

□ File No.: EXP202100282

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 November 15, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against NBQ
TECHNOLOGY, S.A.U. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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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 complaining party) dated June 2, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against NBQ TECHNOLOGY, S.A.U. with NIF A65559296 (in
hereinafter, the claimed party or NBQ). The grounds on which the claim is based are
following.

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The claimant states that he has been denied a financial operation because his personal data in credit information systems.

It adds that said inclusion was motivated by the non-payment of a loan to the claimed, who did not contract, for which he states that he has been a victim of impersonation of identity.

On the other hand, he indicates that the respondent informs him that the credit was assigned on 23 December 2020 to the entity Quartz Capital Fund S.C.A., being Working Capital Management Spain, S.L. the person in charge of the treatment, not having proof of have received any kind of communication in this regard.

And, it provides, to justify the facts, the following documentation:

- Complaint filed with the police on March 23, 2021, in relation to the Identity theft for contracting a loan.
- Complaint filed with the police for the theft of his wallet, from the year 2018.
- Emails sent to the defendants stating the facts, as well

such as the deletion of your personal data from the common systems of credit information dated March 30, April 22 and May 7, 2021.

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 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.

On July 26, 2021, this Agency received a response letter stating that on February 3, 2021, the complaining party contacted the one claimed reporting that she had been the victim of an identity theft

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having suffered the theft of their personal documentation, including their National Document of Identity, on May 5, 2018 and pointing out the person who stole his National Identity Document used your personal data to request a loan with the claimed.

Add, the part claimed that after the expiration date of the loan, period of time in which the loan had to be repaid, the loan was unpaid and, consequently, after a few months the debt was registered in the files of equity solvency.

Likewise, they state that NBQ, as evidenced by document number 1, the loan was transferred by means of a Contract for the Purchase, Sale and Assignment of the Loan Portfolio of dated December 23, 2020 to the entity Quartz Capital Fund S.C.A.

On the other hand, they point out that the entity recommended the claimant to contact contact with the new creditor entity and it was confirmed that their personal data they were not registered in the name of NBQ in asset solvency files.

Accompanying screenshot of this end as document number two.

On the other hand, they state that NBQ was never aware that the claimant had been a victim of identity theft during the time you were creditor of the credit, since even months after having assigned the NBQ loan He was not aware of this circumstance. For all the above, they consider that they have acted correctly and diligently within the margin of action available to him,

since once NBQ became aware of the facts, it made available to the claimant all the tools so that the current creditor was correctly informed of the situation, being able to attend to the client's request.

THIRD: On September 30, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

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FOUNDATIONS OF LAW

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

II

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

"1. The personal data will be:

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

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

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

conditions:

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

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(...)"

The infraction for which the claimed entity is held responsible is

typified in article 83 of the RGPD that, under the heading "General conditions for

the imposition of administrative fines", states:

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"5. Violations of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of 20,000,000 Eur or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particular the following:

(...)

a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

III

In accordance with the evidence available in this moment of agreement to initiate the sanctioning procedure, and without prejudice to what result of the instruction, it is considered that the claimed violated Art. 6.1 of the RGPD, since it processed the claimant's personal data without having any legitimacy for it. The personal data was incorporated into the systems of company information, without proving that he had contracted legitimately, had legal authorization for the collection and treatment of the personal data of a third party, or there is any other cause that made the treatment carried out lawful.

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It is important to highlight that, as recognized by the complaining party, a third party used the personal data of the claimant for the application of a microcredit through of the web portal <https://www.quebueno.es>, being the lender the party claimed.

- The deposit was made in the account of a third party, of which he is the owner.

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

We must emphasize that the defendant has recognized said error and thus in its

letter dated July 26, 2021 has stated that after the date of

maturity of the loan, period of time in which the loan had to be repaid,

the loan was unpaid and, consequently, after a few months the debt was

registered in the capital solvency files, and that subsequently on the 23rd of

December 2020 the loan was assigned through a Purchase Agreement and

Assignment of Portfolio to the entity Quartz Capital Fund S.C.A. and also state that

their personal data were not registered in the name of NBQ in files of

equity solvency. Thus, the defendant, when contracting, did not have the precautions

necessary to prove the legitimacy of the contracting party.

The lack of diligence displayed by the entity in complying with the

obligations imposed by the personal data protection regulations

it is therefore evident. Diligent compliance with the principle of legality in the treatment

of third-party data requires that the data controller be in a position

to prove it (principle of proactive responsibility).

According to the evidence currently available

procedural, and without prejudice to what results from the investigation of the procedure, it is estimated

that the conduct of the complained party could violate article 6.1 of the RGPD

being able to constitute the infraction typified in article 83.5.a) of the aforementioned

Regulation 2016/679.

IV

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

visions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

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

effective, proportionate and dissuasive.”

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“Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

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

applied under articles 25 and 32;

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

treatment;

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

remedying the breach and mitigating the possible adverse effects of the breach;

- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, to what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.”

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

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatments of personal data.

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- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

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

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the sanction of fine to

impose on the claimed entity as responsible for an infraction typified in the

article 83.5.a) of the RGPD, in an initial assessment, they are estimated to be concurrent in the

present case the following factors:

As aggravating factors:

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That the facts object of the claim are attributable to a lack of diligence

of the claimed party (article 83.2.b, RGPD), a third party contracted on behalf of the

claimant a loan with the claimed party, figuring a bank account and

an address other than yours. Thus, the respondent did not verify the

personality of the one who hired, did not take the necessary precautions so that these

events will not occur

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

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

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

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of

€40,000 for the infringement of article 83.5 a) RGD and 72.1b) of the LOPDGDD.

Therefore, according to the above.

By the Director of the Spanish Data Protection Agency,

FIRST: START SANCTION PROCEDURE against NBQ TECHNOLOGY,

S.A.U. with NIF A-65559296, for the alleged violation of article 6.1. GDPR

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

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SECOND: APPOINT instructor D. R.R.R. and as secretary to Ms. S.S.S.,

indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

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

claim filed by the claimant and his documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection.

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

October, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be 40,000 euros (forty thousand euros), without

prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to NBQ TECHNOLOGY, S.A.U. with NIF A-

65559296, granting him a hearing period of ten business days to formulate

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

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 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 32,000 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, www.aepd.es

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the sanction would be established at 32,000 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 24,000 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, 32,000 euros or 24,000 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.

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

LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On December 1, 2021, the claimed party has proceeded to payment of the sanction in the amount of 24,000 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

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

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

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

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

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

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

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

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

RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202100282, of

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

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

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.

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