

□ Procedure No.: PS/00149/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On March 15, 2021, it had entry in this Spanish Agency of  
Protection of Data a document presented by GUARDIA CIVIL - POSITION OF  
\*\*\*LOCALIDAD.1 (hereinafter, the complaining party), through which it formulates  
claim against A.A.A. with NIE \*\*\*NIE.1 (hereinafter, the claimed party), for the  
installation of a video surveillance system installed at \*\*\*ADDRESS.1,  
\*\*\* PROVINCE.2, there are indications of a possible breach of the provisions of  
the personal data protection regulations.

The reasons underlying the claim are that the establishment  
Supermarket \*\*\*SUPERMERCADO.1, owned by the respondent, has a  
video surveillance system and lacks informative posters in this regard and printed matter  
information available to customers.

Provides a copy of several minutes-complaints/Inspection completed by the Guard  
Civil, Post of \*\*\* LOCALITY.1, of March 03, 2021, by:

- Not having at least one badge or sign in the video surveillance area  
informative in a sufficiently visible place.
- Not having at the disposal of the interested parties printed in which the  
information provided for in articles 15 to 22 of the RGD.

SECOND: These facts have already been the subject of a claim before this Agency,  
processing file E/08268/2019.

From this Agency, the requested party was informed of the requirements for

carry out personal data processing through this type of device, indicating that, in the event of not adopting the necessary measures to comply with these requirements, would incur a violation of the provisions of the regulations of data protection, which could lead to the initiation of investigative actions and corresponding penalties.

THIRD: The claim was admitted for processing by means of a resolution dated April 5, 2021.

FOURTH: On July 1, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the GDPR.

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FIFTH: The Start Agreement was notified to the respondent on July 13, 2021, without it being recorded, at the present time, that a writ of allegations to the same, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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

In this proceeding, the following are considered proven facts:

## FACTS

FIRST: On March 15, 2021, a claim against

A.A.A. with NIE \*\*\*NIE.1 for having a video surveillance system installed in the Supermarket establishment \*\*\*SUPERMERCADO.1, owned by the defendant, that it lacks informative posters on the matter and informative printed matter to customer disposition.

SECOND: Several minutes-complaints/Inspection completed by the Civil Guard, Post of \*\*\*LOCATION.1.

THIRD: The Agreement to Start this sanctioning procedure was notified dated July 13, 2021, without, to date, having been received in this Agency allegations by the respondent.

## 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 arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating 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

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purpose of preserving the safety of people and property, as well as their installations.

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

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in 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 data controller must keep available to those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

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 the images and sounds obtained through the use of cameras and video cameras by the Armed 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

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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 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.”

### III

In accordance with the foregoing, the processing of images through a video surveillance system, 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 April 4.
- The video cameras will not be able to capture images of the people who are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said

purpose. Therefore, the cameras could exceptionally capture the portion

minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this

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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 installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for

Data Protection offers through its website [<https://www.aepd.es>] access to

the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide

on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

#### IV

In the present case, the claim was filed because the respondent has installed a video surveillance system in the establishment of your property that lacks informative posters in this regard and informative printed matter available to customers.

As proof of these manifestations, the evidence indicated in the “Facts” section of this agreement.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among they have the power to issue a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD - article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.



In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the defendant has installed a video surveillance system in the establishment of your property that lacks

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informative posters in this regard and informative printed matter available to customers,

Therefore, it is considered that these facts violate the provisions of article 13 of the RGPD, for which it could suppose the commission of an infraction typified in the article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
  - b) the rights of the interested parties according to articles 12 to 22;
- [...]."

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of 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:

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

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

(...)

h) 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.

(...)»

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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 RGPD. So,

It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 RGPD:

In the initial assessment, the following have been considered:

- There is no information poster indicating the person responsible for the treatment and where the interested parties can go to exercise their rights recognized in the GDPR.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES

FIRST: IMPOSE A.A.A. with NIE \*\*\*NIE.1, for a violation of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine of €1,000 (one thousand euros).

SECOND: ORDER A.A.A. with NIE \*\*\*NIE.1 which, by virtue of article 58.2.d) of the GDPR, within ten days, take the following measures:

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certifies having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered in the same (must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts), locating this device in a sufficiently visible, both in open and closed spaces.

certifies that it keeps the information available to those affected referred to in the aforementioned RGPD.

THIRD: NOTIFY this resolution to A.A.A. with NIE \*\*\*NIE.1.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of the LPACAP, within the voluntary payment term established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, dated 29 July, in relation to art. 62 of Law 58/2003, of December 17, through its income, indicating the NIF of the sanctioned and the procedure number that appears in

the heading of this document, in the restricted account number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.. Otherwise, it will be processed collection in executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of

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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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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