

□ File No.: EXP202212017

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On June 10, 2022, by the Director of the Spanish Agency for
Data Protection resolution was issued in sanctioning procedure number
PS/00439/2021, filed against INMARAN ASESORES S.L. (hereinafter, the part
claimed). In said resolution, in addition to sanctioning with the imposition of a fine,
required the adoption of the following measures:

“SECOND: TO ORDER INMARÁN ASESORES, S.L., with NIF B85508232, that, in
in accordance with article 58.2.d) of the RGPD, proceed, within a period of one month
computed from the time this resolution became executive, to adopt all the
measures that are essential to guarantee that it informs in the terms
provided for in article 13 of the GDPR to the interested parties from whom data is collected
personal, at the time of collection.”

SECOND: The electronic notification of the resolution of the disciplinary procedure
to the claimed party was not collected by the person responsible within the period for making the claim
disposition, understood as rejected in accordance with the provisions of art. 43.2 of the law
39/2015, of October 1, of the Common Administrative Procedure of the
Public Administrations (LPACAP, hereinafter) as stated in the certificate that
work on file.

THIRD: Once the period indicated in the resolution has elapsed without this Agency having
had received any writing on the measures implemented by the party
claimed, we proceeded to request them again so that, within ten days

working days, they will prove to this Agency that they have adopted the corrective measures timely, in attention to what was agreed in the aforementioned Resolution.

Exceptionally, this request was sent by post along with

with a copy of said Resolution, reminding you of your obligation to relate by

electronic means in accordance with the provisions of the LPACAP. The requirement was

collected by the person in charge on July 18, 2022, as stated in the

Postal certificate that is in the file.

FOURTH: After the term indicated in the previous event has elapsed without this Agency

any writing had been received on the implemented measures, a

new term of ten business days, to prove to this Agency having adopted the

appropriate corrective measures, in accordance with what was agreed in the aforementioned Resolution.

Said requirement was collected by the person in charge on October 6, 2022,

as stated in the postal certificate that is in the file.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

FIFTH: The claimed party has not sent any response to this Agency that

certify compliance with the imposed measures.

SIXTH: 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

established for it. Likewise, the interested party has not expressed 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

INMARAN ASESORES S.L. is an SME established in 2008, and with a

turnover of 114,150 euros in 2014.

EIGHTH: On November 30, 2022, the Director of the Spanish Agency

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

for the alleged violation of Article 58.2 of the GDPR, typified in Article 83.6 of the

GDPR.

NINTH: Notification of the aforementioned initiation agreement in accordance with the established norms

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 resolution of the disciplinary procedure and the requirements for the compliance with the measures imposed therein, indicated in the background first to fourth, were notified in accordance with the provisions of the LPACAP.

SECOND: The claimed party has not sent any response to this Agency that certify compliance with the imposed measures.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

THIRD: Notification of the agreement to start this procedure disciplinary action was carried out electronically, being collected by the person in charge with dated December 2, 2022.

FOURTH: The claimed party has not submitted allegations to the agreement to start this disciplinary procedure.

FUNDAMENTALS OF LAW

Yo

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 breached the Resolution of the Spanish Agency for the Protection of Data in relation to the measures that were imposed.

Therefore, the facts described in the "Proven facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the Article 58.2.d) of the GDPR, which provides the following:

"2. Each control authority will have all the following corrective powers indicated below:

(...)

d) order the person in charge or person 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;"

Classification and classification of the offense

II

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

"Failure to comply with the resolutions of the control authority under article 58, section 2, will be penalized in accordance with section 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 alleged infringement prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as the following behavior is very serious:

"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.

sanction imputed

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 GDPR typified in the article 83.6 of the GDPR. The sanction to 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 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 of the GDPR.

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

V

adoption of measures

This Agency agrees to impose on the controller the adoption of appropriate measures

to adjust its performance to the regulations mentioned in this act, in accordance with the established in the aforementioned article 58.2 d) of the GDPR, according to which each authority of control may “order the person in charge or person in charge of the treatment that the processing operations comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period...”.

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 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

FIRST: IMPOSE INMARAN ASESORES S.L., with NIF B85508232, for a infringement of Article 58.2 of the GDPR, typified in Article 83.6 of the GDPR, a fine of 1,000.00 euros (THOUSAND euros).

SECOND: REQUEST INMARAN ASESORES S.L., with NIF B85508232, so that within 10 business days from the notification of this Resolution accredit before this body the adoption of all the measures ordered in the Resolution of the disciplinary procedure PS/00439/2021.

THIRD: NOTIFY this resolution to INMARAN ASESORES 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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), 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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

of the Electronic Registry of the Agency [<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

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

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

