

□ File No.: EXP202105439

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 February 21, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate sanctioning proceedings against SCF ZHU, S.L. (in
hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: EXP202105439

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: The CIVIL GUARD - POST OF ***LOCALITY.1 (hereinafter, the
complaining party), dated 11/25/2021, submitted a double Report-Complaint for a possible
non-compliance with the personal data protection regulations by
of SCF ZHU, S.L., with NIF B65080921 (hereinafter, the claimed one).

The following is indicated in the referral document:

“At 12 noon on November 22, 2021, the Patrol of the ***COMPANY.1
performs an inspection at the BASAR CASA MONA establishment, located in the town of
***LOCATION.2 (...).

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A Complaint Act is issued for violation of data protection regulations in reference to the placement of a video surveillance system in the premises:

- Not having at least one badge or sign in the video surveillance area informative in a sufficiently visible place. It lacks on the outside when entering the store.

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Having a video surveillance device in use, and not accrediting the obligation to have the Record of Processing Activities.

[...]

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 control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

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."

In accordance with the definition of "personal data" offered by article 4.1 of the RGPD, the image of a natural person is personal data. Thus, in accordance with the article 1.2 of the RGPD, the image of a natural person and its protection is subject to said Regulation.

Article 12.1 of the RGPD states that: "1. The data controller will take the appropriate measures to provide the interested party with all the information indicated in the www.aepd.es

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articles 13 and 14". In this sense, section 7 of the aforementioned precept indicates that: "The information to be provided to data subjects under Articles 13 and 14 may be processed in combination with standardized icons that allow to provide in an easily visible, intelligible, and clearly legible manner an adequate vision of set of planned treatment.

In parallel, article 22 of the LOPDGDD includes the specific rules for the data processing for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent

when necessary to ensure the safety of goods or facilities

strategic or infrastructure linked to transport, without in any case

may involve capturing images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its capture,

except when they had to be kept to prove the commission of acts that

threaten the integrity of persons, property or facilities. In such a case, the

Images must be made available to the competent authority within a period

maximum of seventy-two hours from the knowledge of the existence of

the recording.

The blocking obligation provided for in the

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood fulfilled by placing an informative device instead

sufficiently visible identifying, at least, the existence of the treatment, the

identity of the person in charge and the possibility of exercising the rights foreseen in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device 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

just capture the inside of your own home.

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This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from images and sounds obtained through the use of cameras and video cameras by the Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (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 information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.

In order for the data controller to comply with the obligation imposed by the Article 12 of the RGPD, article 22 of the LOPDGDD requires that, 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 the RGPD, is contained in a device whose design and location must be such that the affected party has a clear view of the information available on the processing of your personal data and on where and

how to find the detailed information. However, it should be noted that the rest of the matters contemplated in article 13 of the RGPD “must be kept available of those affected”, that is, in a place that can be easily accessed by the interested party. In accordance with article 13 of the RGPD, the information that must be provided by the responsible for the treatment when the personal data is obtained from the interested party is the next:

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

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

a)

b)

the contact details of the data protection officer, if any;

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

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

d)

the recipients or categories of recipients of the personal data, in

Their case;

e) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personally, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

a)
the existence of the right to request from the data controller access to the personal data related 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 data portability;

b) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

c) the right to file a claim with a supervisory authority;

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

and)

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

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

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

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III

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:

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

-

Camcorders will not be able to capture images of people
are outside the private space where the security system is installed.
video surveillance, since the processing of images in public places only
can be carried out, unless there is government authorization, by the
Security Forces and Bodies. They cannot be captured or recorded
spaces owned by third parties without the consent of their owners, or, in their
case, 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 in
facades or inside, it may be necessary to guarantee the purpose of
security recording a portion of the public highway. That is, the cameras
and video cameras installed for security purposes will not be able to obtain images
of public roads unless it is essential for that purpose, or it is
impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the
cameras could exceptionally capture the minimally necessary portion
for its 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.
- The person in charge must keep a record of treatment activities
carried out under their responsibility, including the information to which
refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces.
third party and/or public space without duly accredited justified cause, or
may affect the privacy of passers-by who move freely through the

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zone. It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

In relation to the foregoing, 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” / “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 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 regarding the processing of personal data that it carries out and, where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

The claim is based on the lack of information poster of the existence of a system of video surveillance installed in the establishment of the claimed, located in the town of ***LOCALIDAD.2, and in that it does not have a Record of Activities of Treatment. However, in the latter case, in accordance with article 30.5 of the RGD, the claimed party is exempt from this obligation by providing that "they will not apply to any company or organization that employs less than 250 people" and, in addition, its activity does not "involve a risk to the rights and freedoms of the interested parties, it does not be occasional, or include special categories of personal data (...)".

Thus, the evidence available at this stage of the procedure sanctioning party, without prejudice to what results from the investigation of the file, constitute solid indications that the claimed one, having security cameras installed, video surveillance in the establishment, lacks a badge or poster with all the information that must necessarily appear in it.

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The conduct of the defendant violates the obligation imposed by article 13 of the RGD, so such conduct could constitute an infringement typified in the article 83.5 b) of the RGD, a precept that establishes: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to 4% of the total annual global turnover for the year previous financial statement, opting for the highest amount:

a)

(...)

a) The rights of the interested parties according to articles 12 to 22;

(...)

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as

very serious “The omission of the duty to inform the affected party about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the Regulation

(EU) 2016/679 and 12 of this Organic Law”. The limitation period for offenses

very serious cases provided for in Organic Law 3/2018 is three years.

v

Article 58.2 of the RGPD establishes:

“Each supervisory authority shall have all of the following corrective powers

listed below:

a)

(...)

(...)

d) order the person responsible or in charge of treatment that the operations of

treatment comply with the provisions of this Regulation, when

proceed, in a certain way and within a specified period;

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(...)

Yo)

impose an administrative fine under article 83, in addition to or in

Instead of the measures mentioned in this section, according to the circumstances of each particular case.

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

In the present case, taking into account the exposed facts and without prejudice to what results from the instruction of the procedure, it is considered that the sanction that should be imposed is an administrative fine. The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the article 83.1 of the RGPD. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. 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 the 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 to be treated as well as the number of interested parties affected and the level of damage and damages they have suffered;

a)
the intentionality or negligence in the infringement;

b) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

c) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures they have applied under articles 25 and 32;

d)

any previous infraction committed by the person in charge or the person in charge of the

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treatment;

e) the degree of cooperation with the supervisory authority in order to put

remedy the violation and mitigate the possible adverse effects of the

infringement;

F)

the categories of personal data affected by the breach;

g)

the way in which the supervisory authority became aware of the infringement, in

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

h) when the measures indicated in article 58, section 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

Yo)

i)

adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42,

any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided,

directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

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

a) The continuing nature of the offence.

a) The link between the activity of the offender and the performance of treatments of personal data.

b) The benefits obtained as a result of the commission of the

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infringement.

c) The possibility that the conduct of the affected party could have induced the commission of the offence.

d) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.

e) Affecting the rights of minors.

f) Have, when it is not mandatory, a delegate for the protection of data.

g) The submission by the person in charge or person in charge, with

voluntary, alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and anyone interested”.

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in the present case for the infraction typified in article 83.5 b) of the RGPD, in the first assessment they are estimated concurrent as aggravating the following aspects that reveal greater unlawfulness and/or culpability in the defendant's conduct:

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The nature of the infringement. The one claimed due to the lack of an information poster produces damages to all affected stakeholders who are unaware who is responsible for the treatment and to whom they must address to be able to exercise the rights recognized in the RGPD.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13, it allows setting as an initial assessment a fine of 1,000 euros (one thousand euros).

SAW

If the infringement of article 13 of the RGPD is confirmed, it could also be agreed, impose on the person responsible the adoption of appropriate measures to adjust their actions

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to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may “order the

responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period...”.

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined, prove these extremes:

- Prove that you have proceeded to place the appropriate information device in video-monitored areas (at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of the RGPD), locating this device in a sufficiently visible place.

- Prove that you keep the information to which it refers available to those affected. refers to the aforementioned RGPD.

The respondent is warned that not meeting the requirements of this body may be considered as an administrative infraction in accordance with the provisions of the RGPD, being able to motivate such conduct the opening of a subsequent procedure sanctioning administrative.

Therefore, based on the foregoing,

by the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against SCF ZHU, S.L., with NIF B65080921, for the alleged infringement of article 13 of the RGPD, typified in the article 83.5 b) of the RGPD.

SECOND: THAT for the purposes provided in article 64.2 b) of Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations www.aepd.es

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(LPACAP), the sanction that could correspond would be an ADMINISTRATIVE FINE of 1,000 euros (one thousand euros), without prejudice to what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of article 58.2 d) of the RGPD.

THIRD: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S.

indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (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 in the actions prior to the start of this sanctioning procedure.

FIFTH: NOTIFY this agreement to SCF ZHU, S.L., with NIF B65080921, 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

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the

this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding, equivalent in this case to €200 (two hundred euros). With the application of this reduction, the sanction would be set at €800 (eight hundred euros)

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Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will entail a reduction of 20% of its amount, equivalent to €200 (two hundred euros). With the application of this reduction, the penalty would be established at €800 (eight hundred euros) and its payment will imply the termination of the procedure.

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. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €600 (six hundred euros).

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 (800 euros or 600 euros), you must make it effective by

your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the banking entity 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 welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of 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.

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Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 8, 2022, the claimed party has proceeded to pay the sanction in the amount of 600 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the

responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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 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."

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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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202105439, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to SCF ZHU, 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.

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