

□ Procedure No.: PS/00382/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On July 6, 2020, it has an entry in the Spanish Agency for
Data Protection (AEPD) a letter sent by D. ^a A.A.A. (*hereinafter, the
claimant) through which he makes a claim against CULLER DE TERESA,
S.L., with NIF B27862747 (hereinafter, the claimed one) for an alleged violation of
the personal data protection regulations related to the system
of video surveillance that you have installed in your business premises.

The reason on which the claim is based is the existence of three video cameras in the
exterior wall of the premises of the defendant -*** ADDRESS.1 - which, as stated, "is
oriented solely and exclusively to the public thoroughfare (...) The public thoroughfare covered
includes sidewalks, the road with vehicular traffic (***ADDRESS.1) and even the entrance to
building portals. It adds that "there is no information panel of the installation
of the video surveillance cameras, nor any information from the company responsible for the
data treatment".

Attached to the claim, a photographic report made up of five
photographs from which the following information is obtained:

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Three photographs are about the same camcorder: black, format
spherical and installed parallel to the ground attached at one end to the profile of a
window; profile that is also parallel to the ground.

The first photograph shows the exterior wall of a building on which there is a large vertical window made of metal profiles in black. The photograph is captured from outside the building. The outer wall, at its confluence with the upper end of the window, it has a recess of several centimeters towards the interior of the building, it is horizontal and therefore parallel to the ground. The recess of the wall, which is covered, like the rest, with gray stone, a few centimeters follow that are not lined with stone but covered by the outer profile of the window. The video camera is installed on it. The camera position is therefore parallel to the ground and perpendicular to the wall and to the window. Photographs 2 and 3 capture practically the same image. Nope. However, it is photograph 3 that confirms the position of the camera. The model of camera does not allow to know by its external appearance where it is focused.

Photographs 4 and 5 offer the image of two gray camcorders installed on a support that is perpendicular to the exterior stone wall. The cameras focus to the right and left of the wall in a plane almost parallel to it. The camera lens with respect to the wall has a somewhat less than 45° because it seems to be rotated a few degrees in the direction of the wall.

Below the chambers, on the wall, there is a large window extends horizontally. It is intuited that right in front of the window there is

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several houses because the photograph captures the reflection of the houses on the glass of

window.

Considering the angle of view of the cameras, they cannot capture the houses reflected in the glass because for this the angle of the objective should be another, perpendicular to the wall. However, it is clear that, for the angle that the two cameras have in relation to the wall of the building, they are capturing public roads, in short, external elements outside the property that they intend to protect. The photographs do not show us what physical elements are within reach of the two video cameras, but, due to their position, the area covers the capture of images clearly exceeds what is permitted.

- In none of the five photographs sent to the AEPD does the existence of an informative poster of the video-surveillance zone.

SECOND: Prior to the acceptance of this claim for processing, in the framework of E/6057/2020, 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), the AEPD transferred it to the reclaimed.

The certificate issued by the FNMT in the file certifies that the 07/17/2020 the Inspection Subdirectorate sent a letter to the complainant with which he forwarded the claim. The shipment was notified electronically to the claimant on 07/17/2020 and the notification is accepted on 07/21/2020. Respondent did not respond to the information request.

The Director of the AEPD agreed to admit this claim for processing on the date 10/13/2020. The agreement for admission to processing was notified to the claimant by emails on 10/13/2020. The certificate issued by the FNMT that operates in the The file proves that the notification was accepted by the claimant on 10/14/2020.

THIRD: On February 8, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, Article 13 of the RGPD, typified in the Article 83.5 of the RGPD.

FOURTH: On 02/17/21, a written statement is received from the respondent argued the following "that the cameras were already installed previously and that are not operational, lacking a display monitor, remaining in the property by fulfilling a dissuasive function.

"Because they do not have any operation or record any activity nor are they an obstacle to the exercise of the activity, the tenants have not performed any act or request authorization from the owners of the property for its dismantling".

"It is possible to verify its uselessness with a simple visit from the FFCC and that these verify what the appearing party alleges and, where appropriate, the owner of the immovable your retirement"

In view of everything that has been done, by the Spanish Data Protection Agency

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In this proceeding, the following are considered proven facts:

FACTS

First. The facts bring cause of the claim dated 07/06/20 through the which the presence of video-surveillance cameras that presumably are oriented towards public space without just cause.

Documentary Annex I is attached with five photographs that certify the presence

ence of the devices object of denunciation.

Second. It is identified as the main person responsible for CULLER DE TERESA, S.L who does not deny the presence of video surveillance cameras.

Third. The presence of three cameras on the facade of the building is accredited with a clear orientation towards a public area, devoid of an informative sign at the regard.

Fourth. According to the claimant's statement, the cameras are not operational, they comply fulfilling a mere dissuasive function, so that they were installed in the premises, such character being easily verifiable.

Fifth. There is no accredited data processing with the cameras subject to complaint.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of 27 April, of the European Parliament and of the Council, on the protection of natural persons with regard to the processing of personal data and the free movement of these data and by which Directive 95/46/CE (hereinafter, RGPD) is repealed, acknowledging ce to 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.

II

In accordance with the definition of "personal data" offered in article 4.1 of the RGPD, the image of a natural person has the character of personal data. So that, In accordance with article 1.2 of the RGPD, the image of a natural person must be of the protection provided by this Regulation.

The RGPD provides in its article 5, under the heading "Principles related to treatment":

"1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

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b) collected for specific, explicit and legitimate purposes, and will not be processed further.

riorly in a manner incompatible with said purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in-

public interest, scientific and historical research purposes or statistical purposes are not considered

will be incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization");

d) accurate and, if necessary, updated; All reasonable steps will be taken

ble to delete or rectify without delay the personal data that are ine-

accurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the interest

sado ("retention period limitation");

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

2. The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

The LOPDGDD dedicates article 22 to "Processing for video surveillance purposes" and has:

"1. Natural or legal persons, public or private, may carry out the treatment 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

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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 article

ass 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2015/679 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.

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

nesses 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.”

Among the principles that govern the processing of personal data, the article Article 5.1.c) of the RGPD refers to the "minimization of data": "Personal data will be: (...) c) adequate, pertinent and limited to what is necessary in relation to the financial tions for which they are treated”.

This principle is intimately connected with the purpose pursued by the treatment to of data made. In turn, in accordance with article 22 of the LOPDGDD, the treatment that is carried out by means of video camera systems in cases such as the one that

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occupies must have the specific purpose of “preserving the safety of people and property, as well as its facilities.

Consequently, the processing of personal data for video surveillance purposes must be adjusted and proportionate to the purpose to which it is directed and be strictly mind necessary to fulfill this purpose. Data processing should be restricted that exceeds such purpose or, proceed, where appropriate, to its deletion.

Consistent with the principle of data minimization, the LOPDGDD warns in its

Article 22.2 that "Images of public roads may only be captured to the extent

that is essential for the purpose mentioned in the previous section.” This, because the treatment of images in public places can be carried out exclusively mind - prior to compliance with the legally enforceable requirements - by the Forces and Security forces.

In order for the exception mentioned in article 22.2 of the LOPDGDD to apply- it will be necessary that there is no alternate location of the camcorder from the that images of public roads are not captured. In such a case, the data controller ment will adapt the use of the facility so that the impact on the rights of third parties (passers-by) is the minimum possible. The use of surveillance practices will not be allowed. lance beyond the environment object of the installation of the system without it being able to affect surrounding public spaces such as adjoining buildings and vehicles other than those who access the guarded space. The principle of “data minimization” should be respected both at the time of data collection and in the processing back of them.

It should also be added that the processing of data that is carried out through systems of video surveillance such as the one that is the subject of this claim, will only be lawful if is based on the legitimizing circumstance described in article 6.1.e) of the RGPD: “the Treatment is necessary for the fulfillment of a mission carried out in the public interest. public or in the exercise of public powers vested in the data controller.

Precept in which the RGPD again requires that the treatment carried out be limited to that which is necessary, in this case to fulfill a mission carried out in the interest public. This mission, by application of article 8.2. of the LOPDGDD in relation to the article 22 of the LOPDGDD, it can only be, in cases like the one we are examining, to preserve the safety of people and property.

III

The processing of personal data is also presided over in the RGPD by the principle

principle of “transparency” (article 5.1.a). This principle is made effective through the obligation that the RGPD imposes on the data controller to inform the owner of the data in the terms of articles 12, 13 and 14.

Article 12.1 of the RGPD states: “1. The data controller will take the measures appropriate measures to provide the interested party with all the information indicated in articles 13 and 14”. The RGPD determines what information must be provided to the interested party regarding to the processing of your personal data and differentiates two assumptions for this purpose: that the Data is collected from the owner (article 13 RGPD) or obtained from another source. you (article 14 RGPD).

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Article 13 of the RGPD provides:

"1. When personal data relating to him is obtained from an interested party, the person in charge treatment, at the time these are obtained, will provide you with all the information information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative. tant;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests swindles of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision of adequacy Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees adequate or appropriate and the means to obtain a copy of them or the fact of that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, ble, the criteria used to determine this term;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any any time, without affecting the legality of the treatment based on consent. lien prior to withdrawal;
- d) the right to file a claim with a supervisory authority;

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e) if the communication of personal data is a legal or contractual requirement, or a re-necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing
tar such data;

f) the existence of automated decisions, including profiling, to which
referred to in article 22, sections 1 and 4, and, at least in such cases, significant information
tive on applied logic, as well as the importance and anticipated consequences of
said treatment for the interested party.

3. When the data controller plans the further processing of personal data
personal data for a purpose other than that for which they were collected, will provide the
received, prior to such further processing, information about that other purpose and
any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent
measure in which the interested party already has the information.”

Regarding the means through which the data controller can offer the
affected the information that must be provided, article 12.7

RGPD indicates: “The information that must be provided to the interested parties under the
Articles 13 and 14 may be transmitted in combination with standardized icons that allow
to provide in an easily visible, intelligible, and clearly legible form a
adequate overview of the planned treatment”.

Article 22.4 of the LOPDGDD, transcribed in the preceding Legal Basis, with
the purpose that the duty can be fulfilled in a concise and understandable manner
to inform the interested party that article 12 of the RGPD imposes on the data controller
and under the provisions of article 12.7 of the RGPD, articulates a system of
layered information.

The first layer -which must refer, at least, to the existence of the treatment; to identity of the person in charge and the possibility of exercising the rights provided for in the articles 15 to 22 of the RGPD- will be contained in a device whose design and location must be such that the affected party has a clear view of the information available on about the processing of your personal data and about where and how to find the information detailed tion. It will not be necessary to specify the exact location of the viewing equipment. deo-surveillance, but, nevertheless, it should be very clear what is the scope or space room under video surveillance.

Second layer information needs to be readily available in one place accessible to the affected party, be it an information sheet at a reception, cashier, etc. ..., co-located in a visible public space or in a web address and must refer to the res- of the aspects that must be reported in accordance with article 13 of the GDPR.

IV

By way of summary, taking into consideration both what is stated in the Fundamentals precedents as well as the set of provisions that regulate this matter, so that

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the treatment of the image of natural persons through video surveillance systems lancia is respectful with current regulations on the protection of personal data de- must meet these requirements:

- The processing of data must be proportionate in relation to the purpose for which it is legitimizes such treatment, "to preserve the safety of persons and goods, as well as

of its facilities”.

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

installed by a private security company that meets the requirements of article

5 of Law 5/2014, of April 4, on Private Security.

- 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 occasions, for the protection of spaces

private spaces in which cameras have been installed on the facades or inside, can

if necessary, to guarantee the purpose of security, the recording of a por-

tion of the public road.

That is, cameras and video cameras installed for security purposes will not be able to obtain

have images of public roads unless it is essential for that purpose, or re-

it is impossible to avoid it due to their location. And, extraordinarily,

The minimum space for said purpose will also be collected. Therefore, the cameras

could exceptionally capture the portion of public space minimally necessary

ary for its intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22

of the LOPDGDD, in the terms already indicated.

- The data controller must keep a record of the activities of the data processors.

procedures carried out under their responsibility, including the information to which

which refers to article 30.1 of the RGPD.

- 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 circulate freely in 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 be admitted beyond the environment that is the object of the installation, not being able to affect the surrounding public spaces, adjoining buildings or vehicles other than those accessing the guarded space.

To facilitate consultation, the Spanish Agency for Data Protection, through its website [<https://www.aepd.es>], offers access to the legislation on protection of personal data, 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 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

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aspect of the processing of personal data that it carries out and, where appropriate, generate diverse documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

v

The claim before us deals with two issues. On the one hand, it raises

that the recording of images that is carried out by the video camera system of the called exceeds the permitted limits because it captures the public road. On the other, about the absence of an informative poster of the video-surveillance area that provides the information that must necessarily be provided by the data controller.

The documentation in the file confirms that there are three video cameras installed in different areas of the wall of a building where, according to what was stated by the claimant, the business premises owned by the claimant is located.

The defendant in allegations dated 02/17/21 argues that the cameras are not are operational, so that they do not process any data, fulfilling a mere deterrent function.

Therefore, they do not process data associated with an identified person. or identifiable, which is why there can be no question of infraction in the matter that it concerns us

The mere exterior visualization is not incompatible with the inoperability of the themselves, which helps to fulfill their dissuasive work for the sake of protecting of the property and its belongings.

It should be remembered that the poor placement of the cameras, while being a deterrent rias are not exempt from reproach in the framework of other branches of law, being able to be considered the behavior described as a civil offense, as the passers-by were unaware simulated nature of the area, so in order to avoid evils

In these cases, it is recommended to be oriented towards the private area of the premises to protect, thus avoiding a certain intimidation with the cameras to third parties who feel affected by them in the belief that they are operative.

The recent Judgment of the TS Civil Chamber, section 1, of November 7, 2019, no. 600/2019, rec. 5187/2017, EDJ 2019/724119, reasons that when an individual unaware that he is being filmed behaves with naturalness and spontaneity

that do not occur otherwise.

The TS brings up the doctrine of the TC by which "the constitutionality of any restrictive measure of fundamental rights is determined by the strict observance of the principle of proportionality.

Although in the past the AEPD has sanctioned data controllers due to the use of this type of device, it is currently understood that the use of cameras simulated does not imply an infringement of the fundamental right to the protection of data. cough.

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The presence of false cameras oriented towards public space can generate new claims in the belief of the operability of the same, not having the bystanders to bear the uncertainty about whether their data is being processed or no, aside from the fact that the measure is disproportionate, since a simple reorientation would suffice towards the main entrances and facade of the property so that the same com- They also fulfill their function.

For the same reasons stated, it is not necessary to signpost the area deo-monitored as effective data processing is not carried out in purity, although the absence of an informative sign contributes to increasing the feeling of insecurity in the neighborhood as they believed they were being recorded and the person responsible and/or finalized was unknown. ity of the treatment of the images.

The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative

(TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a procedure contradictory environment in which their own positions can be defended. Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

The question of who is responsible in his case for the withdrawal of the cameras It is the responsibility of this Agency, since it is the parties (lessor/lessee) who should examine the situation described, reaching a solution that allows the balance between the interests in conflict, in such a way that the protection is feasible of the property against acts of vandalism and the protection of the rights of the neighbors who feel intimidated by the denounced system.

SAW

In accordance with the foregoing, it is appropriate to order the Archive of this procedure. due to not being accredited the commission of any administrative infraction, having cameras a simulated character for the purpose of protecting the premises and its belongings. Notwithstanding the foregoing, without prejudice to an on-site verification of the same by this body, the reorientation of these is recommended, so that are not oriented towards the public area, but towards the private space necessary for fulfill its protection function in the terms set forth.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES: FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction in the matter at hand.

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SECOND: NOTIFY this resolution to the entity A CULLER DE TERESA,

S.L.

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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