

□ File No.: EXP202200419

## 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 April 29, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against PUNTO BADAL-BCN  
SL (hereinafter the claimed party). Once the start agreement was notified and after analyzing the  
arguments presented, on July 12, 2022, the proposal for  
resolution transcribed below:

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File No.: EXP202200419

## PROPOSED RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter the claimant) on 11/29/2021 filed  
claim before the Spanish Data Protection Agency. The claim is directed  
ge against PUNTO BADAL-BCN S.L. with NIF B67014597 (hereinafter the claimed).

The reasons on which the claim is based are the following: receipt of an e-mail  
email dated 11/29/2021 sent to dozens of recipients, including the re-  
crying, without using the BCC functionality. He states that he contacted the  
called to request information about a property, but did not request the receipt of  
publicity.

Provide a copy of the mail received: "La casa agency"; It is a Christmas message

introducing themselves to the neighborhood and offering real estate advisory services. The

The only information revealed is the email address.

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

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), on 01/17/2022, the claim is transferred to THE FRANCHISE

REAL ESTATE CITOR in accordance with the LPACAP, so that it proceeded to its

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

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On 02/07/2022 he replied that he has a protocol to respond to the exercises

of rights it receives; unaware of the means by which the claimant exercises her

right of access, suppression and claim since there has been no communication

prior cation with the entity, not being responsible for your data since it does not keep

had no prior business relationship with her; that for the reason described, it is not possible for the

entity can report on the claim or respond to the exercise of rights; that

the respondent has its own protocol for the exercise of the rights of the in-

concerned, being able to address these to your postal address or to the email [08028a@lacasa.-](mailto:08028a@lacasa.-net)

net; that additionally, since 2018 our entity has the services

Consultancy on Data Protection by a specialized company.

Provides Protocol for the Processing of Rights in the field of Damage Protection.

Likewise, on 02/08/2022 said claim was transferred to the person claimed in accordance with

with the LPACAP, so that it could 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. There is no response.

THIRD: On 02/28/2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 04/29/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infractions of articles 5.1.f) and 32.1 of the RGPD, typified in articles 83.5.a) and article 83.4.a) of the aforementioned RGPD.

FIFTH: Notification of the start agreement, the one claimed in writing on 05/26/2022

I present a brief of allegations stating in summary the following: that it is true that an inexperienced worker who had just joined the team sent by mistake and without bad faith an email without the blind copy option with a simple congratulations-Christmas tion; that in order to impose a fine, the circumstances of the individual character; that real estate agency services were offered in the post office having remarkable data

SIXTH: On 06/02/2022, a period of practice tests began, according to do the following

Consider reproduced for evidentiary purposes the claim filed by the plaintiff and its documentation, the documents obtained and generated by the Inspection services that are part of the file.

Consider reproduced for evidentiary purposes, the allegations to the initial agreement presented by the claimed party and the accompanying documentation.

SEVENTH: Of the actions carried out in this procedure, they have been accredited the following proven facts:

1. On 11/29/2021 there is a written entry in the AEPD from the claimant stating that

received on the same date an email sent to numerous recipients,

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including the claimant, without using the blind copy function. Also, it indicates that contacted the respondent to request information about a property, but that you did not request the receipt of advertising.

2. A copy of the mail received by the claimant without a blind copy is provided in the containing dozens of email addresses; Christmas message from "The casa agency" introducing itself to the neighborhood and offering counseling services in-furniture.

3. The respondent in writing dated 05/26/2022 states "That it is true that a worker inexperienced and who had just joined our team sent by mistake and without bad faith. an email without the blind copy option with a simple CONGRATULATIONS OF CHRISTMAS".

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each authority of control and according to what is established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the 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

Data processed by the Spanish Agency for Data Protection will be governed by the provisions established in Regulation (EU) 2016/679, in this organic law, by the provisions regulatory provisions issued in its development and, as long as they do not contradict them, with subsidiary character, by the general rules on administrative procedures you".

Article 58 of the RGPD, Powers, states:

"two. Each control authority will have all the following powers:

rectives listed below:

II

(...)

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

(...)"

In the first place, article 5 of the RGPD establishes the principles that must govern  
govern the processing of personal data and mentions among them that of "integrity and  
confidentiality".

The cited article states that:

"1. The personal data will be:

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(...)

f) treated in such a way as to guarantee adequate security of the damages

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

(...)

III

1. The documentation in the file offers clear indications that the claimed, violated article 5 of the RGPD, principles related to the treatment, to the re-Send email without using the blind copy option, violating confidentiality.

ity in the processing of personal data. Thus, the claimant had access to the email addresses of the other recipients.

This duty of confidentiality must be understood to have the purpose of prevent leaks of the data not consented to by the owners of the same.

and it is an obligation that falls not only to the person responsible and in charge of the treatment, but to everyone who intervenes in any phase of the treatment and complements obligation of professional secrecy.

The same claimed in writing of allegations to the agreement to start

05/26/2022 I present a brief of allegations, has acknowledged the facts stating “That it is true that an inexperienced worker and that he had just joined our team sent by mistake and without bad faith. an email without the blind copy option with a simple CHRISTMAS CARD”.

Therefore, in view of the foregoing, it is considered that the respondent has violated nerated the RGPD for infraction of what is indicated in article 5.1.f) of the same.

2. The respondent has also indicated in his brief of 05/26/2022 that he has not there was bad faith or intentionality in sending the email; regarding

In this matter, it should be noted that the National High Court in its rulings, among others that of 05/24/02 has indicated that “good faith in acting, to justify the absence

guilt –as is done in the present case-; suffice it to say that that allegation is weakened when there is a specific duty of vigilance derived from the profession criminality of the offender. In this traditional line of reflection, the STS of March 12 of 1975 and March 10, 1978, reject the allegation of good faith, when on the offender weigh duties of vigilance and diligence derived from his status as a professional”.

3. Therefore, it is estimated that the defendant would be responsible for the violation of the article 5.1.f) of the RGPD, infringement typified in article 83.5.a) of the aforementioned regulation.

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article.

IV

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Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum amount of the global total annual turnover of the previous financial year, opting-I know for the highest amount”.

The LOPDGDD in its article 71, Violations, states that: “They constitute violations tions the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this law organic”.

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

entail a substantial violation of the articles mentioned therein and, in particular,

particular, the following:

a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.

(...)"

Second, it should be noted that the security of personal data

It is regulated in article 32 of the RGPD.

v

Article 32 of the RGPD "Security of treatment", establishes that:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of pro-

variable probability and severity for the rights and freedoms of natural persons,

the person in charge and the person in charge of the treatment will apply technical and organizational measures

appropriate channels to guarantee a level of security appropriate to the risk, which in its

case include, among others:

a) pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and re-permanent silence of treatment systems and services;

c) the ability to restore availability and access to personal data

promptly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

of the technical and organizational measures to guarantee the security of the treatment.



2. When evaluating the adequacy of the security level, particular consideration shall be given to taking into account the risks presented by the processing of data, in particular as a consequence accidental or unlawful destruction, loss or alteration of personal data transmitted, stored or otherwise processed, or the communication or unauthorized access to such data.

3. Adherence to an approved code of conduct under article 40 or to a

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certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the feel article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee warrant that any person acting under the authority of the person in charge or the person in charge do and have access to personal data can only process said data following instructions instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

The violation of article 32 of the RGPD is typified in the article

83.4.a) of the aforementioned RGPD in the following terms:

SAW

"4. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 2% of the volume

overall annual total turnover of the previous financial year, opting for the

greater amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43.

(...)"

For its part, the LOPDGDD in its article 73, for prescription purposes, qualifies of "Infringements considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following following:

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679.

(...)

(...)"

The GDPR defines personal data security breaches as "all all those security violations that cause the destruction, loss or alteration accidental or illicit ration of personal data transmitted, conserved or processed in otherwise, or unauthorized communication or access to such data".

7th

The documentation in the file shows that the respondent has violated nerated article 32 of the RGPD, when a security incident occurs motivated by sending an email to a large number of recipients without the function blind copying, violating the established technical and organizational measures.

It should be noted that the RGPD in the aforementioned provision does not establish a list of

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the security measures that are applicable according to the data that is object of treatment, but it establishes that the person in charge and the person in charge of the treatment will apply technical and organizational measures that are appropriate to the risk that treatment entails, taking into account the state of the art, the costs of applying cation, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and proportionate.

to the detected risk, pointing out that the determination of the technical and

Organizational activities must be carried out taking into account: pseudonymization and encryption, capacity to guarantee confidentiality, integrity, availability and resilience, the ability to restore availability and access to data after an incident, process verification (not audit), evaluation and assessment of the effectiveness of the measures you give.

In any case, when evaluating the adequacy of the security level, parti-

taking into account the risks presented by the processing of data, as a consequence

accidental or unlawful destruction, loss or alteration of personal data

transmitted, stored or otherwise processed, or the communication or unauthorized access

authorized to said data and that could cause physical, material and

them or immaterial.

In this same sense, recital 83 of the RGPD states that:

“(83) In order to maintain security and prevent the processing from violating the

established in this Regulation, the person in charge or the person in charge must evaluate the

risks inherent to the treatment and apply measures to mitigate them, such as encryption.

These measures must guarantee an adequate level of security, including confidentiality.

taking into account the state of the art and the cost of its application with respect to

regarding the risks and the nature of the personal data to be protected. To the

assess the risk in relation to data security, should be taken into account

the risks arising from the processing of personal data, such as the destruction

accidental or unlawful loss, loss or alteration of transmitted personal data, conservation

stored or otherwise processed, or unauthorized communication or access to such

data, susceptible in particular to cause physical, material or

immaterial”.

The responsibility of the claimed party is determined by the security incident.

revealed by the claimant, since he is responsible for making decisions

tions aimed at effectively implementing the technical and organizational measures

appropriate to guarantee a level of security appropriate to the risk to ensure the

confidentiality of the data, restoring its availability and preventing access to the

in the event of a physical or technical incident. However, from the documentation provided

It follows that the entity has not only failed to comply with this obligation, but also

Furthermore, the adoption of measures in this regard is unknown, despite having given

side of the filed claim.

In accordance with the foregoing, it is estimated that the respondent would be liable

saber of the infringement of article 32.1 of the RGPD, infringement typified in its article

83.4.a).

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In order to establish the administrative fine to be imposed, they must observe

The provisions contained in articles 83.1 and 83.2 of the RGPD, which indicate:

viii

"1. Each control authority will guarantee that the imposition of the fines

in accordance with this article for infringements of these Regulations.

indicated in sections 4, 5 and 6 are in each individual case effective, proportionate  
tioned and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

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

such as the number of interested parties affected and the level of damages

they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the data controller or data processor.

taking into account the technical or organizational measures that they have applied in vir-

tude of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment-

f) the degree of cooperation with the supervisory authority in order to remedy

gave the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

i) when the measures indicated in article 58, paragraph 2, have been ordered nothing previously against the person in charge or the person in charge in question in relation with the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, direct or indirect. straight, through the infraction.

I lie;

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its ar-

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

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of personal data.

commission of the offence.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

e) The existence of a merger by absorption process after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) The submission by the person in charge or person in charge, voluntarily

beneficiary, to alternative conflict resolution mechanisms, in those cases in which

which there are controversies between them and any interested party.”

cough.

- In accordance with the precepts transcribed, in order to set the amount of the

sanction for the infringement typified in article 83.5.a) and article 5.1.f) of the RGPD of the

that the defendant is held responsible, the following factors are considered concurrent:

Aggravating circumstances are:

- Linking the activity of the offender with the performance of treatments

of personal data (article 76.2.b) of the LOPDGDD in relation to the ar-

article 83.2.k).

- Although it cannot be argued that the defendant acted intentionally-

mind, there is a serious lack of diligence in their actions. Connected to the gra-

diligence that the data controller is obliged to display in the

compliance with the obligations imposed by the data protection regulations

the SAN of 10/17/2007 can be cited: “(...) the Supreme Court has understood that

recklessness exists whenever a legal duty of care is disregarded, i.e.

when the offender does not behave with due diligence. And in the assessment of

degree of diligence, the professionalism or not of the subject must be especially weighed,

and there is no doubt that, in the case now examined, when the activity of the recovery

rrerent is of constant and abundant handling of personal data has to insist-

rigorously and with exquisite care to adjust to the legal precautions regarding the aspect" (article 83.2, b) of the RGPD).

In accordance with the above factors, it is considered appropriate to propose for violation of article 5.1.f) of the RGPD a penalty of 3,000 euros.

- Secondly, in order to set the amount of the penalty for the infringement typified in article 83.4.a) and article 32.1 of the RGPD for which the user is responsible.

claimed, the following factors are considered concurrent.

- Linking the activity of the offender with the performance of treatments of personal data (article 76.2.b) of the LOPDGDD in relation to the article 83.2.k).

- Although it cannot be argued that the defendant acted intentionally-mind, there is a serious lack of diligence in their actions. Connected to the grade of diligence that the data controller is obliged to display in the

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compliance with the obligations imposed by the data protection regulations

the SAN of 10/17/2007 can be cited: "(...) the Supreme Court has understood that recklessness exists whenever a legal duty of care is disregarded, i.e.

when the offender does not behave with due diligence. And in the assessment of

degree of diligence, the professionalism or not of the subject must be especially weighed,

and there is no doubt that, in the case now examined, when the activity of the recovery

process is of constant and abundant handling of personal data has to insist-

rigorously and with exquisite care to adjust to the legal precautions regarding the



aspect" (article 83.2, b) of the RGPD).

In accordance with the above factors, it is considered appropriate to propose for violation of article 32.1 of the RGPD a penalty of 2,000 euros.

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

FIRST: That the Director of the Spanish Data Protection Agency penalize PUNTO BADAL-BCN S.L., with NIF B67014597, for infringing article 5.1.f) of the RGPD, typified in article 85.3.a) of the RGPD, a penalty of €3,000 (three thousand euros).

SECOND: That the Director of the Spanish Agency for Data Protection penalize PUNTO BADAL-BCN S.L., with NIF B67014597, for infringing article 32.1 of the RGPD, typified in article 83.4.a) of the RGPD, a penalty of €2,000 (two thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, You are informed that 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 the amount of the same. With the application of this reduction, the total penalty would be established at €4,000 (four thousand euros) and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, You must make it effective by depositing it in the restricted account number ES00 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of Data in the banking entity CAIXABANK, S.A., indicating in the concept the number

reference of the procedure that appears in the heading of this document and  
the cause, by voluntary payment, of reduction of the amount of the sanction. Likewise,  
You must send proof of entry to the General Subdirectorate of Inspection for  
proceed to close the file.

By virtue thereof, the foregoing is notified, and the  
procedure so that within a period of TEN DAYS you can allege whatever you consider

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in his defense and present the documents and information that he considers pertinent,  
in accordance with article 89.2 of the LPACAP.

BBB

INSPECTOR/INSTRUCTOR

EXHIBIT

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11/29/2021 A.A.A. claim

01/17/2022 Transfer claim to LA CASA REAL ESTATE FRANCHISOR

GROUP, S.L.

02/07/2022 Response to the request of the REAL ESTATE FRANCHISOR

HOUSE GROUP SL

02/08/2022 Transfer claim 2 to PUNTO BADAL-BCN S.L.

02/28/2022 Communication to A.A.A.

05/03/2022 A. opening to PUNTO BADAL-BCN S.L.

05/22/2022 Info. Complainant to A.A.A.

05/26/2022 Allegations of PUNTO BADAL-BCN S.L.

06/02/2022 Notice p. tests to PUNTO BADAL-BCN S.L.

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SECOND: On July 26, 2022, the claimed party has proceeded to pay

the sanction in the amount of 4000 euros making use of the reduction foreseen in the motion for a resolution transcribed above.

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

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

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

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions

in 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.”

## 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."

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202200419, of

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

SECOND: NOTIFY this resolution to PUNTO BADAL-BCN 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 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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