

□ Procedure No.: PS/00140/2021

RESOLUTION R/00430/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00140/2021, instructed by the Spanish Agency for
Data Protection to MASTER DISTANCIA S.A., given the complaint filed by
A.A.A., and based on the following,

BACKGROUND

FIRST: On April 14, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against MASTER DISTANCIA
S.A. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00140/2021

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 claimant) dated January 31, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against MASTER DISTANCIA S.A. with CIF A50715366 (in
later, the claimed one).

The claimant states that the respondent claims an outstanding debt,
despite the existence of a request for arbitration against it before the Arbitration Board of
Consumption of the Government of the Principality of Asturias, having included its data

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information in common credit information systems. In his writing of claim, the claimant did not provide a document of admission to processing of the request for arbitration, nor subsequent report of inclusion in information systems credit.

SECOND: On March 1, 2021, after analyzing the documentation that was in the file, a resolution was issued by the Director of the Spanish Agency of Data Protection, agreeing to file the claim, as it was 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.

THIRD: On March 1, 2021, the respondent submitted a document, registered in this Agency on the same date, in which he formulates an appeal for reconsideration to the resolution, contributing to it new evidentiary elements: document that accredits the admission for processing of your request for arbitration before the Arbitration Board of Consumption of the Government of the Principality of Asturias dated December 11, 2020 against MASTER DISTANCIA, S.A., as well as a report of inclusion in the system ASNEF dated February 24, 2021 in which your personal data appears registered by the claimed entity.

On March 31, 2021, the appeal for reconsideration filed by the claimed against the Resolution of this Agency issued on March 1, 2021.

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 what is established in articles 47, 64.2 and 68.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to initiate this procedure.

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Article 58 of the RGPD, "Powers", indicates in its point 2:

"2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

"i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

III

The RGPD deals in its article 5 with the principles that must govern the

treatment of personal data, provision that provides:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness,

loyalty and transparency

(...)

2. The data controller will be responsible for compliance with the

provided in section 1 and able to demonstrate it (<<proactive responsibility>>)"

(The underlining is from the AEPD)

Article 4 point 2) of the RGPD defines "processing" as "any

operation or set of operations carried out on personal data or set of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any another form of access authorization, (...)"

Article 6 of the RGPD, "Legality of the treatment", mentions 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;

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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;

(...)"

At the same time, the LOPDGDD, in its article 20, under the rubric of "Systems of credit information" provides:

"1. Unless proven otherwise, the data processing will be presumed lawful.

related to the breach of monetary, financial or

credit through common credit information systems when the requirements are met.

following requirements:

a) That the data have been provided by the creditor or by someone acting on his behalf.

account or interest.

b) That the data refer to certain, overdue and payable debts, whose

existence or amount had not been the subject of an administrative or judicial claim for

the debtor or through an alternative dispute resolution procedure

binding between the parties.

c) That the creditor has informed the affected party in the contract or at the time

to require payment about the possibility of inclusion in said systems, with

indication of those in which it participates.

The entity that maintains the credit information system with relative data

non-compliance with monetary, financial or credit obligations must notify

to the affected the inclusion of such data and will inform you about the possibility of exercising

the rights established in articles 15 to 22 of Regulation (EU) 2016/679

within thirty days after notification of the debt to the system,

The data remains blocked during that period.

d) That the data is only kept in the system while the problem persists.

default, with a maximum limit of five years from the expiration date of

monetary, financial or credit obligation.

e) That the data referring to a specific debtor can only be

consulted when the person consulting the system maintained a contractual relationship

with the affected party that implies the payment of a pecuniary amount or this would have

requested the conclusion of a contract that involves financing, deferred payment or

periodic billing, as happens, among other cases, in those provided for in the

legislation of consumer credit contracts and real estate credit contracts.

When the right to limit the

processing of the data contesting its accuracy in accordance with the provisions of article

18.1.a) of Regulation (EU) 2016/679, the system will inform those who may consult it in accordance with the previous paragraph about the mere existence of said circumstance, without providing the specific data with respect to which www.aepd.es

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exercised the right, while it is resolved on the request of the affected.

f) That, in the event that the request to conclude the contract is denied, or this will not be held, as a result of the consultation carried out, whoever has consulted, the system informs the affected party of the result of said consultation.

2. The entities that maintain the system and the creditors, regarding the treatment of the data referred to their debtors, will have the condition of co-responsible for data processing, being applicable what is established by Article 26 of Regulation (EU) 2016/679.

It will be up to the creditor to ensure that the requirements for the inclusion in the debt system, answering for its non-existence or inaccuracy.

3. The presumption referred to in section 1 of this article does not cover the assumptions in which the credit information was associated by the entity that kept the system to additional information to those contemplated in said section, related to the debtor and obtained from other sources, in order to carry out out a profiling of the same, in particular through the application of techniques of credit rating.” (The underlining is from the AEPD)

The infringement of article 6 of the RGPD, in relation to its article 5.1.a) of which the claimed person is held responsible, it is sanctioned in article 83.5 of the RGPD that states:

“Infractions 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.”

It must also be taken into account, for the purposes of prescription of infractions, that the LOPDGDD qualifies as very serious infractions those described in its article 72. 1 among which is included "a) The treatment of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679”

III

The documentation in the file shows that the claimed violated article 6.1 of the RGPD.

The conduct of the defendant contrary to the principle of legality has consisted of communicate to a credit information system (the ASNEF file) a debt that, www.aepd.es

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with respect to the alleged debtor, the claimant, was not certain, neither expired nor enforceable. so what establishes, “acontra sensu”, article 20.1 of the LOPDGDD. The illicit treatment of the data of the claimant, specified in the inclusion in a file of solvency without meet the conditions that are required for it to be adjusted to law, the February 24, 2021, date of registration of the debt in the aforementioned file,

The claimant has provided a document that accredits the admission for processing of his request for arbitration before the Consumer Arbitration Board of the Government of the Principality of Asturias dated December 11, 2020 against MASTER DISTANCIA, S.A., as well as a report of inclusion in the ASNEF system dated February 24, 2021 in the that your personal data is registered by the claimed entity.

As clearly stated in Recital 40 of the RGPD "... So that the treatment is lawful, personal data must be processed with the consent of the interested party or on any other legitimate basis established in accordance with Law, either in this Regulation or by virtue of other Law of the Union or of the States members referred to in these Regulations, including the need to comply with the legal obligation applicable to the data controller or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.

IV

In order to determine the administrative fine to be imposed, it is mandatory go to the provisions of articles 83.1 and 83.2 of the RGPD, provisions that establish:

"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

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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.
- 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.

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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."

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 in the present case on the entity claimed for the infraction typified in the article 83.5.a) of the RGPD for which the claimant is responsible, in an assessment initial, the following factors are estimated concurrent:

- In the present case we are facing a serious negligent action (article 83.2 b)
- Basic personal identifiers are affected (name, surname, domicile) (article 83.2 g)

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 6.1 of the

RGPD allows setting a penalty of 25,000 euros (twenty-five thousand euros), considered

as "very serious", for purposes of prescription of the same, in 72.1.a of the LOPDGDD.

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

Spanish Data Protection,

HE REMEMBERS:

1.

START A SANCTION PROCEDURE against MASTER DISTANCIA S.A. with

CIF A50715366, for the alleged violation of article 6.1. of the RGPD typified

in article 83.5.a) of the aforementioned RGPD.

1. APPOINT D.B.B.B. as instructor. and Ms. C.C.C. as secretary, indi-

whereby 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, of Ré-

Legal Regime of the Public Sector (LRJSP).

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two.

INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its attached documentation.

3. 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 25,000 euros

(twenty-five thousand euros), without prejudice to what results from the instruction.

4. NOTIFY this agreement to MASTER DISTANCIA S.A. with CIF

A50715366, granting a hearing period of ten business days for

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

In your brief of allegations you must provide your NIF and the number of

procedure at the top 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 20,000 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 20,000 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

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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 15,000 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, 20,000 euros or 15,000 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 June 2, 2021, the respondent has proceeded to pay the sanction in the amount of 20,000 euros making use of one of the two reductions provided for in the Start Agreement transcribed above. Therefore, there is no accredited acknowledgment of responsibility.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the

Home 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.

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.

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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/00140/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to MASTER DISTANCIA S.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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