

□ File No.: PS/00019/2022

## 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 3, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against FLORAQUEEN

FLOWERING THE WORLD S.L. (hereinafter, the claimed party), through the

Agreement that is transcribed:

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File No.: PS/00019/2022

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection, and in  
based on the following

### FACTS

FIRST: Through the “Internal Market Information System”, regulated by the

Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of 25

October 2012 (IMI Regulation), whose objective is to promote cooperation

cross-border administrative assistance, mutual assistance between Member States and the

exchange of information, was received in this Spanish Agency for the Protection of

Data (AEPD) a claim, dated November 11, 2020, made before

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the data protection authority of \*\*\*COUNTRY.1. Transfer of this claim to the AEPD is carried out in accordance with the provisions of article 56 of the Regulation (EU) 2016/679, (General Data Protection Regulation, hereinafter RGPD), taking into account its cross-border nature and that this Agency is competent to act as the main control authority.

The aforementioned claim is made against FLORAQUEEN FLOWERING THE WORLD SL (hereinafter, the claimed party), with CIF B63609051, with registered office and unique establishment in Spain.

SECOND: In view of the foregoing, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions with code E/01679/2021, for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of the RGPD and in accordance with the provisions of Title VII, Chapter I, Section second, of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights.

Within the framework of the investigative actions, the respondent was sent two requests for information, related to the claim outlined in the section first, so that, within a period of ten working days, it could present to this Agency the information and documentation indicated therein. The first of them was registered departure on March 11, 2021, while the second is registered on November 17, 2021.

FOURTH: The information requirements were carried out in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter, LPACAP). The first

request was not collected by the person in charge within the period of implementation provision, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP as of March 22, 2021, while the second was picked up by responsible on November 25, 2021, as stated in the certificates of Notific@ that work in the file.

FIFTH: Regarding the required information, the respondent has not submitted any response to this Spanish Data Protection Agency.

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SIXTH: According to the report collected from the AXESOR tool, the entity FLORAQUEEN FLOWERING THE WORLD S.L. is an SME (Medium), constituted in 2004, and with a turnover of 21,574,161 euros in 2020.

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, 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 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 agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the respondent party has not procured to the Agency Spanish Data Protection the information that required.

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With the aforementioned conduct of the defendant, the power of investigation that the Article 58.1 of the RGPD confers on the control authorities, in this case, the AEPD, has been hampered.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to the claimed party, for violation of article 58.1 of the RGPD, which provides that each control authority will have, among its powers of research:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, 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 in charge of the treatment the presumed 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 in accordance with the procedural law of the Union or of the Member States.”

### III

#### Typification and qualification of the infraction

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the investigation, it is considered that the exposed facts could constitute a infraction, attributable to the claimed party.

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

In the same article it is established 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%) as a maximum of the

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global total annual turnover of the previous financial year, opting for the of greater 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 conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority 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 proposal

According to the exposed facts, without prejudice to what results from the investigation of the procedure, it is considered that it corresponds to charge the party claimed by the

violation of article 58.1 of the RGD of the RGD. The

The sanction that should 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 RGD. In

Consequently, the sanction to be imposed must be graduated according to the criteria

established in article 83.2 of the RGD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGD.

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

They have considered, as aggravating, the following facts:

- Art. 83.2 b) RGD: the intention or negligence in the infringement. It is a company that is not newly created and should have procedures

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established for the fulfillment of the obligations contemplated by the regulations of data protection, among them, to respond to the requirements of the authority of control.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: START A SANCTION PROCEDURE FOR FLORAQUEEN

FLOWERING THE WORLD S.L., with CIF B63609051, for the infringement of article 58.1 of the RGPD, typified in art. 83. 5 e) of the aforementioned RGPD.

SECOND: APPOINT A.A.A. and, as secretary, to B.B.B.,

indicating that any of them may be challenged, where appropriate, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the information requirements issued by the Subdirector General for Inspection of Data within the framework of the actions with code E/01679/2021 and the accreditation of notification has been made.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 3,000.00 euros, without prejudice to what result of the instruction.

FIFTH: NOTIFY this agreement to FLORAQUEEN FLOWERING THE WORLD S.L., with CIF B63609051, granting a hearing period of ten days able to formulate the allegations and present the evidence that it considers convenient. In your brief of allegations you must provide your NIF and the number of

procedure at the top of this document.

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If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the sanction would be established at 2,400.00 euros, resolving the procedure with the imposition of this sanction.

Similarly, 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 its amount. With the application of this reduction, the sanction would be established at 2,400.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment



of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 1,800.00 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (2,400.00 euros or 1,800.00 euros), you must make it effective

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by depositing it in account number ES00 0000 0000 0000 0000 0000 open to

name of the Spanish Agency for Data Protection in the bank

CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On February 23, 2022, the claimed party has proceeded to pay of the sanction in the amount of 1800 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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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 [www.aepd.es](http://www.aepd.es)

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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

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/00019/2022, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FLORAQUEEN FLOWERING THE  
WORLD S.L.

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.

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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.

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