

□ File No.: PS/00251/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On July 5, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against FUTURE VINLINE SL

(hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00251/2021

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: On 01/10/2021, it had entry in this Spanish Agency of

Data Protection a document presented by A.A.A. (hereinafter, the claimant),

through which he makes a claim against FUTURE VINLINE SL with NIF

B67626473

the website

<http://www.vinogrado.com>, due to the lack of a privacy policy appropriate to the

GDPR.

the claimed one),

(onwards,

title of

The claim indicates the following, in relation to the matter of protection of

data:

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“When trying to make a claim, I observe in the comments, as well as in the information that exists on the web, which may be a fraudulent page. Nope there is no information on data protection, there is no phone number of contact and the email that contains info@vinogrado.com, returns the emails, so it is impossible to contact”.

Based on the foregoing, in the opinion of the claimant, the privacy policy contained in the website <https://www.vinogrado.com> does not comply with data protection regulations of a personal nature, since it does not provide the user with clear and complete information about your treatment. Along with the claim, provide, among other things, a copy of the following documents:

- A copy of the contact form that includes spaces for data identification of the person, specifically those related to the name, email and phone number. Likewise, the document, under the rubric “What is in your mind?” allows the user to formulate any type of doubt or opinion about the services offered on the web.
- A copy of the privacy policy of the website <https://www.vinogrado.com> in which indicates the following: "All communication with Future Vinline S. L., by any means, either through your email address or the forms present in this "web site", supposes the express consent

so that your personal data is incorporated into files owned by

FUTURE VINLINE SL...”.

In an independent paragraph, it adds: “These personal data will be treated in accordance with the provisions of Organic Law 15/1999, of 13

December, Protection of Personal Data. Therefore, the

The interested party may exercise the right of access, rectification, cancellation and

opposition with respect to the personal data contained in the expressed

files, being able to revoke your consent in writing at any

moment. They may do so by written communication addressed to

FUTURE VINLINE SL...”.

SECOND: In view of the facts denounced, the General Subdirectorate of

Data Inspection verified that the web page <https://vinogrado.com> to date

02/10/2021 continued without adapting its privacy policy to the provisions of the RGPD.

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Prior to admitting this claim for processing, the Agency gave

transfer of it to the claimed one on 02/24/2021, in accordance with the provisions

in article 65.4 of Organic Law 3/2018, of December 5, on the Protection of

Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). I know

produced a first notification attempt through the Notification Service

Electronic, being rejected on 03/07/2021 once the deadline for

ten days set. However, on 03/12/2021 the respondent received notification to

through postal mail, as stated in the Receipt Notice issued by Correos, without

that a response has been received.

THIRD: The claim was admitted for processing by agreement on 05/21/2021.

FOURTH: Dated 06/24/2021, by the General Subdirectorato for Data Inspection

access to the information available on the claimed entity in "Axesor". In

said website does not contain any information regarding the turnover, since it was constituted on

05/29/2020. However, it is indicated that its capital is 500,000 euros and that it is a

SMEs.

FIFTH: On 06/29/2021 the General Subdirectorato for Data Inspection agreed to the

website <http://www.vinogrado.com>, being verified, on the one hand, that the

claimed acknowledges being the owner of the website and, on the other hand, that its privacy policy

continues to be the same one that appears in one of the documents provided by the

claimant and indicated in the "Facts" section, first point, of this agreement. In

this sense, among the information that is collected in the section "Privacy Policy"

Returns and Reimbursement, General Conditions" indicates the following: "The registration

in the Portal and the use of the services implies that your data as a User will be transferred to

form part of the files of Vinogrado, and its treatment will be in accordance with the provisions

in the Privacy Policy, which the User expressly declares to know and accept".

With regard to the collection of personal data, on the website there are two

forms, contact and registration. The first of them allows any user

of the web page make the queries it deems appropriate, having to complete

for this the corresponding form that collects as mandatory the name and

email, but not the phone number. For its part, the registration form only

collects the personal data of those who want to become customers, such as the

name, surnames and email. Also, if you buy any product,

bank data is also collected when having to enter the data of the

card.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

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

II

The facts revealed by the complainant are specified in the lack of policy of privacy of the web <https://www.vinogrado.com> adapted to the regulations of protection of personal data, by not providing the user with information clear and complete information on the processing of your personal data.

Article 5 of the RGPD regarding the principles that must govern the processing of data personal mentions among them that of transparency. Section 1 of the precept provides: "Personal data will be:

a)
processed lawfully, loyally and transparently in relation to the interested party (in-

teresado ("legality, loyalty and transparency")"

Manifestation of the principle of transparency is the obligation incumbent on the

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responsible for the treatment of informing, in the terms of article 13 of the RGPD, to the

owner of the personal data when they are obtained directly from the interested party:

"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.

presenter;

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

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

treatment schedule;

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

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

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

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a decision

adequacy assessment by the Commission, or, in the case of transfers indicated

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

lack of 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 data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;
- b) 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 cho to data portability;
- c) 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 consent at any time, without affecting the legality of the treatment based on sado in the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;

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- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obligated to provide personal data and is informed of the possible consequences acknowledgments that you do not provide such data;
- f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, inform significant information about applied logic, as well as the importance and planned sequences of said treatment for the interested party.

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

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

In that sense, Recital 60 of the RGPD says that "The principles of treatment fair and transparent demand that the interested party be informed of the existence of the operation. tion of treatment and its purposes. The data controller must provide the interested determined how much additional information is necessary to guarantee a treatment fair and transparent, taking into account the specific circumstances and context in personal data is processed. The interested party must also be informed of the existence profiling and the consequences of profiling. Yes personal data is obtained from the interested parties, they must also be informed of if they are obliged to provide them and the consequences if they do not do so.”

Article 13 of the RGPD provides that when personal data is collected from a interested party -what happens in the present case- the person in charge of the treatment is obliged, at the time you obtain them, to inform the owner of the data of all the aspects covered by the aforementioned precept.

In the privacy policy that we have examined, all the information should have been included. information required by law. However, only the data of contact (name of the entity, its address, the CIF and its email) and this paragraph: "These personal data will be treated in accordance with the provisions of the Organic Law

15/1999, of December 13, on the Protection of Personal Data. So,

The interested party may exercise the right of access, rectification, cancellation and opposition with respect to the personal data contained in the aforementioned files,

You can revoke your consent in writing at any time.

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In accordance with article 13 of the RGPD, the claimed party, in its capacity as responsible for the treatment, was obliged to include in its privacy policy various information which he has dispensed with entirely. Specifically, it is required to report on the purposes of the treatment to which the collected personal data will be used, not being able to subsume within this question the mere reference that appears in the web when it indicates that the personal data will be incorporated into files owned of the one claimed, since that does not detail the purpose that determines both the collection and the treatment of these. Nor does it inform, as was its obligation, of the legal basis of the treatment; nor of the recipients of the personal data; of the period during which will retain the same or, not being possible to set a deadline, on the criteria employees to determine. Regarding the obligation to inform users on the possibility of exercising the rights of access, rectification, deletion, of limitation of its treatment, of opposition to the treatment and of portability of the data; the privacy policy lists those contemplated by the repealed Law Organic 15/1999. Nor does it inform about the right to file a claim with the controlling authority.

In short, the privacy policy offered by the one claimed on the web

<https://www.vinogrado.com> must provide the information established in article 13

of the RGPD in a simple and understandable way.

The privacy policy used violates article 13 of the RGPD conduct that is

Subsumable in article 83.5 of the RGPD that provides: "Infringements of the

following provisions will be sanctioned in accordance with section 2, with fines

administrative fees of 20,000,000 Eur maximum or, in the case of a company, of

an amount equivalent to a maximum of 4% % of the total annual turnover

of the previous financial year, opting for the highest amount:

(...)

a)

b) The rights of the interested parties pursuant 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.

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III

Article 58.2 of the RGPD establishes:

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

listed below:

a) (...)

b) send a warning to any person responsible or in charge of the treatment

when the treatment operations have violated the provisions of this

Regulation;"

c) (...)

d) order the person responsible or in charge of 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 under Article 83, in addition to or instead of

of the measures mentioned in this section, depending on the circumstances of

each individual 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:

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- 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 that 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 person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;
- e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;
- 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 previously ordered against the person in charge or the person in charge in question in related to 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,
- 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.

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

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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 of personal data.
- 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 commission of the offence.
- 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 it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

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

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:

-
-
-

The nature, seriousness and duration of the infraction. The claim continues without

modify the privacy policy of your website.

The negligence in the infringement. In the present case, we cannot say that the

claimed has acted maliciously, although his conduct reveals

a serious lack of diligence.

The way in which the supervisory authority became aware of the infringement. The

The way in which the AEPD has been informed has been through the interposition of the

complaint by the claimant.

- The degree of cooperation with the AEPD in order to remedy the

infringement. After the claim has been notified to the claimed party for the purposes of

to be able to answer and, where appropriate, take measures to avoid the infraction, the AEPD

has not received any response.

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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 10,000 euros (ten thousand euros).

IV

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way 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, adapt the data processing that it carries out to the data protection regulations in accordance with what is indicated in the preceding Foundations of Law.

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

V

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the claim has violated article 13 of the RGPD since the privacy policy of the website <https://www.vinogrado.com> does not contain the various information contained in that precept. This behavior is typified in the article

83.5 b) of the GDPR. At this stage of the procedure, it is deemed appropriate to sanction such conduct with an administrative fine of €10,000 (ten thousand euros).

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against FUTURE VINLINE SL, with NIF B67626473, for the alleged infringement of article 13 of the RGPD typified in the Article 83.5 b) of the aforementioned Regulation.

SECOND: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP), the sanction that could correspond would be an ADMINISTRATIVE FINE of 10,000 euros (ten 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.

FIFTH: NOTIFY this agreement to FUTURE VINLINE SL, with NIF

B67626473, granting him a hearing period of ten business days to formulate

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

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

header of this document.

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If within the stipulated period it does not make allegations 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, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

this procedure, equivalent in this case to 2,000 euros. with the app

of this reduction, the sanction would be established at 8,000 euros, resolving the

procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction,

the sanction would be established at 8,000 euros and its payment will imply the termination of the

process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. 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 6,000 euros (six thousand 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 (8,000 or 6,000), you must make it effective through your income in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A., indicating C/ Jorge Juan, 6

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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.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On July 31, 2021, the claimed party has proceeded to pay

the sanction in the amount of 6,000 euros making use of the two planned reductions

in the Startup Agreement transcribed above, which implies the recognition of the

responsibility.

THIRD: The payment made, within the period granted to formulate allegations to

the opening of the procedure, entails the waiver of any action or resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

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December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased
regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of
Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00251/2021, of
in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FUTURE VINLINE SL.

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

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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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Director of the Spanish Data Protection Agency

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