

□ File No.: PS/00181/2022

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (hereinafter, the claimant), dated February 1, 2021,  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against the CANTABRO HEALTH SERVICE with NIF Q3900738J  
(hereinafter, the claimed). The grounds on which the claim is based are  
following:

The claimant states that he availed himself of the provisions of Law 7/2006, of June 15,  
of guarantees of maximum response times in healthcare specialized in  
the public health system of Cantabria. It is a law that can benefit  
all citizens of Cantabria who have a health card and appear in the  
Registration of Patients on the Waiting List for a time determined by law.

In accordance with the provisions of the aforementioned regulations, the claimant requested the  
reimbursement of expenses for carrying out a diagnostic test (...) and other expenses  
(displacement and allowances), without receiving the legally established response. After  
carry out procedures with the Cantabrian Health Service, considers that they have lost  
the application and the documentation attached to it.

The claimant provides a copy of the official request for reimbursement of expenses dated March 22,  
September 2020, in which the boxes corresponding to the  
documentation required and written by hand also states that a CD is delivered  
(...). The request is stamped with the seal of the "Doctor Morante Health Center".

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the respondent, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on 03/10/2021, as recorded in the acknowledgment of receipt that works in the file. In said transfer, this Agency requested expressly to the claimed, information, among other extremes, for "the causes that have motivated the incidence that has originated the claim", as well as by "the measures taken to prevent similar incidents from occurring.

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On 04/05/2021, this Agency received a response letter, which, avoiding rule on the required issues, contains only a narrative chronology of the following events:

“Once the submitted documentation and the facts related to the

The following aspects must be indicated in chronological order:

1. On September 22, 2020, the interested party submits the documentation of reimbursement of expenses for carrying out a diagnostic test, taking advantage of the Law 7/2006, of June 15, guarantees maximum response times in specialized health care in the public health system of Cantabria.

The admissions coordinator of the Dávila Health Center states in writing who submitted the documentation on September 22.

2. On December 30, 2020, there is an entry in the delegate registry of the Cantabrian Health Service, photocopies of the documentation to proceed to reimbursement of expenses.

3. On December 30, 2020, in the Common Electronic Registry, the files a claim demanding responsibilities for the loss of the documentation.

4. On January 5, 2021, there is an entry in the delegate registry of the Service Cantabro de Salud, the documentation for the payment of allowances and travel to Bilbao to carry out the diagnostic test.

5. The interested party is paid the amount of 210.23 euros, corresponding to the diagnostic test, displacements and diets. Expenses are not valued caused by CD copying and postage, amounting to 45.89 euros. And it, since the CD did not have to have been presented, since it is not part of the documentation required and necessary in this matter.

6. On March 12, 2021, in the Common Electronic Registry, the interested party files a claim against the Health Assistance Subdirectorate of the Cantabrian Health Service for the payment of legal interest of 210.23 euros paid on March 11, 2021 and the expenses caused by the copy of CD and postage (45.89 euros).

7. The Head of the Benefits, Concerts and Medical Transport Service of the Cantabrian Health Service requests a report from the Advisory Service Legal of the Ministry of Health on the payment of interest and expenses caused by the CD copy and their postage.»

THIRD: On April 23, 2021, in accordance with article 65 of the

LOPDGDD, the claim submitted by the claimant was admitted for processing.

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FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in the article 57 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

The claimant states that he exercised the right of access to his data personal (travel and food bills, medical report of the test and CD with (...)), without having received the legally established response.

He considers that said documentation has been lost and provides a copy of the reimbursement request and the claim filed after the loss of the documentation.

The antecedents that appear in the information systems are the following:

On April 23, 2021, in procedure E/02584/2021, the Agency Spanish Data Protection agreed to carry out these actions investigation, revealing the following circumstances, either previously collected:

The claimant states that he exercised the right of access to his data

personal (travel and food bills, medical report of the test and

CD with (...)), without having received the legally established response.

He considers that said documentation has been lost and provides a copy of the reimbursement request and the claim filed after the loss of the documentation.

The respondent has responded to the request for information carried out by this AEPD, stating, in summary, that it has proceeded to pay the claimant an amount corresponding to the diagnostic test, commuting and diets. Likewise, it is indicated that the Head of the Service of Benefits, Concerts and Health Transport of the Cantabrian Health Service has requested a report from the Legal Advice Service of the Ministry of Cantabrian Health on the claim for the payment of interest to the amount paid. However, nothing has been clarified about the loss of documentation with personal and clinical data of the complaining party, therefore which infers a possible violation of the current matter of protection of data.

1.- The complainant provides a copy of the official request together with the complaint letter reimbursement of expenses dated September 22, 2020, which includes checked the boxes corresponding to the required documentation and written to hand also states that a CD is delivered (...). The request is stamped with the seal of the Doctor Morante Health Center.

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2.- By means of a letter dated May 19, 2021, the Inspection of Data requested the Cantabrian Health Service that within 10 days business days, send the following information and documentation:

1.- Detailed specification of the causes that have made possible the security incident in the custody of the documentation delivered by the claimant, including information regarding the conditions that are they gave for the events reported to have occurred.

2.- Description of the possible consequences for the affected party.

3.- Regarding the security of personal data processing:

3.1. Security measures implemented in data processing where gap has occurred.

3.2. Information regarding the reason why the security measures implemented have not prevented the security incident.

3.3. Technical and organizational measures adopted to avoid, as far as possible, security incidents like the one that happened.

4.- Information on the recurrence of these events and number of events analogues that occurred in time.

3.- Dated June 25, 2021, a letter from the Cantabrian Service has entered of Health that attaches a report from the Managing Director of Primary Care, with the following content:

“In view of the document issued by the AEPD in relation to the Claim

E/02584/2021 regarding the pending file initiated to know the

circumstances of the complaint filed on February 1, 2021 in relation to the operation of the Dávila Health Center in the loss of

documentation, the information requested by the Service is expanded below

Cantabro de Salud on the basis of the assessment of the issues raised

by the agency.

Yo.

Report of causes that led to the incident.

The admission areas in the Health Centers are not Offices of

Assistance in Registration Matters so that

the

make requests and

citizens/users/patients can

present them together with the corresponding documentation. The

regulatory regulations of the registry offices is collected

in Decree 42/2019, of March 28, which regulates the

Legal and Organizational Regime of Citizen Attention and the

exercise of the Administrative Function of Registration in the Administration

of the Autonomous Community of Cantabria. Establishes in ANNEX IV

the LOCATION AND OPENING HOURS OF THE REGISTRY

GENERAL ELECTRONIC OF THE ADMINISTRATION OF THE

AUTONOMOUS COMMUNITY OF CANTABRIA.

(...)

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Yo.

Report of measures adopted

This management has established as a priority strategic line the

implementation of adequate computer systems that allow the obtaining all the information and the adequate exploitation of the data at the health management level in the Health Centers so that the internal bag is electronic and the traceability of any document until its arrival at the central administrative services of primary care management.

Notwithstanding the foregoing, the truth is that the Computer Service of this management is currently serving the interests strategic priority public health directed from the own Ministry of Health to meet treatment needs electronic data that are most necessary in this situation special epidemiology of Covid-19.

Likewise, work is being done on the deployment to all the Health Centers of accurate information so that they can assist users in matters of information on the Registration Assistance Offices closest; as well as on the General Electronic Access Point of the CAC to electronically formulate any request likely to generate an expectation of law as interested in an administrative procedure.

FIFTH: On April 19, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of articles 5.1.f) and 32 of the RGD, typified respectively in sections 5 and 4 of article 83 of the RGD.

SIXTH. On the same day, 04/19/2022, the aforementioned initiation agreement, in accordance with the regulations established in Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (in



hereinafter, LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received by the party claimed.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what

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established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST. The claimant requested the Cantabrian Health Service to reimburse expenses for carrying out a diagnostic test ((...)) and other expenses, as established in Law 7/2006, of June 15, of guarantees of maximum times of response in specialized health care in the public health system of

Cantabria.

SECOND. The request mentioned in the previous section was presented by the claimant in a Health Center of the Cantabrian Health Service. This center admitted the application even though it is not considered an Assistance Office in Registration matter so that citizens/users/patients can formulate applications and submit them together with the corresponding documentation.

THIRD. The claimant did not receive a response to the request indicated in the section previous.

FOURTH. The Cantabrian Health Service has lost the application referred to in this file, together with the documentation attached to it, which included invoices, medical reports and a digital support with (...).

#### 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, 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."

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## Previous questions

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists carrying out personal data processing, whenever the Service Cántabro de Salud carries out, among other treatments, the collection, processing, conservation, consultation, use and access of the personal data of the citizens, in particular those like those who, in this case, direct them requests in accordance with the Law.

The Cantabrian Health Service carries out this activity in its capacity as responsible of the treatment, since it is the one who determines the purposes and means of such activity, in under article 4.7 of the RGPD:

“responsible for the treatment” or “responsible”: the natural or legal person, public authority, service or other body which, alone or jointly with others, determine the purposes and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of processing, the controller treatment or the specific criteria for their appointment may establish them by the Law of the Union or of the Member States;

Article 4 paragraph 12 of the RGPD defines, in a broad way, the "violations of security of personal data" (hereinafter security breach) as “all those breaches of security that cause the destruction, loss or alteration accidental or illicit of personal data transmitted, conserved or processed in another form, or unauthorized communication or access to said data.”

In the present case, there is a security breach of personal data in the circumstances indicated above, categorized as an availability gap, when there has been a loss of the documentation provided by the claimant, without that the respondent has provided any information on what may have happened or where can it be found.

It should be noted that the identification of a security breach does not imply the imposition of a sanction directly by this Agency, since it is necessary to analyze the diligence of those responsible and in charge and the security measures applied.

The security of personal data is regulated in article 32 of the RGPD, which regulates the security of the treatment, the notification of a violation of the security of personal data to the control authority, as well as the communication to the interested party, respectively.

III

Article 5.1.f) of the RGPD

Article 5.1.f) "Principles related to treatment" of the RGPD establishes:

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"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized processing or against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and confidentiality")."

In the present case, it is clear that the request for reimbursement of expenses incurred in carrying out a diagnostic test (...) and other expenses (travel and allowances) and the attached documentation, which contained personal data of the claimant, was subject to loss by the Cantabrian Health Service, since the entry of the itself in a Health Center attached to said service, without this having been able to give reason for its whereabouts before the claim of its owner.

In accordance with the available evidence, it is considered that the facts known are constitutive of an infraction, attributable to the Cantabrian Service of Health, for violation of article 5.1.f) of the RGPD.

Classification of the infringement of article 5.1.f) of the RGPD

#### IV

If confirmed, the aforementioned infringement of article 5.1.f) of the RGPD could lead to the commission of the offenses typified in article 83.5 of the RGPD that under the

The heading "General conditions for the imposition of administrative fines" provides:

"Infractions of the following provisions will be sanctioned (...)

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 72 "Infringements considered very serious" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679. (...)"

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Article 32 "Security of treatment" of the RGPD establishes:

Article 32 of the GDPR

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a)

pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States.

In the present case, the claimant has accredited the presentation before the Cantabrian Health Service of a request for reimbursement of expenses for carrying out a diagnostic test ((...)) and other expenses (travel and allowances). all of it in accordance with the provisions of Law 7/2006, of June 15, on time guarantees maximum responses in specialized health care in the health system Cantabrian public.

The claimant denounces the loss of said documentation, while the claimed, both in the response to the transfer procedure with the performance by this Agency of the previous investigative actions has limited itself to affirming that

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Finally, the benefit was paid to the claimant and that the Health Centers of the Cantabrian Health Service do not have the status of registry offices. I know nothing indicates about the security breach denounced by the claimant, nor about its causes or the possible current whereabouts of the documentation.

Likewise, nothing explains the Cantabrian Health Service about the measures that it had established to prevent incidents like this from occurring. In their replies, it only contains a brief reference indicating that it has established a “priority strategic line the implementation of adequate systems computer systems that allow obtaining all the information and the adequate exploitation of the data at the health management level in the Health Centers so that the internal bag is electronic and the traceability of any document is ensured until arrival at the central administrative services of the care management primary.”. Despite this, the respondent affirms that this action would not be found among its priorities, clarifying that these are focused on “meeting the needs of electronic processing of data that is most necessary in this situation special epidemiology of Covid-19.”

For all these reasons, it cannot be considered accredited that the Cantabrian Health Service had measures in place to prevent a security breach like this could happen. There is sufficient evidence regarding the absence of measures adequate security. These facts constitute a violation of article 32 GDPR.

Classification of the infringement of article 32 of the RGPD



SAW

If confirmed, the aforementioned violation of article 32 of the RGPD could lead to the commission of the offenses typified in article 83.4 of the RGPD that under the

The heading "General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 73 "Infringements considered serious" of the LOPDGDD indicates:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a

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substantial violation of the articles mentioned therein and, in particular, the following:

(...)

f) The lack of adoption of those technical and organizational measures that are appropriate to guarantee an adequate level of security when risk of treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679.

(...)

7th

Imposition of measures

Among the corrective powers provided in article 58 "Powers" of the RGPD, in the Section 2.d) establishes that each control authority may "order the responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period...".

The text of the resolution establishes the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what measures to adopt, without prejudice that the type of specific procedures, mechanisms or instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows your organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the RGPD and the LOPDGDD.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection.

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Sanction

Article 83 "General conditions for the imposition of administrative fines" of the

RGPD in its section 7 establishes:

“Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

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c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent on the Public Administrations.

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

(...)

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article."

In accordance with article 1 of Law 10/2001, of December 28, on the Creation of the Service Cantabrian Health, this service is considered a public body with the character of an autonomous body, with legal personality and full capacity to act.

In accordance with the aforementioned article 77.2 of the LOPDGDD, the sanction that could correspond in this procedure would be that of a warning for each of the two offenses.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

I RESOLVE

FIRST: SANCTION the CANTABRO SERVICE OF HEALTH, with NIF Q3900738J, for the infringement of Article 5.1.f) of the RGPD, typified in article 83.5 of the same Regulation.

SECOND: SANCTION with a warning to the CANTABRO SERVICE OF SALUD, with NIF Q3900738J, for the infringement of Article 32 of the RGPD, typified in Article 83.4 of the same Regulation.

THIRD. REQUEST the CANTABRIAN HEALTH SERVICE to implement the corrective measures that prevent similar events from being repeated in the future, and the update of the action plan for the management and notification of information gaps security, within a period of 3 months, and inform this Agency of what is required in the same term.

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FOURTH: NOTIFY this agreement to the CANTABRO HEALTH SERVICE,

with NIF Q3900738J,

FIFTH: COMMUNICATE this resolution to the Ombudsman, in accordance

with the provisions of article 77.5 of the LOPDGDD.

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.

Against this resolution, which puts an end to the administrative procedure 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 reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting 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 in article 46.1 of the

aforementioned Law.

Finally, it is pointed out 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 by

writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers 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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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