

□ File No.: EXP202212586

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: As a consequence of a claim filed with the Spanish Agency
of Data Protection against NORDETIA CLINICS IBERIA, S.L. with NIF B02880201
(hereinafter, the claimed party), appreciating indications of a possible non-compliance
of the provisions of Regulation (EU) 2016/679 (General Regulation of Protection
of Data, hereinafter GDPR), proceedings were initiated with file number
EXP202203970.

In accordance with the provisions of article 65 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights
(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the Delegate
of Data Protection that in his case has been designated, requesting him to send
to this Agency the information and documentation indicated. This request for
information, which was reliably notified on April 17, 2022, was not
answered by the claimed party. On May 27, 2022, after three
months from its entry into the AEPD, the claim was admitted for processing.

SECOND: The General Subdirectorate of Data Inspection proceeded to carry out
of previous investigative actions to clarify the facts in
matter, by virtue of the investigative powers granted to the authorities of
control in article 57.1 of the GDPR, and in accordance with the provisions of Title
VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

Within the framework of the investigation actions, the defendant was sent a

information requirement, related to the claim outlined in the section

first, so that within a period of ten working days, he presented to this Agency the

information and documentation indicated therein. This request was accepted

by the person in charge on August 30, 2022, as stated in the acknowledgment of receipt

that works in the file.

THIRD: After the indicated period has elapsed without this Agency having received

any writing on the information and documentation requested, exceptionally,

This request was sent again by postal mail.

This

requirement was collected by the person in charge on October 14, 2022, as

It appears in the acknowledgment of receipt that is in the file.

FOURTH: Regarding the required information, the claimed party has not submitted

any response to this Spanish Data Protection Agency.

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FIFTH: According to the report collected from the AXESOR tool, the entity

NORDETIA CLINICS IBERIA, S.L. is an SME, group matrix, incorporated in the

year 2020. According to the accounts of the last published financial year, 2021, the group

economico has a global business volume of 1,319,816 euros.

SIXTH: On December 16, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged violation of Article 58.1 of the GDPR, typified in Article 83.5 of the

GDPR.

SEVENTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) and after the period granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed in the agreement to open the procedure - establishes that if no arguments within the established term on the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement of beginning of the disciplinary file determined the facts in which the imputation, the infringement of the GDPR attributed to the defendant and the sanction that could impose. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The information requirement indicated in the second precedent was notified electronically, in accordance with the provisions of article 43 of the LPACAP, and the information request indicated in the third precedent was delivered reliably by post.

SECOND: The claimed party has not responded to the information requirements carried out by this Agency within the terms granted for it within the framework of the research actions referenced with the code EXP202203970.

THIRD: Notification of the agreement to start this procedure

disciplinary action was carried out in accordance with the provisions of articles 42 and 44 of the LPACAP.

FOURTH: The claimed party has not submitted allegations to the agreement to start this disciplinary procedure within the period indicated for it.

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), 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 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

breached obligation

Based on the available evidence, it is considered that the party claimed has not provided the Spanish Data Protection Agency with the information you requested.

With the indicated conduct of the claimed party, the investigative power that the Article 58.1 of the GDPR gives the control authorities, in this case, the AEPD, has been hampered.

Therefore, the facts described in the "Proven facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the Article 58.1 of the GDPR, which provides that each control authority shall have, among his investigative powers:

“a) order the person responsible and the person in charge of the treatment and, where appropriate, the representative of the manager or manager, who provide any information that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or the person in charge of the treatment the alleged infractions of the present Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of accordance with the procedural law of the Union or of the Member States.”

Classification and classification of the offense

II

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In accordance with the available evidence, it is considered that the exposed facts could constitute an infringement, attributable to the party claimed.

This infringement is typified in article 83.5.e) of the GDPR, which considers as such: "no facilitate access in breach of article 58, section 1."

The same article establishes that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) maximum of the total annual global business volume of the previous financial year, opting for the of greater amount.

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

"ñ) Failing to facilitate access by data protection authority personnel competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority of competent data protection."

IV.

sanction imputed

In accordance with the facts exposed, it is considered that it corresponds to impute to the party claimed for the violation of article 58.1 of the GDPR typified in article 83.5 e)

of the GDPR. The sanction that would be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. In Consequently, the sanction to be imposed must be graduated according to the criteria established in article 83.2 of the GDPR, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR.

It is appreciated that no mitigating or aggravating circumstance is applicable.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: IMPOSE NORDETIA CLINICS IBERIA, S.L., with NIF B02880201, for an infringement of Article 58.1 of the GDPR, typified in Article 83.5 of the GDPR, a fine of 3,000.00 euros (THREE THOUSAND euros).

SECOND: ORDER NORDETIA CLINICS IBERIA, S.L. that, according to the power of investigation provided in article 58.1.a) of the GDPR, is provided, in the

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within ten business days, the information required in the requirements made within the framework of actions with file number EXP202203970.

THIRD: NOTIFY this resolution to NORDETIA CLINICS IBERIA, S.L..

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code: XXXXXXXXXX), opened on behalf of the Spanish Data Protection Agency in the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its collection in executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment term It will be until the 5th of the second following or immediately following business month.

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 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through

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

of the Electronic Registry 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 registries 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

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contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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