 File No.: PS/00467/2021

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 10, 2021, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against UNIÓN

FINANCIERA ASTURIANA S.A. E.F.C. (hereinafter, the claimed party), through the

Agreement that is transcribed:

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File No.: PS/00467/2021

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 May 17,

2021 filed a claim with the Spanish Data Protection Agency. The

The claim is directed against Unión Financiera Asturiana S.A. E.F.C. with CIF

A33053984 (hereinafter the claimed part). The grounds on which the claim is based

are the following.

The claim states that the claimed entity has consulted your data in
the Asnef file without any contractual relationship.

Together with the claim, it provides, to prove these facts, the following
documentation:

-

Report from the credit information system with the query made by the
claimed on February 24, 2021.

- Response of the party complained against to its suppression request of April 26,
2021 in which they inform that they do not carry out any treatment of their data
personal and that your data is blocked, not reporting the reason for the
consultation in February 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.

The respondent, in his brief dated July 7, 2021, has submitted the following
information: that the claimant was the holder of two commercial loan agreements
canceled in advance by him with dates 05/05/2017 and 03/28/2018. attach
as document number one, a copy of the applications for both credits,
duly signed by the claimant.

They add that in addition to the information provided in the credit application, in
both commercial loan contracts, its ninth clause (9th) enables Unión
Financiera Asturiana for the treatment of the minimum necessary data of the holder,

to send you information about the entity itself, by establishing that "the data may be

kept in the files of the FINANCING COMPANY even once all

contractual relationship with the BORROWER/S exclusively for remittance of the

information, carrying out the prospecting previously planned and, in all

case, during the legally established periods, or disposition of authorities

administrative or judicial. Attach as document number two, a copy of the

general conditions of both contracts.

On the other hand, they point out that on February 24, 2021, and within the framework of a selection

of clients of the Asturian Financial Union, proceeded to consult the DNI of the

complainant in the Asnef file, in order to send you information, in relation to the

possibility of accessing new credit operations, commercial information that

final was not sent, since the promotion was withdrawn.

On the other hand, they indicate that on April 22 of this year, they received the request for

deletion of claimant data. Attach a copy of this, as document number

three.

Likewise, they state that having verified that it did not maintain any operation

in force, and that the operations of which he was the holder were duly cancelled,

erroneously proceeded to inform him that no treatment of

your data, as the data derived from the operations is duly blocked.

They state that said request was answered by human error, without verifying that

By virtue of clause 9 of the contracts, Asturian Financial Union,

was authorized to process the minimum necessary data of the owner,

to send you information about the entity itself. And that, with that authorization,

proceeded to consult the credit information file, in order to

update your creditworthiness and feasibility of being included in a general campaign of

Commercial information.

However, they point out that said procedure was finally not carried out.

They indicate that they replied to the claimant that the data was blocked, without

warn you of the treatment carried out, and accessing according to your request, to

also suppress any treatment for commercial purposes.

On the other hand, they state that the Asturian Financial Union has proceeded to correct the

response erroneously sent to the claimant last April, review the

access profiles to the internal applications of the Asturian Financial Union to the

employees who, within the Customer Service Department, must attend to the

exercises of law derived from the specific data protection regulations,

refresh such staff, the obligations of a data controller

personal data, before the exercise of a right by a holder and to review the

circuit to follow before the exercise of a right of suppression by the owner of the

personal data to know if you are or have been a client, if there are requests for

suppression and/or cancellation, previous, if there are previous requests, the meaning of the

same, and if the holder has opposed or revoked the consent for the treatment

of your data, for purposes other than those strictly derived from the relationship

contract from which the processing of your data derives.

Finally, they state that there has been no intention on the part of the defendant in the incident that gives rise to this claim, due to an error human in the processing of the request for deletion of the owner. mistake that was communicated to the holder himself by telephone, and which is reiterated in writing, attending to your request and also proceeding to block your data, without they may be treated for purposes other than those listed in article 32 of LO 3/2018 of December 5.

THIRD: On September 21, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOUNDATIONS OF LAW

Yo

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

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 at least one of the following is met

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:

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

with section 2, with administrative fines of a maximum of EUR 20,000,000 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

particularly the following:

(…)

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679."

III

The documentation in the file offers evidence that the party

claimed, violated article 6.1 of the RGPD.

Whenever it does not prove the legitimacy for the treatment of the data of the

claimant.

It is stated in the statements made by the respondent in his brief

dated July 7, 2021 to this Agency that processed the claimant's data without

legitimacy for it, given that they were already blocked. As it

confirmed in the answer given to the claimant on April 26, 2021, in response to his request for

deletion of your personal data. However, despite being blocked

consulted the Asnef common credit information file on February 24,

2021.

They allege that said query was due to a human error in the

processing of the request for deletion of the owner to make an offer because there was

been a client of the respondent party, but it is found that the respondent party did not offer

the possibility of being able to oppose the use of your data for advertising purposes. Namely,

consent to the processing of data for commercial purposes

independent of the rest of the treatments derived from the loan contract.

Respect for the principle of legality that is in the essence of the fundamental right

of protection of personal data requires that it be accredited that the

responsible for the treatment displayed the essential diligence to prove that

extreme. Failure to act in this way -and this Agency, who is responsible for ensuring

for compliance with the regulations governing the right to data protection of

personal character - the result would be to empty the content of the principle of legality.

v

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

provisions 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."

"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 data processing personal.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have led to the commission of the infringement.

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 delegate.

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."

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 be imposed in the present case, the party claimed is considered responsible for an infringement typified in article 83.5.a) of the RGPD, in an initial assessment, concurrent the following factors.

As aggravating the following:

-

The intentionality or negligence in the infringement. Since they consulted the data of the claimant despite being blocked and not given the option to object to the use

of your data for advertising purposes (article 83.2 b).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and

set it at the amount of €15,000 for the infringement of article 6.1 of the RGPD.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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1.

START SANCTION PROCEDURE a FINANCIAL UNION

ASTURIANA S.A. E.F.C. with CIF A33053984, for the alleged infringement of the

article 6.1. of the RGPD, typified in article 83.5.a) of the aforementioned RGPD.

2. APPOINT D.B.B.B. as instructor. and as secretary to Ms. C.C.C.,

indicating that any of them may be challenged, where appropriate,

in accordance with the provisions of articles 23 and 24 of Law 40/2015, of 1

October, of the Legal Regime of the Public Sector (LRJSP).

3.

INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its attached documentation, the

information requirements that the General Subdirectorate of Inspection of

Data sent to the claimed entity.

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

October, of the Common Administrative Procedure of the Administrations

Public, the sanction that could correspond would be 15,000 euros

(fifteen thousand euros), without prejudice to what results from the instruction.

5. NOTIFY this agreement to UNIÓN FINANCIERA ASTURIANA S.A.

E.F.C. with CIF A33053984, granting a hearing period of ten days

able to formulate the allegations and present the evidence that

deem convenient. In your statement of arguments, 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

established at 12,000 euros, resolving the procedure with the imposition of this

sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction,
the sanction would be established at 12,000 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 9,000 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, 12,000 euros or 9,000 euros, you must make it effective
by depositing it in account number ES00 0000 0000 0000 0000 0000 open to
name of the Spanish Data Protection Agency at CAIXABANK Bank,
S.A., indicating in the concept the reference number of the procedure that appears in
the heading of this document and the reason for the reduction of the amount to which
welcomes
Likewise, you must send proof of payment to the General Subdirectorate of
Inspection to proceed with the procedure in accordance with the quantity
entered.
The procedure will have a maximum duration of nine months from the
date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 18, 2021, the claimed party has proceeded to payment of the sanction in the amount of 9,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

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.

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 PS/00467/2021, of

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

SECOND: NOTIFY this resolution to the ASTURIAN FINANCIAL UNION

S.A. E.F.C.

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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