

□ File No.: EXP202300361

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: On October 10, 2022, by the Director of the Spanish Agency  
of Data Protection, a resolution was issued in the sanctioning procedure of the  
file number EXP202204455, filed against A.A.A. (hereinafter, the part  
claimed). In said resolution, in addition to sanctioning the imposition of two  
fines, the adoption of the necessary measures was ordered to stop the conduct or  
the effects of the infractions committed are corrected. Specifically, in Point Three  
of the operative part the following was agreed:

THIRD: REQUEST A.A.A. so that, within a month from the  
notification of this resolution, adapt its action to the regulations of  
protection of personal data, with the scope expressed in the Basis of  
Right VIII of this resolution, and justify before this Spanish Protection Agency  
of Data the attention of this requirement.

In accordance with what is indicated in the aforementioned Legal Foundation VIII of the Resolution,

This requirement includes the following items:

- a) Suppress the capture of sounds by the video surveillance system object of the  
performances.
- b) Compliance with the duty to inform, in relation to the aforementioned system of  
video surveillance, providing workers with the information required by the GDPR and  
completing the information that is offered by means of the informative poster installed in the  
establishment, the location of which should be changed so that it is easily visible.

SECOND: The resolution of the disciplinary procedure was notified reliably on October 16, 2022 to the claimed party, granting the period of one month for the adoption of the imposed measures, as stated certified in the file.

THIRD: After the indicated period has elapsed without this Agency having received any writing on the measures implemented by the claimed party, proceeded to require them again so that, within ten business 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 November 22, 2022, as stated in the acknowledgment of receipt in the file.

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FOURTH: On December 2, 2022, they registered in this Agency, with the numbers REGAGE22e00055586620 and REGAGE22e00055587675, two separate writings presented by the claimed party, through which they provide a copy of the contract signed with an external entity in order to implement policies appropriate technical and organizational measures to apply the security measures that establishes the regulations for the protection of personal data.

However, nothing is indicated in said writings about compliance with what is indicated in the resolution of October 10, 2022, in relation to the suppression of the sound capture by the video surveillance system and on compliance with the duty to inform

Consequently, a request for justification was sent to him again, in the within fifteen business days of compliance with the indicated measures. This requirement was collected by the person in charge on December 14, 2022, as stated in the acknowledgment of receipt in the file.

FIFTH: On December 29, 2022, the entry registered with this Agency, with number REGAGE22e00060084163, written by which the claimed party declares that it has scrupulously complied with the regulations relating to personal data protection. Likewise, it affirms that there has never been any recruitment of sound of the surveillance system and that at all times it has complied with the required regarding the duty of information and informative posters. Also alleges that all of the above would have been accredited if the opportune visit of inspection required multiple times.

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.

On the other hand, on January 11, 2023, he registered with this Agency, with the number of entry REGAGE23e00002009810, document of the National Court claiming the administrative file EXP202204455 accompanied by a copy of the appeal contentious-administrative filed. This Agency confirms that in said appeal there was no a precautionary suspension of the appealed resolution has been requested, therefore it is not application of the provisions of article 90.3 of law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations.

SEVENTH: On January 25, 2023, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings 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 Public Administrations (in

hereafter, LPACAP), for the alleged infringement of Article 58.2 of the GDPR, typified in Article 83.6 of the GDPR Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter GDPR).

EIGHTH: The aforementioned initiation agreement was collected by the claimed party on the 26th January 2023, as stated in the acknowledgment of receipt in the file.

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NINTH: Dated February 10, 2023 and entry registration number

REGAGE23e00008909541, the claimed party submits a written statement of allegations to the

initiation agreement in which it again states that the requirements of this

Agency have been taken care of and that has scrupulously complied with the regulations

regarding the protection of personal data. Furthermore, it reiterates that there has never been

sound capture of the video surveillance system and that at all times it has been

complied with the requirements regarding the duty of information and informative posters.

He insists that all this could have been verified with a routine visit from

Agency inspection.

TENTH: On March 6, 2023, a resolution proposal was formulated, in the

that it was proposed that the Director of this Agency impose on the party

claimed, for a violation of Article 58.2 of the GDPR, typified in Article 83.6

of the RGPD, a fine of 400 euros, ordering again that he prove, within the term

of ten business days, having proceeded to comply with the measures imposed in the

resolution of file EXP202204455.

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. Bliss The resolution became final and enforceable due to the expiration of the periods established for the filing of the resources indicated therein.

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

THIRD: Notification of the agreement to start this procedure sanction was collected by the claimed party on January 26, 2023.

FOURTH: The claimed party has presented allegations to the agreement to initiate this disciplinary procedure as stated in the ninth antecedent.

FIFTH: The notification of the proposed resolution was received by the party claimed on March 6, 2023.

SIXTH: The claimed party has not presented allegations to the proposal of resolution of this sanctioning 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

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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."

#### Arguments to the Commencement Agreement

#### II

In response to the allegations to the agreement to initiate this file submitted by the claimed party, in reiteration of what was stated in the fifth antecedent, the following should be noted.

The claimed party has not accredited before this Agency in any of its responses compliance with the measures imposed in the resolution, that is, the suppression of the capture of sounds by the video surveillance system object of the actions and compliance with the duty to inform, in relation to the aforementioned system video surveillance, providing workers with the information required by the GDPR and completing the information that is offered by means of the informative poster installed in the establishment, the location of which should be changed so that it is easily visible.

The means of verification of compliance are not freely available to the responsible, in this case arranging that a face-to-face inspection be carried out, but, within the powers that the RGPD grants to the control authorities, they are These are the ones who will opt for the one that is most appropriate in each case, being able to required to send the necessary documents and data. In this case, it is the

sanctioned who must send justification of compliance with the measures imposed in the resolution, as expressly indicated in the unfulfilled order reproduced in the third antecedent. That is why the refusal to prove adaptation to the regulations by sending the documentation that justifies it, even after having been reiterated on multiple occasions, implies a breach of a resolution fully executive.

II

breached obligation

Based on the available evidence, it is considered that the party claimed has breached the resolution of the Spanish Data Protection Agency in relation to the measures imposed on him.

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:

(...)

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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

IV.

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

"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."

V

sanction imputed

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.

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 amount of 400.00 euros.

SAW



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...”.

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It is warned that not meeting the requirements of this body this body may be considered as an administrative infraction in accordance with the provisions of the RGD, classified as an infringement 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:

FIRST: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for a violation of Article 58.2 of the GDPR, typified in Article 83.6 of the GDPR, a fine of 400.00 euros (Four hundred euros).

SECOND: REQUIRE A.A.A., with NIF \*\*\*NIF.1, so that within 10 days working days from the notification of this Resolution proves to the Agency the adoption of the measures ordered in the resolution of the disciplinary procedure of the file number EXP202204455, that is, that proves having proceeded to the suppression of the capture of sounds by the video surveillance system object of the

actions and compliance with the duty to inform, in relation to the aforementioned system video surveillance, providing workers with the information required by the GDPR and completing the information that is offered by means of the informative poster installed in the establishment, the location of which should be changed so that it is easily visible.

THIRD: NOTIFY this resolution to A.A.A..

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 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, 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

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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

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

Notification of this resolution would terminate the precautionary suspension.

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Director of the Spanish Data Protection Agency

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