

□ File No.: EXP202100109

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 October 29, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against B.B.B. (onwards,
the claimed party), through the Agreement that is transcribed:

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AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated June 28, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

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“presence of video-surveillance cameras in public spaces” without just cause

confirmed, “not considering the explanations of the respondent to be valid” (folio nº 1).

It is attached as documentary evidence (camera photographs) that prove the their presence and the presumed orientation towards an adjacent rural road.

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 claimed party in fe-date 07/05/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

On 08/04/21, a first response to the claimed confirmation is received.

commanded the installation of a video-surveillance system, providing blank photographs co and black that do not allow an in-depth analysis of the legality of the system.

On 08/25/21 a second response is received, after a new request of this Agency dated 08/06/21, providing the same photographs this time in co- lor, indicating the personal installation of the system with “help from a friend”.

THIRD: On August 26, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to re- solve this procedure.

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In the present case, the claim dated 06/28/21 is examined by me-

gave from which the following is transferred as the main fact:

“presence of video-surveillance cameras in public spaces” without just cause
tified.

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes
for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, proving that it complies with all
the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding
intimidate neighboring neighbors with this type of device, as well as control areas
transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.
co, as this is the exclusive competence of the State Security Forces and Bodies
ted.

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It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

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 defendant has a video system

Surveillance poorly oriented towards the adjacent public road.

The camera numbered 1 excessively captures space outside its ownership affecting the entrance area of the neighbor (a) next to it.

The known facts could constitute an infraction, attributable to the party claimed for violation of the content of art. 5.1 c) GDPR, previously aforementioned.

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

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When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as

the number of interested parties affected and the level of damages suffered

fired; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), by not doing

have adopted the necessary measures to prevent the orientation of the cameras towards

public space, the conduct described being at least slightly negligent.

In accordance with article 58.2 d) RGPD, by the claimed party, it must be provided

take a screen print (before and after) of the modifications made in the previous

angle of the camera, in such a way that they are oriented exclusively towards your

private property; without prejudice to any additional measures deemed necessary by this

body, where appropriate, impose.

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

data protection law,

HE REMEMBERS:

FIRST: START A SANCTION PROCEDURE against B.B.B., with NIF ***NIF.1,

for the alleged infringement of article 5.1 c) RGPD, infringement typified in art. 83.5

RGPD, being punishable in accordance with art. 58.2 d) GDPR.

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D., indi-

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

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THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim
filing filed by the claimant and its documentation, as well as the documents
documents obtained and generated by the General Subdirectorate for Data Inspection in
actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-
tubre, of the Common Administrative Procedure of the Public Administrations, the
sanction that could correspond would be €1,500, without prejudice to what results from the
instruction.

FIFTH: NOTIFY this agreement to B.B.B., with NIF ***NIF.1, granting it a
hearing period of ten business days to formulate the allegations and present
tests you deem appropriate. In your statement of arguments, you must provide
your NIF and the procedure number that appears 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 Law 39/2015, of October 1, of the Common Administrative Procedure of
Public Administrations (hereinafter, LPACAP).

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
feel start agreement; which will entail a 20% reduction in blood
tion to be imposed in this proceeding. With the application of this re-
reduction, the sanction would be established at €1,200, 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 supposes
will give a reduction of 20% of its amount. With the application of this reduction, the
The payment would be established at €1,200 and its payment will imply the termination of the procedure.

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

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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
In this case, if it were appropriate to apply both reductions, the amount of the penalty would be
set at €900.

In any case, the effectiveness of any of the two reductions mentioned will be
conditioned to the withdrawal or waiver of any action or resource in the administrative process.
deal against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

indicated above €1,200 or €900, you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agencia Es-Data Protection Office at the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading processing of this document and the reason for the reduction of the amount to which it is accepted. Likewise, you must send proof of income to the General Subdirectorato of Ins-request to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-do this period will produce its expiration and, consequently, the filing of actions; in accordance with the provisions of article 64 of the LOPDGDD.

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

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Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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SECOND: On November 26, 2021, the claimed party has proceeded to payment of the sanction in the amount of 900 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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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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,

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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."

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202100109, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to B.B.B..

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 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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