

□ File No.: EXP202104667

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 May 3, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate sanction proceedings against COMPANY.1 (in
hereinafter, the claimed party), through the Transcribed Agreement:

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File No.: EXP202104667

AGREEMENT TO START THE SANCTION PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated November 15
of 2021 filed a claim with the Spanish Agency for Data Protection. The
The claim is directed against EMPRESA.1 with NIF ***NIF.1 (hereinafter, the re-
called). The reasons on which the claim is based are the following:

“The claimed establishment has video surveillance cameras on its façade.
lancia oriented to its terrace, capable of capturing the public thoroughfare, without counting on
prior administrative authorization for it” (folio no. 1).

Along with the notification, photographic material is provided (Annex I) that proves the presence
of what is asserted in your claim document.

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

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 11/18/21 and 12/09/21, to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

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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 Public Administrations cas (hereinafter, LPACAP), was collected after postal notification on 12/23/21 as stated in the acknowledgment of receipt in the file.

THIRD: On 12/31/21, a response was received from the claimed party that in essence confirms the installation of a security system by the company (...) contributing copy of the contract signed by the parties.

FOURTH: On February 15, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re- General Data Protection Regulation, hereinafter GDPR), grants each authori-
quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, 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.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 11/15/21 is examined by means of of which the alleged irregularity in the orientation of a device is transferred video surveillance, which could affect public space without just cause.

"It has security cameras installed on its façade facing the area public that is transit (...) "-folio nº 1--.

The art. 5.1 c) GDPR provides the following: Personal data will be:

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

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It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, certifying 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 poster tive, indicating the purposes and person 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 thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State tado.

It should be remembered that even if it is 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, who are intimate measured by it in the belief of being the object 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.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

II

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, it is considered that the claimed party has a camera system video surveillance for security reasons, without clarifying what is captured in your case with the same.

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

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)".

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In accordance with the foregoing, it is considered correct to propose an initial sanction of €300, by having a poorly oriented video surveillance device, visible from abroad, affecting the rights of third parties passing through the area, although there is taking into account the prior collaboration of the defendant, as well as any other sanction via in the matter, a sanction located on the lower scale for this type of behavior. to.

The obvious bad orientation of the device in question makes us consider the conduct as negligence at least serious, when being aware of the disturbance to the de-right of third parties without just cause.

V

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the controller or processor that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.

cified...". The imposition of this measure is compatible with the sanction consisting of

Administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered

classified as an administrative offense in accordance with the provisions of the GDPR, typified

as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening

of a subsequent administrative sanctioning procedure.

The claimed party must complete the prior statements made upon being

considered insufficient to clarify the legality of the system, providing all the documentation

necessary documentation (vgr. printing date and time of what is observed, specifying

of the number of cameras, informative poster, etc).

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

Data Protection tab,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE for COMPANY.1, with NIF

***NIF.1, for the alleged infringement of article 5.1 c) GDPR, by having a

camera disproportionately oriented towards public space, typified in the

art. 83.5 GDPR, being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT as instructor B.B.B. and, as secretary to C.C.C., indicate-

meaning that any of them may be challenged, if applicable, in accordance with the provisions

in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of

Public Sector (LRJSP).

THIRD: INCORPORATING into the disciplinary file, for evidentiary purposes, the claim

petition filed by the claimant and its documentation, as well as the documents

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ments obtained and generated by the General Sub-directorate of Data Inspection in the actions prior to the start of this disciplinary procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1, tube, of the Common Administrative Procedure of Public Administrations sanction that could correspond would be €300, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to COMPANY.1, with NIF ***NIF.1, granting give him a hearing period of ten business days to formulate the allegations and Submit any evidence you deem appropriate. In your statement of allegations you must- You will need to provide your NIF and the number of the procedure that appears in the heading of the this document.

If, within the stipulated period, he 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, on 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 period granted for the formulation of allegations to the pre-set start agreement; which will entail a 20% reduction in blood tion that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 240 euros, resolving the procedure with the imposition of this sanction.

In the same way, it 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

tion would be established at 240 euros and its payment will imply the termination of the procedure.

I lie.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding

apply for acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

allegations at the opening of the procedure. 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 both reductions were to be applied, the amount of the penalty would remain

set at €180.

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or waiver of any action or appeal through administrative

treatment against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts

previously indicated €240 or €180, you must make it effective by depositing it in

account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency

Data Protection tab at the bank CAIXABANK, S.A., indicating in

the concept the reference number of the procedure that appears in the heading

of this document and the reason for the reduction of the amount to which it accepts.

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Likewise, you must send proof of income to the Sub-directorate General of Ins-

expectation 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 date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed- After this period, its expiration will take place and, consequently, the file of actions; in accordance with the provisions of article 64 of the LOPDGDD.

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

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On May 19, 2022, the claimed party has proceeded to pay of the penalty in the amount of 240 euros making use of one of the two reductions provided for in the Startup Agreement transcribed above. Therefore, there has not been acknowledgment of responsibility.

THIRD: The payment made entails the waiver of any action or resource in the against the sanction, in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, 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.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures.”

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II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202104667, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to COMPANY.1.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

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