agent and

I ask if they know anything about this, and they say yes, that it is a

massive change that they have made to all the tenants so that the light appears at

our name. To which I reply that I have not been informed of

said change, much less have I given my consent for me to

change companies and make a contract in my name.

I exchange a series of emails with them, in which they always accept

that it is a legal practice (it can be) but what I tell them is why not

They notified me of the change and because they did not wait for my consent. I them

I comment that I pay the proportional part to what I have been paying until

the moment and they don't even answer that.

Call the electrical company Holaluz, telling them about the incident and asking

the electricity contract that I had supposedly signed and they refused to

give it to me The next day I called without telling them anything about this and they sent me the

contract, that's when I saw that he had signed for me, a certain B.B.B.".

The claim document is accompanied by the following documentation:

- Copy of the lease agreement dated 05/24/21, where it appears as

lessor: D.C.C.C., and as lessee: Mrs. A.A.A., of the domicile located at

Madrid, ***ADDRESS.1.

Said contract appears as verbal representative, D.D.D., with address at

***ADDRESS.2.

- Of the Clauses of the contract, are relevant to the present case, the

following:

or (3) RENT: Price The rent will begin to accrue on June 1,

2021: The Tenant will satisfy the Landlord, as the price of the

Housing lease, the amount of (...) through

bank transfer to the account indicated below: Number

Account name: *** XXXX, Owner: C.C.C..

or (5) EXPENSES: The expenses related to the

consumption of electricity, water and telephone, as well as any other service

communications or television contracted by the Lessee.

or (8) COMMUNICATIONS: Any communication between the parties regarding

This contract must be made in writing, either by email,

postal letter or fax to the addresses indicated in the following section.

- Copy of the exchange of a series of emails that were made on

04/11/22, between the lessee and the real estate representative

ENFOKA, where the tenant asks for explanations of why they have changed it

power company without your consent or your desire to revert to the old

Electric company:

or “I am also waiting for the last bill for this last month, from the

new company that you have changed me without consent. Also

the contract, to know what I am going to pay, because this increase in the

invoice, etc., etc.(…)”.

or "What happens is that I don't want this change of company, since I see

excessive charge. How could I go back to the same company as before.

And who will take care of the excess surcharge (…)".

or (...) Having said that, I would like to continue with Iberdrola as before.

or "(...) You have signed a contract with my data, my signature, my data

banking without my consent, nor was I aware of it. That

it is not mandatory. It is totally illegal (…)".

- Being the answers of the real estate ENFOKA to these questions the

following:

or "(...) According to Lau the supplies have to find

on behalf of the tenants, for its part, the LOPD establishes that the

will require the consent of those affected for the transfer of data

derived from a legal imperative, therefore, we inform you that

We have transferred your data with the sole purpose of giving

legal compliance with the regulations of the LAU. Regarding your query

change your company to Iberdrola, for our part we do not have

inconvenient, provided that the holder of the contract is not the lessor

(…)".

or "(...) Specifically, article 6.1.c) establishes that the treatment is

necessary for compliance with a legal obligation applicable to the

responsible for the treatment. The logical conclusion is that if the

treatment is based on a legal obligation, the communication or assignment

of data is legitimized. If the treatment is necessary for the

execution of a contract (art. 6.1.b), the transfer of data is considered

that is necessary for the performance of said contract.

or (...) Regarding your question about changing your company to Iberdrola, for

We have no objection on our part, as long as the holder of the

contract is not the lessor. We do not know if it is possible for you to choose

the same rate that you had before, you should consult it with

Iberdrola (…)".

-

Copy of the Particular Conditions of the supply contract

HOLALUZ-CLIDOM, S.A. (Holaluz) where you can read, among

others, the following information:

o Customer Data (Debtor):

***TELEPHONE 1;

EMAIL.1 Bank address: * XXXX.

Mailing address:

A.A.A.; NIF:

***NIF.1; Phone:

e-mail:

***ADDRESS 1;

o Data of the signatory: B.B.B. NIF: ***NIF.2 Contract date: ***DATE.1.

or (7) BILLING: We will issue the invoice each month and we will send it to you

arrive by email, within 15 calendar days after

at the end of the month (…).

or (8) PAYMENT: The Client undertakes to pay the invoices issued by

Hello, Luz. Payment will be made by direct debit to the account

indicated by the Client (…)".

SECOND: On 07/08/22, in accordance with the provisions of article 65.4

of the LOPDGDD, by this Agency, this claim was transferred to the

claimed party and the electricity supplier HOLALUZ, so that

proceed to its analysis and report, within a month, on what was exposed

in the claim document.

THIRD: On 07/21/22, the claimed party sends this Agency a written

response to the request made, in which the following is indicated:

"On May 24, 2021, the lease agreement is signed with the lessee

indicated in said lease contract in point 5. Expenses "that

All expenses related to electricity consumption will be borne by the lessee,

water and telephone, as well as any other television service and

communications". (Attached lease agreement as Annex I)

For greater abundance, Art.20.3 of the LAU establishes that "Expenses for

services available to the leased property that are individualized through

Metering devices will be in any case for the account of the lessee.

In compliance with the provisions of the LAU and the contract itself

lease, Enfoka urged the lessee on numerous occasions to

modify the ownership of the electricity supply in their name, all of them without

success. For this reason, last February an e-mail was sent informing that

ownership would be changed. (E-mail is attached as Annex II)

After making said change, Enfoka reiterates to the lessee the

need to proceed with the change of supplies due to legal imperative, one of

the cases in which the LOPD establishes a legal basis. (Attached chain of

e-mails with the lessee as Annex III)

Next, we proceed to answer the following points:

1. The decision adopted regarding this claim.

After crossing the previously detailed e-mails, the

lessee that according to LAU the supplies have to find

name of the tenants as established in the LAU and in the

leasing contract.

For its part, the LOPD establishes that consent will not be required

of those affected for the transfer of data derived from an imperative

legal, therefore, we inform you that we transferred your data with the

exclusive purpose of legally complying with the regulations of the LAU, in

Regarding the request to change the electric company, you are told that you have

full power to choose the company that she wants, as long as she is the owner

of the contract. The electric company does not require any permanence.

2. In the event of exercising the rights regulated in articles 15 to

22 of the GDPR, accreditation of the response provided to the claimant.

We declare that we have not received from the lessee any

request to exercise any of the rights contemplated in the regulations

data protection in force. In the emails that have been

exchanged with the lessee, the latter does not refer to the fact that

delete or block your data or show opposition to the treatment.

3. Report on the causes that have motivated the incidence that has originated the

claim.

The lease agreement is signed with the lessee on May 24, 2021 and

becomes effective on June 1, 2021. (Annex I)

On numerous occasions we asked the lessee to change the

ownership of the supply in his name, explaining the reasons why the

supply contract must be in his name. As a consequence of the

refusal of the lessee to carry out said change of ownership, see you

forced to do it ourselves to comply with the LAU.

In compliance with the provisions of Law 29/1994, of November 24, on

Urban leases in its article 20.3, therefore, in compliance with a

legal obligation, we communicate the data of the lessee to the company Runup

Business, S.L. (Qlip), with whom we have a signed contract by which

are in charge of carrying out the necessary procedures in relation to the changes of

supplies.

4. Report on the measures taken to prevent the occurrence of

similar incidents, implementation dates and controls carried out to

check its effectiveness.

As an additional measure, upon signing the lease, the

tenants sign 2 documents informing that they will proceed to

communicate your data with the exclusive purpose of carrying out the processing

of the change of ownership of the supply. This measure is done knowingly

that we rely on the execution of the contract and the fulfillment of a

legal obligation for data processing.

We have an internal security document that describes the measures

of

proactive responsibility, both technical and organizational, standards,

procedures, rules and standards aimed at guaranteeing the safety of the

treatment.

The Internal Safety Document specifically includes a procedure

to carry out verification actions, periodic controls and audits of

security to verify the level of regulatory compliance in terms of

Data Protection.

FOURTH: On 08/09/22, the HOLALUZ entity sends this Agency a letter of

response to the request made, in which the following is indicated:

"That, according to the CLIDOM database, the Claimant is registered in the

company with the CUPS1 of electricity number ***NUMBER.1 corresponding

to the address C/ ***ADDRESS.1 from 02/26/22 to 03/31/22.

Said registration was carried out by the commercial channel Run Up Business

SL with which CLIDOM maintains a contractual relationship resulting from

application of the clause just transcribed. That the contract is attached

signed between the parties as DOCUMENT NUMBER ONE.

The sales representatives are empowered to subcontract to any other

people or companies to provide the services. In the present case it consists

that the collaborating company was Enfoka Sistemas Globales, S.L.

Due to the fact that the Collaborator pretended the veracity of the contracting object of

this consultation, this party could not detect, until the Complainant did not

has revealed it, that said contract had been carried out without the

consent of the same.

In fact, for this part it was impossible to suspect this circumstance, since,

at all times, apparently, the requirements of

contracting established by CLIDOM.

Specifically, the contractual conditions were sent by email

of the electricity supply contract, since CLIDOM considers it essential

that all its clients are fully informed about the conditions

particular and general contracts signed with this party.

In said email, customers are asked to validate and, therefore, accept the

contract entered into with this party and that is how it occurred in this case.

That, after receiving this Claim, CLIDOM contacted the

commercial channel for the collection of information on July 13.

We attach the email sent as DOCUMENT NUMBER TWO.

That, the responses obtained by email are attached as

DOCUMENT NUMBER THREE AND FOUR.

In this sense, first of all, it is stated that it is the client herself who

validates the electricity supply contract with my client and, therefore, that

she herself knew the contract; and, secondly, what is real estate

Enfoka Global Systems, S.L. who collects the Complainant's data, with

who have formalized a collaboration agreement and the corresponding

data transfer contract.

THIRD.- ON THE MEASURES ADOPTED TO PREVENT THE

PRODUCE SIMILAR INCIDENTS

That CLIDOM randomly performs a subsequent review of the quality of

calls and registrations made by new collaborators, through a

review protocol for a certain percentage of discharges consisting of

that the company's internal customer service agents call by

phone to a significant percentage of the new customers contributed by the

commercial channels with which a contract of

collaboration the previous month.

Through these calls, CLIDOM makes sure that customers

have effectively given their consent to make the change of

supplier or supply registration.

FOURTH.- ON THE RIGHT TO SUPPRESSION

That the data that appears in the CLIDOM database, being the same

incorporated by the Collaborator, are the following: (...)

Therefore, it should be reiterated that the introduction of the Client's personal data

was made by a third party who breached contractual obligations

established, and therefore, being the same person responsible for any damage

arising from non-compliance.

Thus, the Sixteenth clause of the Collaboration Contract signed between

CLIDOM and the Collaborator regarding Responsibility establishes:

“16.1. Each party will be responsible for any damages that may be caused

to the other when there is fraud or gross negligence and when the action or omission

causing the damage has occurred repeatedly, that is proven and

demonstrable, that produces considerable and quantifiable damage, that causes

serious harm."

In this regard, we must bring up the obligations that derive from the

article 28 GDPR. Specifically, it regulates the need to "Treat the data of

according to the instructions of the data controller.

For this reason, CLIDOM acts and has instructed its agents so that the

contracts are in accordance with data protection regulations and, more

specifically, that the treatment is lawful, having to mediate the requirements of the

article 6 GDPR, that this necessarily includes the consent of the

customer for the processing of their personal data.

FIFTH: On 09/11/22, by the Director of the Spanish Agency for

Protection of Data, an agreement is issued to admit the processing of the claim

presented, in accordance with article 65 of the LPDGDD Law, when assessing possible

rational indications of a violation of the rules in the field of competences

of the Spanish Data Protection Agency

FUNDAMENTALS OF LAW

I.- Competition:

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 5/12 on the Protection of Personal Data and guarantee of the

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 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.- Summary of the facts:

First: As stated by the claimant in her claim document dated 06/11/22,

is a tenant of a house since 05/24/21, whose management is carried out by the real estate agency

ENFOKA GLOBAL SYSTEMS, S.L.

The point is that, on 04/07/22, the amount of XXX.XX € was charged to your account

euros from a light company for the energy supply of the house, with which

He had not contracted anything (HOLALUZ) and that it was not his usual company

(IBERDROLA).

Contact the real estate agency from which you rented the property to ask them the

reason they answer that, that it is a massive change that they have made to all the

tenants so that the light appears in their name to which the claimant answers that

You have not been informed of said change, much less have you been asked for the

consent for the change of company whose supply must be paid by her,

She also denounces that in the contract with the new company she appears as a client

but that said contract was signed in his name by a certain "B.B.B." without

consent.

Second: According to the claimed party, said change of company was made

according to the LAU (Urban Leasing Law), article 20.3 of the LAU and in the

own rental contract, since the supplies have to be found in the name of

the tenants and that, in addition, the LOPD establishes that the

express consent of those affected for the transfer of data derived from a

legal imperative.

As alleged by the defendant before this Agency. "(...) In compliance with the provisions

in the LAU and the lease itself, Enfoka urged the lessee in

numerous occasions for him to modify the ownership of the electricity supply to his

name, all of them unsuccessful. For this reason, last February an e-mail was sent

informing that the ownership would be changed (…)".

But said e-mail was not addressed to the claimant, but was sent from the

address

From: Suministros Enfoka: suministros@enfoka.es without stating in it the

recipients:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/19

"For:

Date: 02/23/2022 10:40

Subject: Change ownership supplies

Dear All:

We inform you that from February 23 we will proceed to change the

ownership in the name of the tenants, of electricity and gas supplies (those

properties that have it), as indicated in the Expenses section of the

leasing contract.

Thank you very much in advance and have a happy day.

All the best".

III.- On the possible use of the claimant's personal data without the

legitimation necessary for it.

III.-1

Possible administrative offense

The RGPD exposes in its recital (40), the following:

For processing to be lawful, personal data must be processed with

the consent of the interested party or on some other established legitimate basis

in accordance with Law, either in this Regulation or by virtue of another

Law 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

controller or the need to perform a contract in which

whether 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.

In this sense, article 6 of the GDPR establishes that:

1. The treatment 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 the

public authorities in the exercise of their functions.

2.Member States may maintain or introduce more

in order to adapt the application of the rules of this

Regulations regarding processing in compliance with section 1, letters

c) and e), establishing more precisely specific treatment requirements and

other measures ensuring lawful and equitable treatment, including

other specific situations of treatment according to chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be

established by: a) Union Law, or b) State Law

members that applies to the data controller. The purpose of

treatment must be determined in said legal basis or, as regards

to the treatment referred to in section 1, letter e), will be necessary for the

performance of a mission carried out in the public interest or in the exercise of

Public powers conferred on the data controller.

This legal basis may contain specific provisions to adapt the

application of the rules of this Regulation, among others: the conditions

general rules that govern the legality of the treatment by the person in charge; the

types of data subject to processing; affected stakeholders; the entities to

to which personal data may be communicated and the purposes of such communication;

purpose limitation; the terms of conservation of the data, as well as

processing operations and procedures, including measures

to ensure lawful and equitable treatment, such as those relating to other

specific treatment situations under chapter IX. The Right of

Union or of the Member States will fulfill an objective of public interest and will be

proportional to the legitimate aim pursued.

4. When the treatment for another purpose other than that for which it is

collected the personal data is not based on the consent of the

concerned or in the law of the Union or of the Member States that

constitutes a necessary and proportional measure in a democratic society

in order to safeguard the objectives indicated in article 23, paragraph 1, the

responsible for the treatment, in order to determine if the treatment with another

purpose is compatible with the purpose for which the data was initially collected

personal, will take into account, among other things: a) any relationship between the

purposes for which the personal data was collected and the purposes of the

intended further processing; b) the context in which the data was collected

personal data, in particular as regards the relationship between the data subjects and the data controller; c) the nature of the personal data, in specifically when special categories of personal data are processed, in accordance with article 9, or personal data relating to convictions and criminal offences, in accordance with article 10; d) the possible

consequences for the data subjects of the planned further processing; the A existence of adequate guarantees, which may include encryption or pseudonymization.

For its part, article 20 of Law 29/1994, of November 24, on Leasing Urban, establishes, on general expenses and individual services, what following:

1. The parties may agree that the general expenses for the adequate maintenance of the property, its services, taxes, charges and responsibilities that are not susceptible to individualization and that correspond to the dwelling leased or its accessories, are at the expense of the lessee.

In buildings under the horizontal property regime, such expenses will be those that correspond to the leased property based on their participation fee.

In buildings that are not under the horizontal property regime, such Expenses will be those that have been assigned to the leased property based on its surface.

For its validity, this agreement must be in writing and determine the amount

of said expenses to the date of the contract. The agreement that refers to taxes

It will not affect the Administration.

The expenses of real estate management and formalization of the contract will be borne by

of the lessor, when the latter is a legal person.

2. During the first five years of the contract, or during the seven

first years if the landlord was a legal entity, the sum that the

lessee has to pay for the concept referred to in section

above, with the exception of taxes, may only be increased, by agreement

of the parties, annually, and never in a percentage greater than double that

in which the rent can be increased in accordance with the provisions of section 1

of article 18.

3. The expenses for services that the leased property has that are

individualized by means of metering devices will in any case be for the account of the

tenant.

4. The payment of the expenses referred to in this article will be accredited in the

manner provided in article 17.4.

Well, according to the information and documentation presented

by the parties, from the time the claimant signs the rental contract for the home on

05/24/21, he was paying the electricity consumption bills that the property had

contracted with the company IBERDROLA, until ***DATE.1, nine months

After signing the contract, the ENFOKA real estate agency that manages the rentals, without

authorization from the tenant signs a new supply contract on behalf of the tenant

of electricity with the company HOLALUZ, through the company, Runup Business, S.L.

(Qlip), to which it provides, as customer data, the data of the tenant (name,

surname, NIF, telephone number, postal address and checking account number

where to upload the receipts), but as an email address where to send the

invoices, the contract and other communications, the email of the

real estate agency, (***EMAIL.1), thus making it impossible to have direct access to any type of

information from the tenant regarding the supply of light.

In addition to all this, the electricity supply contract with HOLALUZ is

signed by B.B.B. NIF: ***NIF.2, on behalf of the tenant, without the knowledge and without the

its prior consent.

In conclusion, the tenant (the claimant in this case) had been complying, since

who signed the rental contract on 05/24/21 with the provisions of said contract, which in

its fifth section specifies that, "The expenses will be borne by the Lessee

related to the consumption of electricity, water and telephone, as well as any other service of

communications or television contracted by the Lessee" and also with the stipulations

in article 20.3 of the LAU, that is: "The expenses for services available to the

leased farm that are individualized by means of metering devices will be in all

case of the lessee's account", until, without prior notice, without communication and without

consent of the tenant, the real estate company decides to change the electric company, the

***DATE.1, providing the personal data of the claimant to the new

trading company (HOLALUZ), thus producing serious economic damage,

Well, according to the complaint, the new invoices that must be paid to the new company

exceeds double what was paid for the same consumption to IBERDROLA.

The question does not lie in the fact that the real estate agency used the personal data of the

claimant based on a “legal or contractual requirement, or a requirement necessary to

sign a contract", as he alleges, but later used the personal data of the

tenant to change electric company without their prior knowledge, that is, without

have communicated a transfer of data from one recipient to another, which even

meant serious economic damage to her and of course, without her consent

Well, the new electricity supply contract was even signed in his name.

In this sense, recital (61) of the GDPR indicates, regarding the obligations of the

responsible for the processing of personal data, which:

"(...) If the personal data can be legitimately communicated to another

addressee, the interested party must be informed at the time the

communicated to the addressee for the first time (…)".

And, on the other hand, it is true that the LAU imposes the obligation that the lessee

pay for supplies of water, electricity, gas, etc., for which it would only be necessary to treat the

data of the claimant's bank account where the receipts can be domiciled, but in

In no case does the LAU impose an obligation to modify the ownership of the contract

supply, an issue that was carried out using the personal data of the tenant without her

consent.

III.-2

Sanction proposal

The fact that the claiming party made use of the personal data of

the claimant without her knowledge and above all without her consent, to sign a

new electricity supply contract with another company, signing said

contract in his name, may constitute an infringement of article 6.1.) of the

GDPR, when processing personal data without the necessary legitimacy

for it.

This infraction can be sanctioned with a fine of a maximum of €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

of greater value, in accordance with article 83.5.a) of the GDPR.

For its part, article 72.1.b) of the LOPDGDD considers it very serious, for the purposes of

prescription, "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".

III.-3

Graduation of the sanction

The determination of the sanction that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,

respectively, provide the following:

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

administrative procedures under this article for violations of the

this Regulation indicated in sections 4, 9 and 6 are in each case

individual effective, proportionate and dissuasive."

"2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an additional or substitute title to the measures

referred to in article 58, paragraph 2, letters a) to h) and j). When deciding the

imposition of an administrative fine and its amount in each individual case is

will take due account of:

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 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;

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 infraction."

Within this section, the LOPDGDD contemplates in its article 76, entitled

"Sanctions and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the

Regulation (EU) 2016/679 will be applied taking into account the criteria of

graduation established in section 2 of said article.

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) 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

data.

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.

3. It will be possible, complementary or alternatively, the adoption, when

appropriate, of the remaining corrective measures referred to in article

83.2 of Regulation (EU) 2016/679."

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 on the entity claimed as responsible for an infringement classified in the

article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating circumstances:

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The evident link between the business activity of the defendant and the

treatment of personal data of clients or third parties (article 83.2.k, of the

GDPR in relation to article 76.2.b, of the LOPDGDD).

The Judgment of the National Court of 10/17/2007 (rec. 63/2006), in which,

with respect to entities whose activity involves continuous data processing

of customers, indicates that

"…the Supreme Court has been understanding that imprudence exists whenever

a legal duty of care is neglected, that is, when the offender fails to

behave with the required diligence. And in the assessment of the degree of diligence

the professionalism or not of the subject must be specially considered, and it is not possible to

doubt that, in the case now examined, when the activity of the appellant

is of constant and abundant handling of personal data must

insist on the rigor and the exquisite care to adjust to the preventions

laws about it."

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 30,000

euros (thirty thousand euros) for the alleged violation of article 6.1) typified in

Article 83.5.a) of the aforementioned GDPR.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

START: SANCTION PROCEDURE against the entity ENFOKA SISTEMAS

GLOBAL, S.L. with CIF.: B87671186, for the violation of article 6.1 of the GDPR,

typified in article 83.5 of the GDPR, when carrying out data processing

personal information of the claimant without the necessary legitimacy for it.

APPOINT: D. E.E.E. as Instructor, and Secretary, where appropriate, Dª F.F.F.,

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 Legal Regime

of the Public Sector (LRJSP).

ADD: to the disciplinary file, for evidentiary purposes, the claim

filed by the claimant and their documentation, the documents obtained and

generated by the General Sub-directorate of Data Inspection during the phase of

investigations, all of them part of this administrative file.

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

Common Administrative Procedure of Public Administrations, the sanction that could correspond would be 30,000 euros (thirty thousand euros) for the Violation of the article 6 of the GDPR, based on the provisions of article 83.7 GDPR and 77 of the LOPDGDD.

NOTIFY: the present agreement to start the sanctioning file against ENFOKA SISTEMAS GLOBALES, S.L., granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate.

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, in the event that the sanction to be imposed was a fine, he may acknowledge his responsibility within the term zo granted for the formulation of allegations to this initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in the present procedure, equivalent in this case to 6,000 euros. With the application of this reduction, the sanction would be established at 24,000 euros, resolving the ceding 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 supposes will give a reduction of 20% of the amount of this, equivalent in this case to 6,000 euro. With the application of this reduction, the penalty would be established at 24,000 euros and its 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 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 18,000 euros (ten and eight thousand euros).

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or waiver of any action or appeal through administrative

treatment against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it into account No. ES00

0000 0000 0000 0000 0000 open in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the reference number

of the procedure that appears in the heading of this document and the cause

of reduction of the amount to which it receives.

Likewise, you must send proof of income to the Sub-directorate General of Ins-

expectation to continue with the procedure in accordance with the amount entered.

gives.

The procedure will have a maximum duration of nine months from the date of

date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed-

After this period, its expiration will take place and, consequently, the file of actions;

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 LPA-

CAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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SECOND: On February 10, 2023, the claimed party has proceeded to pay of the sanction in the amount of 18,000 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.

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 EXP202207418, in

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

SECOND: NOTIFY this resolution to ENFOKA SISTEMAS GLOBALES,

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.

Mar Spain Marti

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