

□ File No.: PS/00291/2021

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 June 24, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against NEXTGEN

FINANCIAL SERVICES S.L. (hereinafter, the claimed party), through the Agreement
which is transcribed:

<<

Procedure No.: PS/00291/2021

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: A.A.A. (hereinafter, the claimant) dated April 28, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against NEXTGEN FINANCIAL SERVICES S.L. with NIF

B87262804 (hereinafter, the claimed one).

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The claimant states that the respondent did not make the change of address that appears in the loan contract entered into with him, despite having been warned by the claimant of said change.

He points out that the address that appears in the registration of the file is not his, that his address comes in the contract signed with the claimed.

It adds that the person claimed has failed to comply with his right to rectify data, since requested by email to the ASNEF file the rectification or cancellation of the annotation while they did not rectify it and this has been denied by the entity indicating the file that debt has been confirmed by the entity and without rectification of the mistakes.

That the annotation was later cancelled, although it had already been consulted by various entities.

And, among other things, it provides the following documentation:

☐ Particular conditions of the loan agreement with NEXTGEN FINANCIAL SERVICES, S.L. signed and dated March 13, 2019, where it is stated:

o Address at "****ADDRESS.1****LOCALITY.1"

☐

EQUIFAX report dated 03/25/2020 where it is stated, as the address of the claimant:

o Address: ***ADDRESS.2– ***TOWN.2 – ***PROVINCE.1

o In the query history there are several queries for different reasons.
entities.

SECOND: On June 2, 2020, after analyzing the documentation that was in the file, a resolution was issued by the Director of the Spanish Agency for Data Protection, agreeing to file the claim, as it is not appreciated elements that would make it possible to investigate a violation of the rights recognized in

the scope of competence of the Spanish Data Protection Agency.

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THIRD: On June 30, 2020, the claimant filed an appeal for replacement, providing a copy of your ID where it states:

- o Place of birth: ***LOCATION.2

- o Province: ***PROVINCE.1

- o Address: ***ADDRESS.2

- o Place of residence: *** LOCATION.3

- o Province: ***PROVINCE.2

On July 13, 2020, an approving resolution is issued.

FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant and the facts and documents of which he has had knowledge of this Agency, the Subdirectorate General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

On September 10, 2020, it is verified that in the Privacy Policy of www.wanna.es consists:

“Furthermore, in the event of non-payment of the Loan in the terms provided in the Contract, the data related to non-payment will be recorded in files relating to the fulfillment or non-fulfillment of financial obligations (such as ASNEF or, where appropriate, the Risk Information Center of Banco de Spain)".

On 09/17/2020, ASNEF-EQUIFAX, INFORMATION SERVICES ON SOLVENCY AND CREDIT, S.L. send this Agency the following information:

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A screen print is provided where the claimant's debt is recorded with

1.

NEXTGEN FINANCIAL SERVICES S.L. and discharge date 02/18/2020.

A screen print is provided where the claimant's debt is recorded with

two.

NEXTGEN FINANCIAL SERVICES S.L. and discharge date 03/26/2020.

3.

That the notification of inclusion sent to the claimant at the address

“***ADDRESS.2 ***LOCALITY.2-***PROVINCE.1” dated 02/19/2020 resulted returned by "Unknown".

On 03/13/2019, the claimant signed a contract with WANNA (trademark of

NEXTGEN FINANCIAL SERVICES S.L.) indicating the address without indicating the city or Province.

Provide a copy of the contract where only the address appears

****ADDRESS 1". In the "ANNEX I DIRECT DEBIT MANDATE ACCORDING TO SEPA RULES" contains the address "**** ADDRESS.1" and in "population of the borrower" states "**** LOCALITY.1".

Provides "GENERAL CONDITIONS FOR CONTRACTING THE LOAN" with printing date 08/25/2020 where it states:

"11.5. In the event of non-payment or early maturity of the Loan, the

The lender may communicate the data related to the non-payment to files or databases of data related to the fulfillment or non-compliance of financial obligations

(What

ASNEF or, where appropriate, the Risk Information Center of Banco de Spain)."

two.

That the claimant had contributed to the file for contracting the loan

a copy of your DNI and a video selfie proving your identity. that in these

***LOCATION.3,

files is listed as address

*** PROVINCE.2". That these data were used to complete the address on the record of the client.

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****ADDRESS.2,

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A video file is provided containing the indicated data.

3.

That on 05/09/2019 the WANNA collections department contacted telephone contact with the claimant upon receiving a return from one of one of the the deadlines. That in that conversation the claimant indicated that he had changed his address indicating the correct address.

An audio file is provided where it is stated that the claimant indicates a new address in "****ADDRESS.1, ***TOWN.1, ***PROVINCE.1".

That as the non-payment situation continued, a request was sent to the claimant Four.

warning him that if he did not regularize his situation, he would register with ASNEF.

Provide a copy of the request dated 11/04/2019 sent to the claimant at the address "****ADDRESS.2 ***TOWN.2-***PROVINCE.1".

Provides an EQUIFAX certificate dated 09/17/2020 where it is stated that no

It is recorded that the letter requesting prior payment sent to the claimant at the address "****ADDRESS.2 ***TOWN.2-***PROVINCE.1" has been returned.

5.

That on 02/18/2020 the unpaid debt was recorded in ASNEF.

6.

That in March 2020 WANNA canceled the entry in ASNEF when attending the claimant's complaints since an error was verified in the computer systems that had caused that when the contractual address is not complete the system extracted data from the rest of the addresses in the customer's profile. That had been composed the address consisting of the road name of the contractual address and the rest of the information of the address that the claimant had indicated in the telephone conversation on May 9.

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“In turn, after analyzing this incident and establishing a new system of

7.

address management for notification, WANNA in early June 2020 gave

cancellation of all the payment incidents that had been recorded in Asnef, after having

notified again the payment requirements with the certainty that they did not exist

incidents in the addresses and then proceed to write down the debts in the file.”

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 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

resolve this procedure.

II

Section d) of article 5.1. of the RGPD determine in terms of the "Principles

regarding the treatment" that: "The personal data will be:

(...)

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed (<exactness>)"

For its part, regarding the "Principles of Data Protection", article 4.1 of the

LOPDGDD determines:

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"4. Data accuracy.

1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be accurate and, if necessary, updated.

III

Article 16 of the RGPD, regarding the "Right of rectification" establishes that:

"The interested party shall have the right to obtain, without undue delay, from the person responsible for the processing the rectification of personal data concerning you. Having in account the purposes of the treatment, the interested party will have the right to complement personal data that is incomplete, including by means of a declaration additional."

In turn, article 12.4 of the aforementioned LOPDGDD, establishes as one of the

"General provisions on the exercise of rights" that:

"4. Proof of compliance with the duty to respond to the request to exercise their rights formulated by the affected party will fall on the person responsible".

For its part, article 14 of the LOPDGDD, under the heading, "Right of rectification", provides that: "By exercising the right of rectification recognized in article 16 of the Regulation (EU) 2016/679, the affected party must indicate in their request what data is refers and the correction to be made. It must accompany, when necessary, supporting documentation of the inaccuracy or incompleteness of the data treatment object."

Article 83 of the RGPD, 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 20,000,000 Eur or,

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

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

the largest amount:

b) the rights of the interested parties pursuant to articles 12 to 22.”

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

Digital Rights (LOPDGDD) in its article 74.c) establishes that: "They are considered

minor and will prescribe after a year the remaining infractions of a merely formal nature of

the articles mentioned in paragraphs 4 and 5 of article 83 of the Regulation (EU)

2016/679 and, in particular, the following: (...)

c) Failure to respond to requests to exercise the rights established in articles

15 to 22 of Regulation (EU) 2016/679, unless the provisions

in article 72.1.k) of this organic law.”

According to the evidence currently available

agreement to initiate the sanctioning procedure, and without prejudice to what results from

The instruction. It must be taken into account, the lack of attention to the claimant's right

to obtain without undue delay from the person responsible for the treatment the rectification of the

personal data that concerns you. Taking into account the purposes of the treatment, the

The interested party will have the right to have the personal data that is

incomplete, including by means of an additional declaration.

It is stated that on May 9, 2019, the collection department of the claimed

contacted the claimant by telephone after receiving a return from one of the
the deadlines. That in that conversation the claimant indicated that he had changed his
address indicating the correct address, as verified in the audio file
where it is stated that the claimant indicates a new address in “***ADDRESS.1,
***TOWN.1, ***PROVINCE.1”.

Despite this, the request was sent to his old address.

In short, there is evidence in the file of the lack of attention to the right
of rectification of data, by the claimed party. The behavior described violates the
article 16 of the RGD and is subsumable in the sanctioning type of article 83.5.b, of the
GDPR.

IV

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In order to determine the administrative fine to be imposed, the precautions
visions of articles 83.1 and 83.2 of the RGD, 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,

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“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.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- 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 the defendant as responsible for an offense typified in article

83.5.b) of the RGPD, in an initial assessment, they are estimated to be concurrent in this case, as aggravating factors, the following factors:

- In the present case we are facing a serious negligent action. (art.83.2. b) of the GDPR).

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

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against NEXTGEN FINANCIAL SERVICES S.L. with NIF B87262804, for the alleged infringement of article 16 of the RGPD typified in article 83.5.b).

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SECOND: APPOINT instructor D. B.B.B. and 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 October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its attached documentation, and all documents generated by the claim.

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 to the infraction (article 83.5.b, RGPD) would be 50,000 euros (fifty thousand euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to NEXTGEN FINANCIAL SERVICES S.L.

with NIF B87262804, granting a hearing period of ten business days for

formulate the allegations and present the evidence that it deems appropriate. In its

Allegation brief must provide your NIF and the procedure number that appears

at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to 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 total sanction

would be established at 40,000 euros (forty thousand euros) resolving the

procedure with the imposition of this sanction.

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

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

which will mean a reduction of 20% of its amount. With the application of this

reduction, the total sanction would be established at 40,000 euros (forty thousand euros) and

its payment will imply the termination of the procedure.

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The reduction for the voluntary payment of the sanction is cumulative to the one
It is appropriate to apply for the acknowledgment of responsibility, provided that this
acknowledgment of responsibility is revealed within the period
granted to formulate arguments at the opening of the procedure. The pay
volunteer of the amount referred to in the preceding paragraph may be made at any
time prior to resolution. In this case, if it were appropriate to apply both
reductions, the amount of the total sanction would be established at 30,000 euros
(thirty thousand euros).

In any case, the effectiveness of any of the two reductions mentioned
will be conditioned to the withdrawal or renunciation of any action or resource in via
administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the
amounts indicated above, 40,000 euros or 30,000 euros, you must do so
cash by depositing it in account number ES00 0000 0000 0000 0000 0000 opened
on behalf of the Spanish Agency for Data Protection 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 Subdirectorato 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.

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Director of the Spanish Data Protection Agency

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SECOND: On July 14, 2021, the claimed party has proceeded to pay the sanction in the amount of 30,000 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.

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.

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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/00291/2021, of
in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to NEXTGEN FINANCIAL SERVICES
S.L.

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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Director of the Spanish Data Protection Agency

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