

□ File No.: EXP202105649

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 September 9, 2022, the Director of the Spanish Agency
of Data Protection agreed to start a sanctioning procedure against A.A.A. (in
hereinafter, the claimed party), through the Transcribed Agreement:

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File No.: EXP202105649

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: Ms. B.B.B. (hereinafter the claimant) on 11/02/2021 filed
claim before the Spanish Data Protection Agency. The claim is
directed against D.A.A.A. with NIF ***NIF.1 (hereinafter the claimed). The reasons in
on which the claim is based are the following: that the right to
deletion of the interested party by the data controller.

The claimant lawyer whose personal data, linked to her office
professional, appear published on the OKDIVORCIO.COM website; with date
09/09/2021 sent them an email to the address that appears in the privacy policy
privacy, to request that they be deleted (provide a copy of the message). He says no
has received a response.

Provide a copy of the email sent to the person responsible for the website so that delete your data.

SECOND: On 02/02/2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

THIRD: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in

matter, 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 GDPR), and

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2/10

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

On 02/02/2022, the Spanish Data Protection Agency agreed

carry out these investigative actions in relation to the website

reclaimed.

With

date 05/30/2022 it is verified that the

website

<https://OKDIVORCIO.COM/> continues to display information on the claimant and is

Check that the privacy policy does not identify the person responsible for the site

Web.

Likewise, it is verified by means of the Internet tool WHOIS that in the

registration of Internet domains appears as the holder of the registry the entity "Soluciones

Corporate IP" with address in Manacor, Illes Balears.

Made, on 05/30/2022, request for information on the

ownership of the website claimed to the headquarters of "Soluciones Corporativas IP", it is received

in the Agency, dated 06/02/2022 the following information:

Identification data of the owner of the website <https://OKDIVORCIO.COM/>:

- Name: A.A.A.

- DNI/NIF: ***NIF.1

- Email registration: ***EMAIL.1

-

- Address: ***ADDRESS.1

Phone: ***PHONE.1

FUNDAMENTALS OF LAW

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In accordance with [Enter the text corresponding to [Text foundation I

PS].] and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law

3/2018, of December 5, Protection of Personal Data and guarantee of the

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that:

"The

procedures processed by the Spanish Data Protection Agency will be governed

by the provisions of Regulation (EU) 2016/679, in this organic law, for the

regulatory provisions dictated in its development and, as soon as they are not

contradict, on a subsidiary basis, by the general rules on the

administrative procedures."

The denounced facts materialize in the absence of a response to the exercise of the right of deletion exercised by the claimant by the person responsible for the treatment, which could violate the regulations on data protection of personal character.

Article 58 of the GDPR, Powers, states:

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3/10

"2. Each supervisory authority shall have all 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, according to the circumstances of each particular case;

(...)"

Article 17, Right to erasure ("the right to be forgotten"), of the GDPR

states that:

"1. The interested party shall have the right to obtain without undue delay from the responsible for the treatment the deletion of personal data that concerns him, the which will be obliged to delete the personal data without undue delay when one of the following circumstances occurs:

a) the personal data is no longer necessary in relation to the purposes for which those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of

in accordance with Article 6(1)(a) or Article 9(2),

letter a), and this is not based on another legal basis;

c) the data subject opposes the processing in accordance with article 21, paragraph 1,

and no other legitimate reasons for the treatment prevail, or the interested party

object to the processing pursuant to Article 21(2);

d) the personal data have been unlawfully processed;

e) the personal data must be deleted for the fulfillment of a

legal obligation established in the Law of the Union or of the States

members that applies to the data controller;

f) the personal data have been obtained in connection with the offer of services

of the information society mentioned in article 8, paragraph 1.

2. When you have made the personal data public and are obliged, by virtue of

of the provisions of section 1, to delete said data, the person responsible for the

treatment, taking into account the available technology and the cost of its application,

take reasonable measures, including technical measures, with a view to informing

responsible who are processing the personal data of the request of the interested party

deletion of any link to such personal data, or any copy or replica of

the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of

data imposed by the Law of the Union or of the Member States that are

apply to the data controller, or for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers vested in the

responsible;

c) for reasons of public interest in the field of public health of
in accordance with article 9, paragraph 2, letters h) and i), and paragraph 3;
d) for archiving purposes in the public interest, scientific research purposes or
historical or statistical purposes, in accordance with article 89, paragraph 1, in
to the extent that the right indicated in paragraph 1 could make it impossible
or seriously impede the achievement of the objectives of such processing, or
e) for the formulation, exercise or defense of claims”.

The GDPR allows you to exercise before the person responsible for the treatment the
rights of access, rectification, opposition, deletion (“right to be forgotten”), limitation
of treatment, portability and not being subject to individualized decisions.

II

If the person in charge does not process the request, he must inform and no later than
one month, of the reasons for not acting and the possibility of claiming before a
Control Authority, if no response has been obtained.

In the present case, the infringement of the right of deletion brings cause because
From the documentation provided, it is evident that the claimant exercised the aforementioned
right before the claimant and without any accredited response.

IV.

The infringement attributed to the defendant is typified in the
Article 83.5 a) of the GDPR, which considers that the infringement of "the rights of the
interested in accordance with articles 12 to 22" is punishable, in accordance with the

section 5 of the aforementioned article 83 of the aforementioned Regulation, “with fines administrative costs of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual business volume of the previous financial year, opting for the highest amount”.

LOPDGDD in its article 71, Violations, states that:

“constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law”.

The LOPDGDD in its article 74 indicates for prescription purposes that: "It is are considered minor and the remaining infractions of a nature will prescribe after one year. merely formal of the articles mentioned in sections 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

(...)

c) Failure to respond to requests to exercise the rights established in the Articles 15 to 22 of Regulation (EU) 2016/679, unless it results from application of the provisions of article 72.1.k) of this organic law.

(...)”

In order to establish the administrative fine that should be imposed, the observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which point out:

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"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall 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 infraction;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infringement committed by the person in charge or in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedy the breach and mitigate the potential 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

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms

of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as the financial benefits obtained or the losses avoided, direct

or indirectly, through the infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing
of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

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

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6/10

data.

e) The existence of a merger process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character

voluntary, alternative conflict resolution mechanisms, in those

cases 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 fine to

impose in the present case for the infringement typified in article 83.5.a) and article

17 of the GDPR for which the defendant is held responsible, in an initial assessment,

considers it appropriate to establish a penalty of €2,000 (two thousand euros).

The corrective powers that the GDPR attributes to the AEPD as authority of

control are listed in article 58.2, sections a) to j).

SAW

Article 83.5 of the GDPR establishes a sanction of an administrative fine (article

58.2.i) for the conducts that are typified therein, without prejudice to the fact that, as provided in the

article 83.2. of the GDPR, administrative fines can be imposed together with

other corrective measures provided for in article 58.2 of the GDPR.

If the infringement is confirmed, it could be agreed to impose on the person responsible the

adoption of appropriate measures to adjust its performance to the aforementioned regulations

in this act, in accordance with the provisions of the aforementioned article 58.2 c) of the GDPR,

according to which each control authority may "c) order the person in charge or in charge

of the treatment that meet the requests for the exercise of the rights of the interested party

under this Regulation".

In such a case, in the resolution adopted, this Agency may require the

responsible so that within the period to be determined:

- Evidence that the requests for the exercise of the rights are dealt with effectively.

rights of the interested parties when they proceed to request them, in the sense expressed in the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, according to what has been stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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7/10

1. INITIATE SANCTIONING PROCEDURE against D.A.A.A. with NIF ***NIF.1, for the alleged violation of article 17 of the GDPR, typified in article 83.5.a) of the aforementioned GDPR.

2. APPOINT R.R.R. as Instructor and S.S.S. as Secretary, indicating that any of they may be challenged, if applicable, 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).

3. INCLUDE the claim in the disciplinary file, for evidentiary purposes.
filed by the claimant and their documentation, the documents obtained and generated by the Inspection Services; documents, all of which make up the

proceedings.

4. THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1 and article 58.2.b) of the RGPD, the sanction that could correspond for the violation of the Article 15 of the GDPR would be €2,000 (two thousand euros), without prejudice to what is of the instruction.

5. NOTIFY this Agreement to D. A.A.A. with NIF ***NIF.1, indicating expressly their right to a hearing in the procedure and granting them a period of TEN BUSINESS DAYS to formulate the allegations and propose the evidence that consider appropriate. In your pleadings you must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the It 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 for Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed is a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% of the sanction that should be imposed in the present procedure. With the application of this reduction, the penalty for the infraction would be established at 1,600 euros, resolving the procedure with the imposition of this sanction.

In the same way, it 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 sanction for the infringement would be established at 1,600 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to that corresponds to apply for the recognition of responsibility, provided that this acknowledgment of responsibility is revealed within the term granted to formulate allegations at the opening of the procedure. The pay voluntary payment of the amount referred to in the preceding paragraph may be made at any

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8/10

time before resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at 1,200 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (1,600 or 1,200 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened 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 reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue 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 agreement or, where appropriate, the start agreement project.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted 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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Mar Spain Marti

Director of the Spanish Data Protection Agency

SECOND: On September 21, 2022, the claimed party has proceeded to the

payment of the penalty in the amount of 1200 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the

recognition 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 appeal via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

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9/10

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 Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility, The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the The competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves. 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 resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202105649, in accordance with the provisions of article 85 of the LPACAP.

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

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10/10

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

936-040822

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