

□ File No.: EXP202103420

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 February 21, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Agreement that is transcribed:

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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: The Superior Police Headquarters of the Basque Country, Provincial Brigade of
Immigration and Borders of Bilbao, dated September 21, 2021, sent the Certificate of
notification of an alleged infringement of data protection regulations to the
Spanish Data Protection Agency.

The following is indicated in the letter of remission of the Minutes, in relation to the matter of
Data Protection:

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On September 2, 2021, the police inspected the establishment called "Locutorio ***LOCUTORIO.1", located on calle ***DIRIMIENTO.1, whose owner is Mr. A.A.A., with NIF ***NIF.1 (hereinafter the claimed party).

As stated in the Act, customers were forced to provide their data (both in writing and by providing a copy of your documentation) identification) so that they could reserve an appointment for the processing of documentation from the National Police.

Likewise, it is indicated that the respondent party failed to comply with the principle of transparency of the information or the right to information of the affected party by not providing their clients all the information required by articles 13 and 14 of the RGD.

The police have taken statements from several affected, stating that they do not were informed or gave their consent when providing their data to the managers of the establishment. An employee of the respondent entity stated in the time of the inspection that customers were not provided with information regarding the data protection regulations.

Along with the claim, the inspection report is provided, a copy of the sanction and the minutes of taking statements from five clients of the entity claimed.

SECOND: Prior to the acceptance of this claim for processing, it is transferred gave to the claimed party, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). The request for information about the facts revealed was received, on November 10, 2021, se- as stated in the Receipt Notice issued by the Post Office.

THIRD: On December 13, 2021, the respondent states in

In relation to the request made by this Agency the following: "explain

that the premises apart from being a money transfer office is the headquarters of several associations that if we effectively help people to get appointments in the portal of foreigners

They asked us if we give people a document explaining what you do with their data I answered them that if we have a document that at the time www.aepd.es

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it was prepared by our manager, although for something else, but few people understand it We are not clear either.

In other words, our work is limited to entering the three pieces of information that the system asks us for.

Immigration contrasts the portal with its database and that's it".

FOURTH: On December 21, 2021, the claimant was informed of the admission to process your claim.

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, 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 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

The facts revealed by the Superior Police Headquarters of the Basque Country,

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Provincial Immigration and Borders Brigade of Bilbao is specified in the lack of information on the treatment of the data of the people who came to the establishment to request an appointment to process different applications.

III

Article 5 of the RGPD regarding the principles that must govern the processing of data personal mentions among them that of transparency. Section 1 of the precept provides: “Personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party («lawfulness, loyalty and transparency»)”

Manifestation of the principle of transparency is the obligation incumbent on the responsible for the treatment of informing, in the terms of article 13 of the RGPD, to the owner of the personal data when they are obtained directly from the interested party:

“1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or categories of recipients of the personal data, in your case;
- f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when not

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possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

In that sense, Recital 60 of the RGPD says that "The principles of fair and transparent treatment require that the interested party be informed of the existence of the processing operation and its purposes. The data controller must provide the

interested as much additional information as necessary to guarantee a fair and transparent treatment, taking into account the circumstances and the context specific in which personal data is processed. You must also inform the concerned about the existence of profiling and the consequences of said elaboration. If personal data is obtained from data subjects, it is also must inform them of whether they are obliged to provide them and of the consequences in case that they didn't."

Article 13 of the RGPD provides that when personal data is collected from a interested party -what happens in the present case- the data controller is obliged, at that precise moment, that is, when he obtains them, to inform the data owner. Information covering various issues detailed in the article 13 of the GDPR.

The claimed party, in its capacity as data controller, in accordance with the Article 13 RGPD, is obliged to provide the information indicated therein with prior to the processing of the data of the people who come to your establishment to request that the prior appointment be arranged for formalities

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administrative.

In short, when a person arrives at the establishment and due to the activity that to perform your personal data is requested, the claimed party must provide the information established in article 13 of the RGPD in a simple way and that is in shop.

Having collected personal data from appointment applicants to carry out procedures administrative violates article 13 of the RGD conduct that is subsumable in the article 83.5 of the RGD that provides: "Infringements of the following provisions will be sanctioned in accordance with section 2, with administrative fines of 20,000,000 Eur maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

a)

(...)

a) The rights of the interested parties pursuant to articles 12 to 22;"

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as very serious "The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law". The limitation period for offenses very serious cases provided for in Organic Law 3/2018 is three years.

IV

Article 58.2 of the RGD establishes:

"Each supervisory authority shall have all of the following corrective powers listed below:

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

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i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of each individual case”.

v

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. For the purpose of determine the administrative fine to be imposed, the provisions of the article 83, section 2 of the RGPD, which states:

"two. 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 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 they have applied under of articles 25 and 32;

e) any previous infringement 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 remedy the

infringement and mitigate the possible adverse effects of the infringement;

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, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

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same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or 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 financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", establishes:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned 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) The link between the activity of the offender and the performance of treatment of personal information.
- 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) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

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SAW

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, the exposed facts may constitute, on the part of the claimed party, an infringement of the provisions of article 13 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As a mitigating factor:

-

The non-linkage of the activity of the offender with the performance of the processing of personal data (art. 83.2 k of the RGPD in relation to art. 76.2 b of the LOPDGDD)

At this stage of the procedure, it is considered appropriate to sanction such conduct with €500 (five hundred euros).

Without prejudice to what derives from the instruction of the procedure, between the powers corrective measures contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In such a case, this Agency may require the person in charge to adapt the processing of personal data carried out in accordance with data protection regulations in accordance with what is indicated in the preceding Legal Basis.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, being able to motivate such conduct the opening of a subsequent administrative procedure sanctioning

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START PUNISHMENT PROCEDURE against D.A.A.A., with NIF

***NIF.1, for the alleged infringement of article 13 of the RGPD typified in article

83.5.b)

SECOND: APPOINT D. B.B.B. as instructor. and, as secretary, 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, 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 her 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 500 euros (five hundred euros) without prejudice

of what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of

measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, proceed

provide information to the people whose personal data it collects, in accordance with the

provisions of article 13 of the RGPD.

FIFTH: NOTIFY this agreement to D. A.A.A., with NIF ***NIF.1, granting

a hearing period of ten business days to formulate the allegations and

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Submit whatever evidence you deem appropriate. In his pleadings

You must provide your NIF and the procedure number that appears in the heading 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 set at €400 (four hundred 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 €400 (four hundred euros), and its payment will imply the termination of the procedure.

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 €300 (three hundred 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.

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In case you chose to proceed to the voluntary payment of any of the amounts previously indicated 400 euros or 300 euros must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for 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

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SECOND: On March 10, 2022, the claimed party has proceeded to pay
of the sanction in the amount of 300 euros making use of the two reductions

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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:

"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

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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 EXP202103420, of

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

SECOND: NOTIFY this resolution to A.A.A.

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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