

□ File No.: EXP202204253

## 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 22, 2023, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanction proceedings against MUNDOVIAJES2010,  
S.L. (hereinafter, the claimed party), through the transcribed Agreement:

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File No.: EXP202204253

### AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: On March 21, 2022 A.A.A. (hereinafter, the claiming party)  
filed a claim with the Spanish Data Protection Agency.

The claim is directed against MUNDOVIAJES2010, S.L. with NIF B05450689 (in  
below, the claimed party).

The reasons on which the claim is based are the following:

The claimant states that on 03/17/2022 at 11:15 a.m., she received a message on her mobile  
call from the calling line \*\*\*PHONE.1.

He asked his interlocutor how he got his data without his consent and he

She replied that through a friend of hers who gave them to her.

Subsequently, he contacted said company through WhatsApp to

request an electronic address where you can exercise your rights of protection of data.

The company has not provided the claimant with the information required when the data personal information have not been obtained directly by the owner of the same, of in accordance with article 14 of the LOPDGDD.

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Along with your claim document, you provide:

- screenshot of WhatsApp messages exchanged with the party claimed.

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

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), on April 8, 2022, transfer of said

claim to the claimed party, to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on April 11, 2022 as

It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: On June 21, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

The operators of the calling and called numbers are checked.

Confirmation with the operator of the number called the owner of the line and the reception of the call on the date and time indicated with a duration of 33 seconds.

The owner of the line and the issuance of the caller are verified with the operator of the calling number. call that the owner is GOVAR TOURS 2004 SL. with NIF B93614501 with address in C/ LA TORRETA 2 TORREMOLINOS 29620 Malaga.

Made and reiterated the request for information to the claimed party on dates 9 August and September 29, 2022, delivery expired on August 20 and October 13, 2022, respectively.

The request was reiterated by post on October 18, and it was delivered on October 22. November.

It is verified by means of a diligence on November 8 that the address is correct for the claimed party based on his name and NIF.

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Finally, a response is obtained on December 12 where the representative of the

Respondent states that:

Its represented is MUNDOVIAJES 2010 S.L. with NIF: B05450689 and with address at C/ Gran Cardenal 10, 2º-15, 29620 Torremolinos (Málaga).

It has taken the necessary measures to prevent it from happening again, eliminating all the information related to the claimant.

Due to computer problems and the transfer of the physical office, it was impossible for them to communicate in advance.

Has received from the claimed party the exercise of rights regulated in articles 15 to 22 of the GDPR.

The company MUNDOVIAJES 2010 S.L. obtains the contact information of the claimant through a friend of hers from Mallorca (provide name and surname), who provided on March 17, 2022 a list of contacts of relatives and friends between which the claimant is located.

The company has decided to previously verify that the contact lists provided by clients are signed by the interested party, making sure that future potential customers agree to receive an offer.

Provide a copy of the original list of clients stated by the friend of the claimant, since the claimant no longer appears in its database.

It is verified that the list of 11 contacts with name, relationship and telephone number is March 17, 2022 with the friend's details, but no signature.

Provide the contact to exercise the rights in MUNDOVIAJES 2010 S.L. B05450689 at the address of the reservation center C/ Antonio Zedano, 3, office 26, 29620 Torremolinos (Málaga) or at [costatourhoteles@gmail.com](mailto:costatourhoteles@gmail.com).

FUNDAMENTALS 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 GDPR), 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.

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

Article 6.1 of the GDPR establishes the assumptions that allow the use of processing of personal data indicating the following:

II

"1. Processing will only be lawful if at least one of the following is fulfilled conditions:

- a) the interested party gave his consent for the processing of his personal data for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;
- c) the processing is necessary for compliance with an applicable legal obligation

to the data controller;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

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The provisions of letter f) of the first paragraph shall not apply to the treatment

carried out by public authorities in the exercise of their functions.

Violation of art. 6 of the GDPR is typified in article 83.5 a) of the GDPR that

has:

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; (...)"

Article 72.1 b) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years, the infractions that suppose a substantial violation of the articles mentioned therein and in particular, the following:

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

II

In relation to the right to information, we must refer to article 14 of the GDPR which determines the following:

1. When the personal data has not been obtained from the interested party, the person in charge of the treatment will provide you with the following information:

- a) the identity and contact details of the person in charge and, where appropriate, their representative;
- b) the contact details of the data protection officer, if applicable;
- c) the purposes of the processing for which the personal data is intended, as well as the basis legal treatment;
- d) the categories of personal data concerned;

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

f) where appropriate, the intention of the controller to transfer personal data to a addressee in a third country or international organization and the existence or absence

of a Commission adequacy decision, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to the adequate or appropriate guarantees and the means to obtain a

copy of them or the fact that they have been lent.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will provide the interested party with the following information necessary to guarantee

a fair and transparent treatment of data with respect to the interested party:

a) the period during which the personal data will be kept or, when this is not

possible, the criteria used to determine this term;

b) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge of the treatment or of a third party;

c) the existence of the right to request the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of their treatment, and to oppose the treatment, as well as the right to portability

of the data;

d) 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

at any time, without affecting the legality of the treatment based on the

consent before its withdrawal;

e) the right to file a claim with a control authority;

f) the source from which the personal data comes and, if applicable, if it comes from

publicly accessible sources;

g) the existence of automated decisions, including profiling, to which

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, information

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.



3. The controller will provide the information indicated in sections 1 and

2:

a) within a reasonable period of time after obtaining the personal data, and no later than take within one month, taking into account the specific circumstances in which said data is processed;

b) if the personal data are to be used for communication with the interested party, at the latest at the time of first communication to that data subject, or

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c) if it is planned to communicate them to another addressee, at the latest at the time when personal data is communicated for the first time.

4. When the controller plans the subsequent processing of the data

personal data for a purpose other than that for which they were obtained, will provide the data subject, prior to said further processing, information about that other purpose and any other pertinent information indicated in section 2.

5. The provisions of paragraphs 1 to 4 shall not apply when and to the extent in what:

a) the interested party already has the information;

b) the communication of said information is impossible or involves an effort disproportionate, in particular for processing for archiving purposes in the interest public, scientific or historical research purposes or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation referred to in paragraph 1 of this article may

render impossible or seriously impede the achievement of the objectives of such treatment. In such cases, the controller shall take appropriate measures to protect the rights, freedoms and legitimate interests of the data subject, including making public the information;

c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the controller and that establish appropriate measures to protect the legitimate interests of the data subject, or

d) when personal data must remain confidential on the basis of an obligation of professional secrecy regulated by Union law or of the Member States, including a statutory secrecy obligation.

Violation of article 14 of the GDPR, is typified in article 83.5 of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22; (...)".

For the purposes of the limitation period for infringements, the infringement indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states that:

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"Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

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

IV.

In this case, the claimant receives a commercial call from the defendant, confirmed in origin and destination operator.

The requested entity states that the telephone number was provided by a friend of the claimant, and that due to computer problems and transfer of the physical office, they were unable to respond to the claimant's access request.

In relation to this last aspect, the claimant sent the defendant a letter

Whatsapp message, in response to which the latter should have informed, in particular to his express request to know the means through which he could exercise Your rights.

Therefore, in accordance with the evidence available in this time of agreement to start the disciplinary procedure, and without prejudice to what result of the instruction, it is considered that the claimed party is violating the articles 6.1 and 14 of the GDPR, because it has processed the personal data of the claimant without your consent or without incurring in cause that justifies your treatment, and has denied the information regarding the processing of your personal data, as required by article 14 of the GDPR indicated in the legal basis III.

V

Article 58.2 of the GDPR provides the following: "Each control authority shall have

of all of the following corrective powers listed below:

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

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine in accordance with article 83, in addition to or instead of the

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

particular;

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The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR.

SAW

Therefore, it is appropriate to graduate the sanction to be imposed according to the criteria that

establishes article 83.2 of the GDPR, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR.

Article 83.2 of the GDPR establishes that:

"Administrative fines will be imposed, depending on the circumstances of each

individual case, as an addition to or substitute for the measures contemplated in article

Article 58, section 2, letters a) to h) and j).

When deciding to impose an administrative fine and its amount in each individual case

dual 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

such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

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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 extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification 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, directly or indirectly, through the infringement.”

In the present case, without prejudice to what results from the investigation, they have taken into account account, as an aggravating circumstance, the intentionality and negligence of the entity claimed, according to article 83.2 b) of the GDPR, since access to your data is not allowed despite your request.

For all these reasons, it is considered that the sanction that would correspond to be imposed would be 5,000 euros for the infringement of article 6.1 of the GDPR and 2,000 euros for the infringement of the article 14 of the GDPR.

If such infringements are confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust its performance to the aforementioned regulations in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may “order the person in charge or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...”.

The imposition of this measure is compatible with the sanction consisting of a fine administration, according to the provisions of art. 83.2 of the GDPR.

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It is noted that not attending to the possible order to adopt measures imposed by this body in the sanctioning resolution may be considered as a

administrative offense in accordance with the provisions of the GDPR, classified as infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against MUNDOVIAJES2010,

S.L., with NIF B05450689, in accordance with the provisions of article 58.2.i) of the GDPR,

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for the alleged infringement of article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR.

for the alleged infringement of article 14 of the GDPR, typified in article 83.5.b) of the GDPR.

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

indicating that any of them may be challenged, if applicable, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into 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 Sub-directorate General of Inspection of Data in the actions prior to the start of this sanctioning procedure.

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

would be 7,000 euros (seven thousand euros):

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€5,000 (five thousand euros) under article 6.1 of the GDPR

€2,000 (two thousand euros) for article 14 of the GDPR

FIFTH: NOTIFY this agreement to MUNDOVIAJES2010, S.L., with NIF

B05450689, granting a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations must provide your NIF and the procedure number that appears in the

heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

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64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the period granted for the formulation of allegations to the

present initiation agreement; which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 5,600 euros, resolving the

procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this



procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 5,600 euros and its payment will imply the termination of the procedure, without prejudice to the imposition of the corresponding measures.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain established at 4,200 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated 5,600 or 4,200 euros, you must make it effective through your deposit in account IBAN number: ES00-0000-0000-0000-0000-1719 (BIC/SWIFT Code: CAIXESBBXXX) opened on behalf of the Spanish Data Protection Agency in the banking entity CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

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

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, as regards successively, the notifications that are sent to you will be made exclusively in a electronically, through the Unique Authorized Electronic Address (dehu.redsara.es) and the Electronic Notification Service (notifications.060.es), and that, if you do not access their rejection will be recorded in the file, considering the process completed and

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following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of making available to the notifications and that failure to practice this notice will not prevent the notification be considered fully valid.

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

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 29, 2023, the claimed party has proceeded to pay of the sanction in the amount of 4200 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of 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 appeal against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

## FUNDAMENTALS OF LAW

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### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 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 Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

## II

### Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

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

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

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

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

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

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

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202204253, in

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

SECOND: NOTIFY this resolution to MUNDOVIAJES2010, S.L.

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

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

Against this resolution, which puts an end to the administrative process as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations, interested parties may file an appeal administrative litigation before the Administrative Litigation Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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