

□ File No.: PS/00295/2021

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 July 12, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against BAR DA VINCI
(SHUANGFENG ZHOU) (hereinafter, the claimed party), through the Agreement that
is transcribed:

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Procedure no.: PS/00295/2021

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: On April 30, 2019, a claim is received at this Agency
filed by the GENERAL DIRECTORATE OF THE CIVIL GUARD. MARKET STALL

***LOCATION.1

(hereinafter referred to as the claimant) v. BAR DA VINCI

(SHUANGFENG ZHOU) with NIF ***NIF.1 (hereinafter, the claimed one) for having
installed a video surveillance system both outside and inside the
establishment in *** ADDRESS.1, and not have informative area signs
video surveillance.

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For this reason, file E/05410/2019 was opened, sending a letter to the defendant informing you of the requirements to carry out data processing personal through such devices. This letter was returned by the service of mail with the notation "Wrong address".

Likewise, the claimant organization was informed that if the non-compliance adoption of measures would be initiated, where appropriate, the actions provided for in the data protection regulations.

On May 12, 2021, it had entry in this Spanish Protection Agency of Data a document presented by the complaining party, by means of which it formulates new claim against the claimed party for the installation of a video surveillance without information signs, there being indications of a possible Non-compliance with the provisions of the data protection regulations staff.

Provides record-complaint of the Civil Guard for not having announcing badges, both outside and inside the establishment of video-surveillance area.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

On June 8, 2021, this Agency received a document from the claimant providing several photos:

- In one of them you can see the informative poster of the video-monitored area, located in the

access to the establishment, in which the identification and address of the person responsible for the video surveillance system, before whom the interested parties they can exercise their rights.

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- Other photographs show the images captured by the installed cameras

both inside and outside.

From the analysis of the photographs provided of the images that the cameras would capture that make up the system from their location, it follows that two of them are interiors capturing areas of the bar and interior of the premises and a third that captures the the outdoor terrace, but in all its extension, excessively capturing the public thoroughfare., given that between the bar and the terrace it requires a wide public space between them.

It can be deduced from the images provided that there is a monitor where they are displayed.

the images captured from the outside (terrace) in public view in the upper part of a wall. Also, it has another monitor that appears in grids that apparently it is not in public view.

THIRD: The claim was admitted for processing by resolution of June 10 of 2021.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

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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II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the

natural persons) carried out through the reported video surveillance system is

in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of treatment,

provides that personal data will be "adequate, relevant and limited to what is

necessary in relation to the purposes for which they are processed ("minimization of

data")." This article enshrines the principle of data minimization in the treatment

of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of data must be restricted excessive or proceed to suppress them.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the

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that the planned information is detailed, which the person in charge must make available of those interested.

The content and design of the informative label must comply with the provisions of the Article 22.4 of the LOPDGDD.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to "Processing for video surveillance purposes", the processing of images in public places can only be made -if applicable and prior to the compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, unless the exception established in the aforementioned article 22 of the LOPDGDD for individuals or legal entities, public or private, respecting the

conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to record a minimum and essential of the public road, which is inevitably captured.

For this exception on the protection of private spaces to be applicable,

There must be an alternative installation possibility. In these cases, the responsible of the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is the minimum possible.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

IV

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:

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- Respect the principle of proportionality.
- When the system is connected to an alarm center, it 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 April 4.

- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, 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 on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the 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.

Specifically, at least one badge must be placed in video-monitored areas. informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

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- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose

to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space

guarded.

In relation to the above, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” /

“normative”), as well as the Guide on the use of video cameras for security and other

purposes, as well as 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 of carrying out low-risk data processing, the

facilitates free tool (in the “Guides and tools” section), which through

specific questions, allows to assess the situation of the person in charge with respect to the

treatment of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures

guidelines considered minimum.

v

The claim is based on the lack of information poster of the existence of a system video surveillance system installed at the claimant's premises.

As proof of these statements, the claimant provided the evidence indicated in the "Facts" section of this agreement.

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In accordance with the provisions of article 65.4 of the LOPDGDD, transfer of the claim to the respondent, who responded by providing several photographs.

In one of them, you can see the informative poster of the video-monitored area, located at the access to the establishment, in which appears the identification and address of the person responsible for the video surveillance system, before which the interested parties can exercise their rights.

Other photographs show the images captured by the cameras installed both inside as well as outside.

From the analysis of the photographs provided of the images that the cameras would capture that make up the system from their location, it follows that two of them are interiors capturing areas of the bar and interior of the premises and a third that captures the the outdoor terrace, but in all its extension, excessively capturing the public thoroughfare., given that between the bar and the terrace it requires a wide public space between them.

Likewise, it appears that there is a monitor where the images are displayed.

captured from the outside (terrace) in public view at the top of a wall.

Also, you have another monitor that appears in grids that are apparently not is in public view.

In accordance with the foregoing, this Agency considers that, once this sanctioning procedure, the defendant has placed the information poster of the area video surveillance, and that there are indications of the existence of a security camera video surveillance installed in ***ADDRESS.1 that captures images of the public road in excess.

SAW

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 issue a warning -article 58.2 b)-, the

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power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

7th

The art. 77 section 5 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (LPACAP, hereinafter),

provides the following: “The documents formalized by the officials to whom the

recognizes the condition of authority and in which, observing the legal requirements

corresponding the facts verified by those are gathered will prove of
unless proven otherwise". The Security Forces and Bodies
displaced to the scene of the events confirm the presence of the system.

viii

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 exposed facts do not comply with what is established in the
articles 5.1.c) and 13 of the RGPD, for what they could suppose the commission of paths
offenses typified in article 83.5 of the RGPD, which provides the following:

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

- a) the basic principles for the treatment, including the conditions for the
consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...]"

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For the purposes of the limitation period for infractions, the infraction indicated in the
previous paragraph is considered very serious and prescribes after three years, in accordance with
Article 72.1 of the LOPDGDD, which establishes that:

"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.

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.”

For its part, article 74 of the aforementioned LOPDGDD provides:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679”.

IX

In the present case, regarding the breach of article 13 of the RGPD, it is observed that the respondent has shown a cooperative attitude with this Agency in order to remedy the violation and mitigate possible adverse effects.

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For all these reasons, it is considered that the corresponding sanction is to direct a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

Regarding the external camera that captures images in excess, regarding what established in article 5.1.c) of the RGPD, 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 an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. So, It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 RGPD.

In the initial assessment, the following have been considered:

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The nature of the infraction when having a video surveillance system that is oriented towards public transit areas without just cause, processing data of identifiable natural persons (art. 83.5 a) RGPD.

The intention or negligence of the infringement, the camera is oriented to the outside of your establishment (83.2.b) RGPD).

The claimed party must provide all the necessary documentation that proves the legality of the system, that is, an informative poster (photograph showing the date and time) as well as screen printing, also with date and time, of what it captures with the cameras. In addition, you must prove that you have an information form in the establishment that is managed for the appropriate legal purposes.

It must be remembered that the voluntary payment of the proposed amounts does not exempt
prove the regularization of the video surveillance system in accordance with the
regulations in force.

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Therefore, according to the above,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE AGAINST BAR DA VINCI

(SHUANGFENG ZHOU) with NIF ***NIF.1, for the alleged violation of article 5.1.c)
of the GDPR.

SECOND: DIRECT A WARNING TO BAR DA VINCI (SHUANGFENG

ZHOU) with NIF ***NIF.1, for the alleged violation of article 13 of the RGD.

THIRD: APPOINT A.A.A. as instructor, and B.B.B. as secretary, indicating that

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

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Subdirector General for Inspection of
Data.

FIFTH: THAT for the purposes provided in art. 64.2 b) of the LPACAP, the sanction
could correspond would be €500 (Five Hundred Euros), without prejudice to what is

of instruction.

FIFTH: NOTIFY this agreement to BAR DA VINCI (SHUANGFENG ZHOU), granting him a hearing period of ten business days to formulate the pleadings and submit any evidence you deem appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document.

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If within the stipulated period it does not make allegations, this initial agreement may be considered resolution proposal, according to what is established in article 64.2.f) of the LPACAP.

The sanctioning procedure will have a maximum duration of nine months from from the date of the start-up agreement or, if applicable, the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within 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 established at €400, 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 will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €400 and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. If it were appropriate to apply both reductions, the amount of the penalty would be established at €300.

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

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account no. ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for www.aepd.es

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Data Protection at Banco 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 is accepted. Also, you must send proof of entry to the General Subdirectorato of Inspection for continue with the procedure in accordance with the amount entered.

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.

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Director of the Spanish Data Protection Agency

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SECOND: On July 31, 2021, the claimed party has proceeded to pay the sanction in the amount of 300 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.

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.

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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, 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 PS/00295/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to BAR DA VINCI (SHUANGFENG
ZHOU).

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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