

□ File No.: EXP202101735

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 July 15, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against URBANO DIVERTIA,
SL (hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: EXP202101735

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 CLAIMING PARTY) dated August 12
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against URBANO DIVERTIA, S.L. with NIF B73314072 (in
forward, URBAN).

The grounds on which the claim is based are as follows:

The CLAIMING PARTY states that the manager of the URBANO entity sends
documentation with data from third parties, former clients, to their clients.

In his specific case, the CLAIMING PARTY was sent a document in which
that contained the data of the previous tenant of the premises of which the PARTY
CLAIMANT is the current tenant and a guarantor with third party data.

In addition, it points out that the entity's corporate mail does not include a reference to the Privacy Policy indicating where and how to exercise your data protection rights.

A copy of the submitted contract and the guarantee provided by the claimed entity and emails from the entity in which they send you the aforementioned documentation.

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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 URBANO, so that proceed to 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 transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on September 24, 2021 as stated in the acknowledgment of receipt in the file.

THIRD: On November 12, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the PARTY was admitted for processing.

CLAIMANT.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 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

LOPDGDD, having knowledge of the following extremes:

Regarding the chronology of events. Actions taken in order to minimize

adverse effects and measures adopted for their final resolution

(...)

(...)

(...)

Regarding the causes that made the gap possible

(...)

Regarding the affected data

(...)

Regarding the security measures implemented

(...)

Information on the recurrence of these events and the number of similar events

events in time

(...)

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FOUNDATIONS OF LAW

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Competition

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

Previous issues

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists carrying out personal data processing, whenever URBANO performs, among other treatments, the collection, conservation, use and dissemination of the following You have personal data of your clients, such as: name and surnames, DNI, address email, bank details.

URBANO, according to the contract provided, carries out this activity in its capacity as responsible for the treatment, since it is he who determines the purposes and means of such activity, under the aforementioned article 4.7 of the RGPD; and *** BUILDING.1 LEISURE CENTER ***LO-QUALITY.1 as data processor.

Clause

first,

after

of

paragraph

and):

“..... URBANO DIVERTIA SL is the Data Controller (hereinafter, the Responsible), and CDAD PROP BUILDING ZIG ZAG LEISURE CENTER ***LOCATION.1 has the

Condition of Treatment Manager (hereinafter, the Manager).”

Article 4 section 12 of the RGPD defines, in a broad way, the "violations of se-

curity of personal data” (hereinafter security breach) as “all

those breaches of security that cause the destruction, loss or alteration

accidental or illicit of personal data transmitted, conserved or processed in another

form, or unauthorized communication or access to said data.”

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In the present case, there is a security breach of personal data in the circumstances indicated above, categorized as a breach of confidentiality, by having been sent to the RECLAMOUS PARTY emails, with a real example bank guarantee, containing some personal data of the people who signed the documents, instead of being sent a standard or anonymized form of endorsement like this as the first page of the previous tenant's lease, for purposes that he knew who was the holder of the supply contracts that he had to deal with. mitigating the change of name or that it needed for the purpose of processing the licenses necessary.

It should be noted that receiving a complaint about a security breach does not imply the imposition of a sanction directly, since it is necessary to analyze the diligence of those responsible and in charge and the security measures applied. Within the principles of treatment provided for in article 5 of the RGD, the integrity and confidentiality of personal data is guaranteed in section 1.f) of the article 5 of the RGD. For its part, the security of personal data is regulated in articles 32, 33 and 34 of the RGD, which regulate the security of the treatment, notification of a breach of personal data security to the authority of control, as well as the communication to the interested party, respectively.

III

Article 5.1.f) of the RGD

Article 5.1.f) "Principles related to treatment" of the RGD establishes:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, through the application of technical measures or appropriate organizational structures ("integrity and confidentiality")."

In the present case, it is stated that the personal data of third parties, held in the documentation available to URBANO, were unduly disclosed to the PAR-YOU CLAIM, violating the principle of confidentiality.

Within the framework of negotiations for the lease of a premises, the management of Zig-Zag had to ask the CLAIMING PARTY to provide a surety as guarantee of di-lease, and must send you a model of the type of guarantee that should be provided. tion, with the data of the interveners blank or anonymized, so that he could see what what was being asked of him.

Although, an email is sent to the COMPLAINING PARTY, with an example real bank guarantee, containing some personal data of the people who signed documents, instead of being sent a standard or anonymized form of guarantee as well as another with the first page of the lease of the previous inquilino, in order to know who was the owner of the contracts for the supply of

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those who had to process the name change or who needed to effect the pertinent you have licenses

Data to which the CLAIMING PARTY should never have had access.

In accordance with the evidence available in this initiation agreement, sanctioning procedure, and without prejudice to what results from the investigation, it is considered that the known facts could constitute an infraction, im-attributable to URBANO, for violation of article 5.1.f) of the RGPD.

Classification of the infringement of article 5.1.f) of the RGPD

IV

If confirmed, the aforementioned infringement of article 5.1.f) of the RGPD could entail the commission of the infractions typified in article 83.5 of the RGPD that under the rubric

"General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

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

lien pursuant to articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to

ries to this organic law".

For the purposes of the limitation period, article 72 "Infringements considered very serious"

you see" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees established

two in article 5 of Regulation (EU) 2016/679. (...)"

Sanction for the infringement of article 5.1.f) of the RGPD

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For the purposes of deciding on the imposition of an administrative fine and its amount,

accordance with the evidence available at the present time according to

initiation of the sanctioning procedure, and without prejudice to what results from the

construction, the infringement in question is considered serious for the purposes of the RGPD and

that it is appropriate to graduate the sanction to be imposed in accordance with the criteria established

Article 83.2 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

criteria established in section 2 of article 76 "Sanctions and corrective measures"

of the LOPDGDD.

The balance of the circumstances contemplated in article 83.2 of the RGPD and the ar-

Article 76.2 of the LOPDGDD, with respect to the infraction committed by violating the sta-

Established in article 5.1.f) of the RGPD, it allows initially setting a penalty of €2,000

(TWO THOUSAND EUROS)

SAW

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of

appropriate measures to adjust their actions to the regulations mentioned in this

act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the

which 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.

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,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent sanctioning administrative proceeding.

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: START A SANCTIONING PROCEDURE against URBANO DIVERTIA, S.L.,

with NIF B73314072, for the alleged violation of art. 5.1 f) of the RGPD, typified in the article 83.5 of the RGPD.

SECOND: APPOINT B.B.B. and, as secretary, to C.C.C.,

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

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

Legal Department of the Public Sector (LRJSP).

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

claim filed by the CLAIMING PARTY and its documentation, as well as

the documents obtained and generated by the Subdirectorate General for Inspection of

Data in the actions prior to the start of this sanctioning procedure.

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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

The corresponding sanction would be TWO THOUSAND EUROS (€2,000).

FIFTH: NOTIFY this agreement to URBANO DIVERTIA, S.L., with NIF

B73314072, granting him a hearing period of ten business days to formulate

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

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

header of this document.

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

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the penalty would be set at ONE THOUSAND SIX HUNDRED EUROS (€1,600), 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 ONE THOUSAND SIX HUNDRED EUROS (€1,600) 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 ONE THOUSAND TWO HUNDRED EUROS (€1,200)].

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 mentioned above ONE THOUSAND SIX HUNDRED EUROS (€1,600) or ONE THOUSAND TWO HUNDRED EUROS (€1,200), you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in the banking entity CAIXABANK, S.A., indicating in the concept the number reference of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

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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.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, in what successively, the notifications sent to you will be made exclusively in a electronically by appearance at the electronic headquarters of the General Access Point of the Administration or through the unique Authorized Electronic Address and that, if not access them, their rejection will be recorded in the file, considering the processing and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of commissioning disposition of the notifications and that the lack of practice of this notice will not prevent that the notification be considered fully valid.

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 July 29, 2022, the claimed party has proceeded to pay the sanction in the amount of 1200 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the 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, 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

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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

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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202101735, of

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

SECOND: NOTIFY this resolution to URBANO DIVERTIA, 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

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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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