

□ File No.: PS/00054/2022

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 February 25, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate disciplinary proceedings against DESPACHO
IBERFORO MADRID SLP (hereinafter the claimed party). notified of the agreement
beginning and after analyzing the allegations presented, on April 1, 2022,
issued the proposed resolution that is transcribed below:

<<

File number: PS/00054/2022

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

BACKGROUND

FIRST: Dated May 14, 2021, by the Director of the Spanish Agency
of Data Protection, a resolution was issued in the procedure for exercising
rights number TD/00048/2021, filed against DESPACHO IBERFORO MADRID
SLP (hereinafter, the claimed party). In said resolution, the adoption of
the following measures:

“ESTEEM the claim made by A.A.A. and urge the IBERFORO OFFICE
MADRID SLP, with CIF B83327320, so that, within ten business days
following the notification of this resolution, send to the complaining party
certification by which the right of Suppression exercised is addressed or denied

reasoned indicating the reasons why it is not appropriate to attend to the request, in accordance with the provisions of the body of this resolution. The actions carried out as a result of this Resolution must be reported to this Agency within the same period. Failure to comply with this resolution could entail the commission of the infraction considered in article 72.1.m) of the LOPDGDD, which will be sanctioned, in accordance with art. 58.2 of the GDPR.”

SECOND: The resolution of the indicated procedure was reliably notified on May 15, 2021 to the claimed party, granting him a period of ten business days for the adoption of the imposed measures, as evidenced on the record.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

THIRD: On September 9, 2021, the claimant filed a written in which it informed this Agency that it had not complied with the resolution, since the right of suppression has not been heeded or the right of deletion has been denied. reasoned form in the terms described above.

FOURTH: Given that this Agency had not received any written information on the measures implemented by the claimed party, they were requested again to that, within a period of ten business days, prove that they have adopted the measures timely corrections, in accordance with what was agreed in the aforementioned resolution.

This requirement was collected by the person in charge on September 13, 2021, as stated in the Notific@ certificate that is in the file, without To date, the party complained against has sent any response to this Agency that

certifies compliance with the imposed measures.

FIFTH: On February 7, 2022, the respondent filed a new brief in which it reiterated that the resolution continued not to be complied with by the claimed.

SIXTH: Against the aforementioned resolution, in which the adoption of measures was required, There is no ordinary administrative appeal due to the expiration of the deadlines established for it. Likewise, the interested party has not stated his intention to file a contentious-administrative appeal, nor is this Agency aware that the same has been filed and a precautionary suspension of the resolution.

SEVENTH: According to the report collected from the AXESOR tool, the entity DESPACHO IBERFORO MADRID SLP is an SME (Microenterprise) incorporated in in 2002, and with a turnover of 349,730 euros in 2018.

EIGHTH: On February 25, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged violation of Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD).

NINTH: The aforementioned initiation agreement was collected by the person in charge on the 1st of March 2022, as stated in the Notific@ certificate in the file.

TENTH: Dated March 11, 2022 and entry registration number REGAGE22e00006499965, the respondent filed a pleadings brief in the which states, in short, that the publication referred to in the resolution of the procedure TD/00048/2021 is legitimate, since the data reproduced in

its website faithfully reflect the content of the corporate purpose substitution deed and adaptation to Law 2/2007 of March 15, granted by the mercantile DESPACHO IBERFORO MADRID SLP and registered in the Mercantile Registry of Madrid, being public

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

and notorious its content and therefore the authorization of the party is not necessary.

claimant for publication.

ELEVEN: Attached as an annex is a list of documents in the process.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The resolution of the procedure for exercising rights, which includes the requirement for compliance with the measures imposed on the claimed party, was notified electronically, in accordance with the provisions of article 43 of the LPACAP. Said resolution became final and enforceable by the expiration of the terms foreseen for the interposition of the resources indicated therein.

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 carried out electronically through the Notific@ system, being collected by the person in charge on March 1, 2022.

FOURTH: The party complained against has presented the arguments to the agreement to initiate

this sanctioning procedure collected in the tenth antecedent.

FOUNDATIONS OF LAW

Yo

Competition

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD) recognizes each

control authority, and according to the provisions of 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), the Director of the

Spanish Agency for Data Protection is competent to initiate and resolve this

process.

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

Allegations to the initiation agreement

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

In response to the allegations presented by the respondent entity, it should be noted the next.

Against the resolution issued in the procedure for the exercise of rights number

TD/00048/2021, in which the adoption of measures is required, no recourse is possible

ordinary in administrative proceedings by the expiration of the periods established for it.

Likewise, the interested party has not stated his intention to file an appeal.

contentious-administrative, nor is this Agency aware that it has been

filed and a precautionary suspension of the resolution has been requested. Therefore, the

The aforementioned resolution is firm because it has been consented to by the expiration of the deadlines, and

therefore fully enforceable.

Likewise, the respondent is reminded that, regardless of the sanction

that could fall in this sanctioning procedure, the obligation to

comply with the aforementioned resolution, and the party complained against must send to the complaining party

certification by which the right of suppression exercised is addressed or denied

reasoned indicating the reasons why it is not appropriate to attend to the request.

In addition, the actions carried out as a result of said resolution must

be reported to this Agency.

III

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

IV

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/8

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 behavior:

"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."

v

sanction proposal

In accordance with the facts exposed, it is considered that it is appropriate to impute a sanction to the party claimed for the violation of article 58.2 of the RGPD typified in the

article 83.6 of the RGPD. The sanction that should be imposed is a fine.

administrative.

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.

In view of the foregoing, the following is issued:

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction
OFFICE IBERFORO MADRID SLP, with CIF B83327320, for an infringement of the
Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD, a fine of 1,000.00
€ (thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,
informs that 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 the amount of the same. With the application of this
reduction, the sanction would be established at 800.00 euros and its payment will imply the
termination of the procedure. The effectiveness of this reduction will be conditioned to the
Withdrawal or waiver of any administrative action or recourse against the
sanction.

In case you chose to proceed with the voluntary payment of the amount specified
above, in accordance with the provisions of article 85.2 cited, must do so
effective by depositing it in restricted account number ES00 0000 0000 0000 0000
0000 opened in the name of the Spanish Agency for Data Protection in the entity
banking CAIXABANK, S.A., indicating in the concept the reference number of the
procedure that appears in the heading of this document and the cause, for
voluntary payment, reduction of the amount of the sanction. Also, you must send the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

proof of entry to the General Subdirectorate of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.

so that within TEN DAYS you can allege whatever you consider in your defense and

present the documents and information that it considers pertinent, in accordance with

Article 89.2 of the LPACAP.

BBB

INSTRUCTOR

>>

1105-040222

EXHIBIT

SECOND: On April 5, 2022, the claimed party has proceeded to pay

the sanction in the amount of 800 euros making use of the reduction foreseen in the

motion for a resolution transcribed above.

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

resolution proposal.

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 and 48.1 of the Law

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."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

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 PS/00054/2022, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to DESPACHO IBERFORO MADRID SLP.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

968-240122

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es