

□ File No.: PS/00551/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On July 7, 2021, by the Director of the Spanish Agency for
Data Protection resolution was issued in sanctioning procedure number
PS/00459/2020, filed against MALAGATROM, S.L.U (hereinafter, the party
claimed). In said resolution, in addition to sanctioning with the imposition of a fine,
required the adoption of the following measure:

“SECOND: REQUEST the entity MALAGATROM, S.L.U. that, within a
month, adopt the necessary measures to adapt its actions to the regulations of
protection of personal data, with the scope expressed in the Foundation of
Law VII of this resolution.”

In the aforementioned Foundation of Law VII, the following was collected:

“Therefore, in this case, it is appropriate to require the respondent so that, within the term
determine, remove all comments from your page on the “Amazon” platform
inserted by the claimant herself in which personal data of her
clients or third parties; and adopt the appropriate measures to avoid similar events
may be repeated in the future, warning everyone in your organization
about the illegality of this conduct.”

SECOND: The resolution of the sanctioning procedure was notified
irrefutably on July 7, 2021 to the claimed party, granting the
period of one month for the adoption of the imposed measures, as stated
accredited in the file.

THIRD: After the expiration of the indicated term without this Agency having received any written on the measures implemented by the claimed party, it is proceeded to request them again so that, within ten working days, prove to this Agency that they have adopted the appropriate corrective measures, in attention to what was agreed in the aforementioned Resolution.

This requirement was collected by the person in charge on September 1, 2021, as stated in the certificate that is in the file.

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

FIFTH: Against the aforementioned resolution, in which the adoption of measures is required, There is no ordinary administrative appeal due to the expiration of the deadlines

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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.

SIXTH: According to the report collected from the AXESOR tool, the entity MALAGATROM, S.L.U is an SME (micro-enterprise), established in 2012, and with a turnover of 243,018 euros in 2014, the last financial year presented according to this tool.

SEVENTH: On December 9, 2021, 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 RGD, typified in Article 83.6 of the RGD Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGD).

EIGHTH: The aforementioned initial agreement was collected by the person in charge on the 14th of December 2021, as stated in the certificate in the file.

After the period of ten business days granted in the initial agreement for the presentation of pleadings, the respondent party has not presented pleadings.

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 RGD 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 requirement for the compliance with the measures imposed therein indicated in the background first to third were notified electronically, in accordance with the provisions of the

Article 43 of the LPACAP.

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

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THIRD: The notification of the agreement to initiate this procedure sanctioning was carried out electronically, being collected by the person in charge with date December 14, 2021.

FOURTH: The respondent party has not submitted arguments to the agreement to initiate this sanctioning procedure.

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

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:

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“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 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.”

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. In Consequently, the sanction to be imposed must be graduated according to the criteria established in article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 of the RGPD.

In the initial assessment it is appreciated that no mitigating factor is applicable and

They have considered, as aggravating, the following facts:

- Art. 83.2 b) RGPD: the intention or negligence in the infringement. It is a company that is not newly created and should have procedures established for the fulfillment of the obligations contemplated by the regulations of data protection, among them, to comply with the resolutions of the authority of control.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MALAGATROM, S.L.U, with CIF B93178614, for a infringement of Article 58.2 of the RGD, typified in Article 83.6 of the RGD, a fine of 1,000.00 euros (THOUSAND euros).

SECOND: NOTIFY this resolution to MALAGATROM, S.L.U.

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

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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

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/], 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.

Sea Spain Marti

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