

□ File No.: PS/00007/2022

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following

### BACKGROUND

FIRST: Dated September 1, 2021, by the Director of the Agency

Spanish Data Protection, a resolution was issued in the sanctioning procedure  
number PS/00230/2021, filed against A.A.A. (hereinafter, the claimed party). In  
said resolution, in addition to directing a warning, required the adoption of the  
following measure:

“SECOND: REQUIRE A.A.A., with NIF \*\*\*NIF.1, under the provisions of the  
article 58.2 d) of the RGPD, so that within ten business days from this act  
of notification accredits before this body the adoption of measures to facilitate  
information to the people whose personal data it collects, in accordance with the provisions of  
article 13 of the RGPD.”

SECOND: The resolution of the sanctioning procedure was notified to the party  
claimed through the publication of an announcement in the "Official State Gazette" in  
date September 29, 2021, because previous attempts were unsuccessful  
notification by certified postal mail, pursuant to the provisions of articles  
42.2 and 44 of Law 39/2015, of October 1, of the Common Administrative Procedure  
of the Public Administrations (hereinafter, LPACAP), as certified  
on the record.

THIRD: After the expiration of the term indicated in the resolution without this  
Agency had received any writing on the measures implemented by the  
claimed party, he was requested again so that, within a period of ten

working days, it will certify before this Agency that it has adopted the corrective measures timely, in accordance with what was agreed in the aforementioned Resolution.

This request was received by the person in charge on November 10, 2021, as stated in the Post Office certificate in the file.

FOURTH: The respondent has not sent any response to this Agency that certifies compliance with the imposed measure.

FIFTH: There is no ordinary appeal against the aforementioned resolution. administrative. Likewise, the interested party has not stated his intention to file contentious-administrative appeal, nor is this Agency aware that the same has been filed and a precautionary suspension of the resolution has been requested.

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SIXTH: On January 14, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the GDPR.

SEVENTH: Notification of the aforementioned start-up agreement in accordance with the established rules in the LPACAP and after the term granted for the formulation of allegations, has verified that no allegation has been received by the respondent party.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: The resolution of the sanctioning procedure and the subsequent requirement indicated in the first and third antecedents were notified in accordance with the provided in articles 42 and 44 of the LPACAP.

SECOND: The respondent has not sent any response to this Agency that certifies compliance with the imposed measures.

THIRD: The notification of the agreement to initiate this procedure sanctioning was practiced in accordance with the provisions of articles 42 and 44 of the LPACAP.

FOURTH: The respondent party has not submitted arguments to the agreement to initiate this sanctioning procedure within the period indicated for it.

#### 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 and 48.1 of the Law

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Organic 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 Data Protection Agency.

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

unfulfilled mandate

In accordance with the evidence available at the present time of the sanctioning procedure, it is considered that the claimed party has breached the resolution of the Spanish Agency for Data Protection in relation to the measures that were imposed on him.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to the claimed party, for violation of article 58.2.d) of the GDPR, which provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed below:

(...)

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

Typification and qualification of the infraction

### III

This infringement is typified in article 83.6 of the RGPD, which stipulates the following:

“Failure to comply with the resolutions of the control authority pursuant to article 58, paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.”

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

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### IV

Imputed sanction

Based on the facts set forth, an administrative fine is imposed on the claimed party, for the violation of article 58.2 of the RGPD typified in article 83.6 of the GDPR.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for a violation of Article 58.2

of the RGPD, typified in Article 83.6 of the RGPD, a fine of 600.00 euros

(SIX HUNDRED euros).

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

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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 in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal 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

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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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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