

936-031219

□ Procedure No.: PS/00317/2019

RESOLUTION R/00040/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00317/2019, instructed by the Agency

Spanish Data Protection Authority to AMALFI SERVICIOS DE RESTAURACIÓN S.L.,

having regard to the complaint filed by OZU SERVICIOS DE RESTAURACION, S.L., and in

based on the following,

BACKGROUND

FIRST: On December 4, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against AMALFI SERVICIOS

OF RESTAURATION S.L. (hereinafter, the claimed party), by means of the Agreement

transcribe:

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□ Procedure No.: PS/00317/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: OZU RESTAURATION SERVICES, S.L. (hereinafter, the claimant)

On May 6, 2019, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against the entity AMALFI SERVICIOS

OF RESTAURATION S.L. with NIF B88109186 (\*hereinafter, the claimed one). The

The grounds on which the claim is based are as follows:

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“The defendant occupies a terrace located at \*\*\*ADDRESS.1 where she provides seasonal bar services from May to October.

The situation that is denounced is that Amalfi has installed eight video cameras deo-surveillance with retransmission of image captured on the Internet (reports are attached illustrative photographic illustration of the reported situation), without the consent of the ity (which has been notified by burofax to stop said conduct and uninstall the cameras) and for these purposes, without complying with the regulations most essential in terms of data protection”

“The use of the video surveillance system is not reported (non-existence of mandatory signage), nor of the reasons that motivate its use, the purposes that are intend to comply, person responsible or in charge of data processing, rights rights that they can exercise in this regard, period of conservation of their data, files secure where the data is stored, placement of information badges suitable, etc. (folio no. 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the installation of several video-surveillance cameras.

SECOND: In view of the facts denounced in the claim and the documents data provided by the claimant, the Subdirectorate General for Data Inspection pro-yielded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD), and in accordance with the provisions  
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed  
that the data controller is the claimed party—Amalfi Services  
Restoration S.L--.

THIRD: On 05/25/2019, the claim was TRANSFERRED to the  
denounced so that he could allege what he considered opportune, without any answer being  
have done about it.

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FOUNDATIONS OF LAW

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

II

In the present case, the claim dated 05/06/19 is examined by me-  
gave from which the following is transferred as the main fact:

“Installation of a video-surveillance system that does not comply with the regulations  
in force in terms of data protection” (folio nº 1).

The facts described above may affect the content of the

art.5.1 c) RGD. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that images of public space cannot be obtained, as they are is an exclusive competence of the State Security Forces and Bodies.

"The legitimacy for the use of video surveillance installations is limited to the protection of private environments, entrusting the prevention of crime and the guarantee of

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security on public roads exclusively to the Security Forces and Bodies of the State under the terms of Organic Law 4/1997, of August 4, which regulates regulates the use of video cameras by the State Security Forces and Bodies do in public places".

However, due to the characteristics of some video surveillance installations, to the protection and custody of private spaces through security cameras, is necessary to engrave part of the public road, as it happens in the accesses to garages, them or common areas. In these exceptional cases where it is unavoidable capturing public spaces by surveillance cameras, Instruction 1/2006 establishes establishes in its article 4.3.:

"Cameras and video cameras installed in private spaces will not be able to obtain have images of public spaces unless it is essential for the purpose of surveillance that is intended, or it is impossible to avoid it due to the location of

those. In any case, any unnecessary data processing should be avoided.

for the intended purpose”.

Every video-surveillance system must have an "informative badge" placed in a visible area, indicating the end of the treatment and the person responsible for it to the appropriate legal effects (art. 22 LO 3/2018, December 5).

Likewise, the establishment must have an informative form(s) disposition of the clients that could require it in their case, arranging all the information formation in an orderly manner in case of request of the municipal police of the location.

### III

In accordance with the evidence available at this time, agreement to initiate the sanctioning procedure, and without prejudice to what is

As a result of the instruction, it is considered that the claimed party has installed up to a total of eight video-surveillance cameras, without duly informing and obtaining images of public space without just cause.

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The sending of a burofax reporting the alleged "irregularities" is verified without any measure has been adopted in this regard or explanation has been made to the appropriate effects.

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

### IV

The art. 58.2 RGPD provides: "Each control authority will have all the following

You have corrective powers indicated below:

i) impose an administrative fine pursuant to article 83, in addition to or instead of  
any of the measures mentioned in this section, according to the circumstances of  
each particular case (...).

The art. 83.5 a) RGPD provides the following: "Infringements of the following provisions

The following will be sanctioned, in accordance with section 2, with administrative fines of  
EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.

to a maximum of 4% of the total global annual turnover of the fiscal year  
previous financial statement, 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; (...).

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

-the nature of the damages caused, having installed vi-  
deo-surveillance disproportionately, affecting the privacy of third parties without  
justified cause, without the mandatory information poster and affecting transit areas  
located in public space (art. 83.2 a) RGPD).

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-the intentionality or negligence of the infraction, given that despite having  
been warned of the "irregularities" has not taken any action to correct them  
(art. 83.2 b) RGPD).

So, based on the above, it is considered correct to initially propose

impose a pecuniary sanction in the amount of €6,000, having installed a system of video-surveillance cameras, affecting the right to privacy of third parties.

without just cause, proceeding to "process data of third parties" without apparent justification.

Rest any.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTIONING PROCEDURE against the AMALFI entity

SERVICIOS DE RESTAURACIÓN S.L., with NIF B88109186, for the alleged

infringement of art. 5.1 c) RGPD, having installed a video camera system-

surveillance with presumed orientation towards public space, without being duly

reported, offense typified in art. 83.5 a) GDPR.

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

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim

information filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the investigation phase.

investigations, all of them part of the administrative file.

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

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sanction that could correspond would be €6,000 (Six Thousand Euros), without prejudice to what result of the instruction.

FIFTH: NOTIFY this agreement to AMALFI SERVICIOS DE RESTAURACIÓN S.L., with NIF B88109186, granting a hearing period of ten working days to formulate the allegations and present the evidence that right convenient. In your brief of allegations you must provide your NIF and the number of procedure at the top of this document.

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 Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Co- of the Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be set at €4,800 (Four Thousand Eight Hundred Euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the claim, present procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the penalty would be established at 4,800 euros (Four Thousand Eight Hundred Euros) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one that



corresponds to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of amount referred to in the preceding paragraph may be made at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at 3,600 euros (Three Thousand Six Hundred Euros).

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

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above €4,800 or €3,600 must be paid through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco 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 payment to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered. sada.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement. Trans- After this period, it will expire and, consequently, the update file will

tions; 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 LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On February 11, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3,600 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the 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.

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FOUNDATIONS OF LAW

Yo

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. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased  
regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00317/2019, of  
in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to AMALFI SERVICIOS DE  
RESTORATION S.L.

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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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