

Sanctioning administrative procedure of violations

Royal Decree 1572/1993 of 10 September, which approves the Regulation on sanctioning administrative procedure of the violations for breach of its obligations under the Law on the Public Statistical Function.

(This is an unofficial translation, the only legal binding text is the one published in the [Spanish Official Journal](#))

Article 10 of Law 12/1989, of 9 May, on the Public Statistical Function, sets out that the statistical services may request data from individuals and companies, whether domestic or foreign, on the condition that they reside in Spain, and in all cases requiring that the information provided be true, exact and complete, as well as supplied within the stipulated deadlines.

Likewise, article 7 of the aforementioned Law establishes a legal reserve principle for the determination of the statistics for whose preparation compulsory data is required. In the interests of said determination, the fourth additional section of law 4/1990, of 29 June, on the General State Budget for the year 1990 lists the statistics for whose preparation data of said compulsory nature may be required.

On the other hand, article 48 of the Law on Public Statistical Function establishes that failure to comply with the obligations imposed, with regard to statistics for state purposes, shall be sanctioned in accordance with the terms set out in the same order, and pursuant to article 54 of the same legal text, in accordance with that which ends Title V (Violations and Sanctions), the National Statistics Institute shall not impose very serious or serious sanctions, except by virtue of the file published to this effect, pursuant to Chapter II of Title VI of the Law on Administrative Processing of 17 July 1958, though it establishes that sanctions for slight violations shall be imposed with no more processing than the prior hearing of the interested party.

With the aforementioned Law on Administrative Procedures no longer in force, in the part of interest here, and with Law 30/1992, of 26 November, on the Legal Regime of the Public Administrations and Common Administrative Procedures having entered into force, by Royal Decree-Law 14/1993, of 4 August, sets out that, within a period of eighteen months, beginning with the entry into force (27 February 1993) of the Law, the adaptation thereof shall be carried out in the regulations of the administrative procedures, regardless of their rank, with specific mention of the effects upheld or dismissed produced by the sentence ruling. As a result, it is important to express that the Regulation on procedures for exercising the sanctioning power passed, which has been by Royal Decree 1398/1993, of 4 August, constitutes the basic regulating norm for the matter, even in the statistical area, in such a way that the regulations passed by the present Royal Decree consider only those specific application singularities, in all cases perfectly adapted to that generic and basic regulation.

By virtue of this, upon the proposal of the Minister of Economy and the Treasury, following approval of the Minister for the Public Administrations, in accordance with the State Council, and following deliberation of the Council of Ministers in the meeting held 10 September 1993.

IT IS AFFIRMED:

Single article

The present approves the Regulation on sanctioning administrative procedure of the violations for breach of its obligations in statistical matters established in Law 12/1989, of 9 May, on the Public Statistical Function, attached below.

Single final affirmation

The present Royal Decree and Regulation passed will enter into force on the day following the date of publication in the "Official State Gazette".

Given in Madrid, 10 September 1993.

JUAN CARLOS R.

The Minister of Economy and the Treasury,

PEDRO SOLBES MIRA

Regulation on sanctioning administrative procedure of the violations for breach of its obligations established in the Law of Public Statistical Function

CHAPTER I. General affirmations

Article 1

The procedure for exercising the sanctioning power, referred to in Title V of Law 12/1989, of 9 May, of the Public Statistical Function, shall be that regulated by Royal Decree 1398/1993, of 4 August, for which the Regulation on the procedure for exercising the sanctioning power is passed, with the singularities established in the following articles.

Article 2

1. The President of the National Statistics Institute (hereinafter, the INE) shall be responsible for selecting the initiation of the procedures; for the instruction, the Secretariat General of the INE, and for the resolution, the President of the aforementioned organisation, pursuant to article 48 of Law 12/1989, of 9 May.

In all cases, it must be understood that those civil servants designated for the instruction of the procedures shall be of an instructional body nature.

2. For those cases in which the sanctioning power corresponds to the Director of the Department of Customs and Special Taxes of the State Tax Administration Agency, pursuant to article 48.3 of Law 12/1989, of 9 May, the Director of the Regional Dependence of Customs and Special Taxes of the Special Delegation of the Tax Agency - or the authority that said person delegates - shall be responsible for the initiation and the instruction of the sanctioning power, in whose territorial area the tax address is located of the individual or company obligated to present the statistical data regarding the exchange of goods with other Member States, in application of European Parliament and Council Regulation (EC) no. 638/2004, of 31 March 2004, regarding the community statistics on the exchange of goods between Member States.

The responsibility for the resolution corresponds to the Director of the Department of Customs and Special Taxes of the State Tax Administration Agency.

CHAPTER II. Initiation of the procedures

Article 3

1. With the nature of activities prior to the respective proposals, the Provincial or Local Delegations of the National Statistics Institute, the units of the Central Services thereof, or as pertinent, of the Statistical Services of the General State Administration, or any other entities that are dependent thereof, shall have acted in accordance with the present article.

2. Any request for data formulated by the statistical services in order to fulfil their function, whether directly or through third parties enabled to this effect, shall be carried out with the express notification of the nature, the characteristics and the purposes of the statistics in question, as well as, as pertinent, the compulsory nature of the information collected, the protection provided by statistical secrecy, and likewise, in its place, of the sanctions that could be imposed by the responsible authority in cases of failure to collaborate or in cases of providing false, incorrect or incomplete data, or of having received it outside of the established time period to receive the information.

3. The warning of such extremes shall be made evident, truthfully, in the instruments used for the data collection (questionnaire, electronic equipment, etc.), in such a way that, with this measure, supposed allegation may be avoided,

by the interested parties (individuals or companies), of ignorance or lack of knowledge of the matter considered.

4. If the period established to provide said data ends without the interested party (individual or company) having completed the required data, in time and in form, the requiring administrative unit will repeat the request, made by any medium that enables proof of receipt, preferably by certified post, requiring compliance with the reglamentary requirement, and granting the interested party a period of fifteen calendar days, to be counted from the day following the date of notification, with a warning of the violations and sanctions that might be incurred if such requirement is not fulfilled, according to the indicated terms.

5. The action described in the section above shall be independent of whether, within the normal statistical management process, the service may be practiced regarding the interested parties, with regard to the rectification or completion of defective data or factual errors by them in the fulfillment of their work in the subject. Said rectification or supply of complementary information shall be collected by the responsible administrative unit through the customary communications, notifications or requirements sent to the interested parties, according to the customary procedure for the statistical process of data compilation.

6. The processing of prior actions, to which this article refers, is not applicable to the sanctioning procedures that are the responsibility of the Department of Customs and Special Taxes of the State Tax Administration Agency.

Article 4

If the period of fifteen days mentioned in the above article elapses without the interested party having completed the requirement set out by the Statistical administration, the information collection unit shall submit the facts occurred to the body responsible for initiating the procedures, together with a detailed report-proposal of the circumstances that might have arisen in the case in question.

CHAPTER III. Instruction phase

Article 5

1. The abbreviated procedures set out in article 54.2 of Law 12/1989, of 9 May, shall be preformed according to the following regulations, and pursuant to article 24 of the Regulation on the procedures for the exercise of the sanctioning power.

2. If the instructor observes the existence of a slight infringement, s/he must write a reasoned proposal for resolution, which shall be notified to the interested parties, granting them a period of seven days in which to allege what they deem appropriate for their defence. Once the allegations are received, or the period for

the presentation of them has elapsed, and if the instructor does not consider the proposition and practice of a test to be necessary, all events occurring shall be presented to the Presidency of the Institute so that it may adopt the appropriate resolution.

CHAPTER IV. Resolution phase

Article 6

1. The longest time period for processing the procedures that this Regulation covers shall be six months, counted as of the agreed date of initiation.
2. If there is no resolution after thirty days following the end of the six-month time period from the agreed initiation, bearing in mind the possible interruptions to the computation, due to causes that are attributable to the interested parties, this will consider the expiry date to be ended, as established in section 4 of article 43 of Law 30/1992, procedure to filing the actions, either as standard procedure by the responsible body to dictate resolution, or upon the request of any interested party.
3. The resolutions resulting from the procedures imply the end of the administrative route, and shall be executed immediately; ordinary administrative appeals may not be made against them.

Article 7. Electronic communications and notifications

1. For the purposes of the procedures regulated in this Royal Decree, when the sanctioning power corresponds to the National Statistics Institute, in accordance with article 27.6 of Law 11/2007, of 22 June, on Electronic Access of Citizens to Public Services, this establishes the compulsory use of electronic media for communications that the Administration must make with entities with a legal form of public limited company (with a tax identification number - NIF - beginning with the letter A), or private limited company (entities with a NIF beginning with the letter B), so long as the prior communication of the interested parties is involved.
2. For the assignment of the electronic address provided, Order PRE/878/2010, of 5 April, is followed, and which establishes the system for the electronic address provided in article 38.2 of Royal Decree 1671/2009, of 6 November, partially developing Law 11/2007, of 22 June.
3. For the purposes of the procedures regulated in this Regulation, when the sanctioning power corresponds to the Department of Customs and Special Taxes, Royal Decree 1363/2010, of 29 October, shall be applied, as it regulates cases of compulsory administrative notifications and communications by electronic media, in the area of the State Tax Administration Agency, or the regulation replacing it shall be applied.

Single additional affirmation

Qualification criteria of the violations, and of the graduation of the sanctions within the scope of the Department of Customs and Special Taxes of the State Tax Administration Agency.

1. For those cases in which the sanctioning power corresponds to the Director of the Department of Customs and Special Taxes of the State Tax Administration Agency, pursuant to article 48.3 of Law 12/1989, of 9 May, this shall bear in mind the qualification and assessment of the serious jeopardy for the service, false declarations, opposition to judicial review and graduation of the sanctions established in the following sections.

2. It shall be considered that a serious jeopardy is caused for the service when, in a reference period set out in article 6 of Regulation (EEC) no. 638/2004, of 31 March 2004, the difference between the data stated or corresponding to statements not presented, and the correct data that should have been presented in the statement, exceeds 250,000€.

3. It shall be considered that the data is false, and not erroneous, when it is proven that the obligated party has intentionally omitted operations, or has carried out incorrect imputations with regard to: the Tariff and Statistical Nomenclature and the Common Customs Tariff: or the Country, Member State of the European Union or Autonomous Community of origin, source or destination of the merchandise.

4. It shall be considered that there is regular opposition to judicial review when justification is not provided for the requirements established, as regards the statements corresponding to three subsequent reference periods, or to six alternate reference periods within the statistical year.

5. For the graduation of the sanction, based on the prior behaviour of the infringing party during the period of one calendar year starting from the latest failure to comply, not presenting the statement, or not tending to the Administration requirements shall entail:

a) With regard to one reference period, for this concept, an increase of 100 percentage points shall be applied of the minimum sanction set out for the type of qualified infringement.

b) With regard to two reference periods, for this concept, an increase of 150 percentage points shall be applied of the minimum sanction set out for the type of qualified infringement.

c) With regard to more than two reference periods, for this concept, an increase of 300 percentage points shall be applied of the minimum sanction set out for the type of qualified infringement.

6. For the graduation of the sanction based on the nature of the damages and jeopardy caused, each type of infringement shall be graduated according to the following criteria:

a) In slight violations:

1.^o) When the difference between the amount stated and the amount that should have been presented is less than or equal to 100,000€ in the reference period, the sanction shall be 100 percentage points of the minimum sanction.

2.^o) When the difference between the amount stated and the amount that should have been presented is greater than 100,000€ and less than 250,000€ in the reference period, the sanction shall be 200 percentage points of the minimum sanction.

b) In serious violations:

1.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 250,000€ and less than 1,000,000€ in the reference period, the sanction shall be 200 percentage points of the minimum sanction.

2.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 1,000,000 and less than 6,000,000€ in the reference period, the sanction shall be 400 percentage points of the minimum sanction.

3.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 6,000,000€ in the reference period, the sanction shall be 750 percentage points of the minimum sanction.

c) In very serious violations:

1.^o) When the difference between the amount stated and the amount that should have been presented is less than or equal to 250,000€ in the reference period, the sanction shall be 100 percentage points of the minimum sanction.

2.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 250,000€ and less than 1,000,000 in the reference period, the sanction shall be 200 percentage points of the minimum sanction.

3.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 1,000,000€ and less than 6,000,000€ in the reference period, the sanction shall be 400 percentage points of the minimum sanction.

4.^o) When the difference between the amount stated and the amount that should have been presented is greater than or equal to 6,000,000€ in the reference period, the sanction shall be 750 percentage points of the minimum sanction.