

□ File No.: EXP202203762

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 03/22/2022, the CIVIL GUARD - \*\*\*POSITION.1 (hereinafter, the  
denouncing party) forwarded three Records-Complaints for a possible breach of the  
provided in the personal data protection regulations by

A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the denounced party).

The following is indicated in the referral document:

“At 10:30 a.m. on March 14, 2022, the Patrol of \*\*\*COMPANY.1,

carry out an inspection at the BAZAR PEKIN establishment, located in \*\*\*LOCATION.1. A

Once it is finished, a Complaint Act is issued for infraction of the regulations of  
data protection in reference to the placement of a video surveillance system in  
the store.

- Not having at least one badge or sign in the video surveillance area  
informative in a sufficiently visible place.

- Not having at the disposal of the interested parties printed in which the  
information provided for in articles 15 to 22 of the RGPD.

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Having a video surveillance device in use, and not accrediting the obligation to  
have the Record of Processing Activities.

SECOND: These facts have already been the subject of a claim before this Agency  
processing file E/02218/2021 and, subsequently, PS/00099/2021 in the  
that it was determined to impose a fine of €1,000 (one thousand euros) on the accused for a

violation of article 13 of Regulation 679/2016 (EU), of April 27, 2016,

on the protection of natural persons with regard to the processing of

personal data and the free circulation of these data (hereinafter, RGPD).

THIRD: On 05/12/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

alleged infringement of article 13 of the RGPD and article 30 of the RGPD, typified in the

articles 83.4.a) and 83.5.b) of the RGPD.

FOURTH: On 05/23/2022 the denounced party was notified of the opening agreement

in accordance with the regulations established in Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

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LPACAP) and after the term granted for the formulation of allegations, it has been

found that no claim has been received.

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 to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

FIFTH: The agreement to open the procedure agreed in the fourth point of the operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

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: Lack of informative poster of the video-monitored area in the establishment BAZAR PEKIN of the accused party, located in \*\*\*LOCATION.1, and not having available to customers the rest of the information referred to in the RGPD.

In addition, it does not have the proper Record of Treatment Activities.

SECOND: It is identified as responsible A.A.A. with NIF \*\*\*NIF.1.

THIRD: The Spanish Data Protection Agency has notified the party denounced the agreement to open this sanctioning procedure, but not has presented allegations or evidence that contradicts the facts denounced.

#### 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 digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

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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

The image of a person, in accordance with article 4.1 of the RGPD, is personal data and its protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD it is defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment ment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except

when they had to be kept to prove the commission of acts that attend to have against the integrity of people, goods or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known.

tion.

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an informative device in a sufficient place ciently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the device information I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded of its scope of application the treatment by a natural person of images that are regretfully capture the interior of your own home.

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This exclusion does not cover processing carried out by a private security entity. given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law. For its part, article 30, "Record of treatment activities", of the RGPD establishes that:

"1. Each person in charge and, where appropriate, their representative will keep a record of the treatment activities carried out under its responsibility. This record must contain all of the information listed below:

a) the name and contact information of the person in charge and, where appropriate, of the co-responsible, the representative of the responsible, and the delegate of protection of data;

b) the purposes of the treatment;

c) a description of the categories of data subjects and the categories of data personal;

d) the categories of recipients to whom the data was or will be disclosed

including recipients in third countries or organizations

international;

e) where appropriate, transfers of personal data to a third country or a

international organization, including identification of such third country or organization

international and, in the case of the transfers indicated in article 49, section

1, second paragraph, the documentation of adequate guarantees;

f) when possible, the periods foreseen for the suppression of the different

data categories;

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g) where possible, a general description of the technical measures and

security organizations referred to in article 32, section 1.

2. Each manager and, where appropriate, the manager's representative will keep a record

of all categories of processing activities carried out on behalf of a

responsible that contains:

a) the name and contact details of the person in charge or persons in charge and of each

person responsible on whose behalf the person in charge is acting, and, if applicable, the representative

of the person in charge or of the person in charge, and of the data protection delegate;

b) the categories of processing carried out on behalf of each controller;

c) where appropriate, transfers of personal data to a third country or organization

including identification of such third country or international organization

and, in the case of the transfers indicated in article 49, section 1, paragraph

second, adequate collateral documentation;

d) where possible, a general description of the technical measures and

security organizations referred to in article 30, section 1.

3. The records referred to in sections 1 and 2 shall be in writing, including

in electronic format.

4. The person in charge or the person in charge of the treatment and, where appropriate, the representative of the

The person in charge or the person in charge shall make the record available to the

check on request.

5. The obligations indicated in sections 1 and 2 will not apply to any

company or organization that employs less than 250 people, unless the

treatment that it carries out may entail a risk for the rights and freedoms of the

data subjects, is not occasional, or includes special categories of personal data

indicated in article 9, paragraph 1, or personal data relating to convictions and

criminal offenses referred to in article 10.”

III

In accordance with the foregoing, the processing of images through a system

of video surveillance, to be in accordance with current regulations, must comply with the

following requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of 4

april.

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Camcorders will not be able to capture images of people

are outside the private space where the security system is installed.

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video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed in facades or inside, it may be necessary to guarantee the purpose of security recording a portion of the public highway. That is, the cameras and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the RGPD and 22.4 of the LOPDGDD.

- The person in charge must keep a record of treatment activities

carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency Spanish Data Protection offers through its website

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including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that, through specific questions, it allows to assess the situation of the person in charge regarding the processing of personal data that it carries out and, where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

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IV

In the present case, the accused party has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the establishment BAZAR PEKIN, property of the accused party and located in \*\*\*LOCALIDAD.1, lacks the mandatory informative posters of the video-monitored area and it does not have available to its customers the rest of the information referred to in the RGPD. Nor does it have the due Record of Processing Activities.

Based on the foregoing, the facts entail a violation of the provisions of articles 13 and 30 of the RGPD, which supposes a commission of both infractions typified in article 83.5.b) and 83.4.a) of the RGPD.

With respect to the first of the infractions, the aforementioned precept establishes the Next:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

a) (...)

b) The rights of the interested parties according to articles 12 to 22; (...)”

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as very serious “The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law”. The limitation period for offenses very serious cases provided for in Organic Law 3/2018 is three years.

For its part, the infringement of article 30 of the RGPD, typified in article 83.4.a) of the

RGPD states that “Violations of the following provisions will be sanctioned,

in accordance with section 2, with administrative fines of EUR 10,000,000 as

maximum or, in the case of a company, an amount equivalent to 2% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a

39, 42 and 43;

(...)”

For the purposes of the limitation period, article 73.n) of the RGPD qualifies as serious “No

have the record of treatment activities established in article 30 of the

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Regulation (EU) 2016/679.” The statute of limitations for serious offenses

provided for in Organic Law 3/2018 is two years.

v

The corrective powers available to the Spanish Agency for the Protection of

Data, as a control authority, is established in article 58.2 of the RGPD. Among

they have the power to impose an administrative fine in accordance with

article 83 of the RGPD (art. 58.2 i)), or the power to order the person responsible or

in charge of the treatment that the treatment operations comply with the

provisions of the GDPR, where applicable, in a certain way and within a

specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, based on the facts set forth, it is considered that the sanctions that should be imposed are an administrative fine for each of the the offenses committed. The fines imposed must be, in each case, individual, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. In order to determine the administrative fines to be imposed, it is necessary to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

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h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of

personal information.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

Regarding the infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, the following aspects are considered concurrent as aggravating reveal greater unlawfulness and/or culpability in the conduct of the defendant:

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Any previous infraction committed by the person in charge or the person in charge of the treatment (article 83.2.e) RGPD). The accused party has already been subject to sanction in PS/00099/2021, where it was determined that it effectively lacked information poster in your establishment, despite having a system of video surveillance.

The balance of the circumstances contemplated allows a fine of €1,500 (one thousand

five hundred euros).

For its part, the infringement of article 30 of the RGPD, typified in article 83.4.a) of the RGPD, allows you to set a fine of €200 (two hundred euros).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, a fine of €1,500 (one thousand five hundred euros).

SECOND: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for an infraction of article 30 of the RGPD, typified in article 83.4.a) of the RGPD, a fine of €200 (two hundred euros).

THIRD: ORDER A.A.A., with NIF \*\*\*NIF.1, that under article 58.2 d) of the GDPR, within ten business days, take the following measures:

- Prove that you have proceeded to place the informative poster in the areas video-monitored (at least the existence of a treatment must be identified, the identity of the controller and the possibility of exercising the rights provided in said precepts), locating this device in a sufficiently visible.
- Prove that you keep the information to which it refers available to those affected. refers to the aforementioned RGPD.
- Proof of having the Record of Processing Activities.

FOURTH: NOTIFY this resolution to A.A.A., with NIF \*\*\*NIF.1.

FIFTH: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure



Common 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, through its entry, indicating the NIF of the sanctioned and the number  
of procedure that appears in the heading of this document, in the account

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restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency  
Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case  
Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if  
between the 16th and last day of each month, both inclusive, the payment term  
It will be until the 5th of the second following month or immediately after.

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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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