

□ File No.: EXP202204323

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 June 9, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Agreement that is transcribed:

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File No.: EXP202204323

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: On 04/06/2022, the TEGUISE CITY COUNCIL (hereinafter, the
denouncing party) sends Report-Complaint of 03/30/2022 of the LOCAL POLICE OF
TEGUISE for a possible breach of the provisions of the protection regulations
of personal data by A.A.A. with NIF ***NIF.1 (hereinafter, the
defendant party).

The following is indicated in the referral document:

"That on 01/10/2022 a complaint was filed for alleged
infringement of Organic Law 3/2018 (...).

A response is received from the Spanish Agency for Data Protection to this Headquarters

(...), participating "that after analyzing the complaint, the defendant has been informed of the

requirements demanded by the regulations (...), at the same time that we are informed that if in future police actions the non-adoption of measures corrective actions by the accused, the actions would be initiated, where appropriate, planned”.

That given the foregoing, in bazaar ***EMPRESA.1 (...), the person responsible for the aforementioned establishment has not adopted any corrective measures (...) observing how the

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establishment continues to have the installation of numerous security cameras security, permanently installed inside the establishment, as well as on the outside of it (terrace area) oriented towards the public space (...), without there being any type of distinctive installed in a visible way on the outside, or area of access to it (...).

According to the images that can be seen on the monitor, a total of 32 cameras (...). It is in the same conditions as the photographic report made in the first act of complaint (...).”

Attach a copy of the Act-Complaint, dated 01/10/2022.

SECOND: The accused party was sent a document indicating the obligations that it had in terms of data protection and video surveillance, resulting in notification of the 02/17/2022, after the submission by the TEGUISE CITY COUNCIL of an Act-Complaint from the LOCAL POLICE OF TEGUISE for the same facts.

FOUNDATIONS OF LAW

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Competition

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."

II

The image is a personal data

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

The images generated by a camera or video camera system are data from personal nature, so its treatment is subject to the protection regulations of data.

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It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGPD.

III

alleged infringement

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Regarding the treatment for video surveillance purposes, article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out carry out the processing of images through camera systems or video cameras in order to preserve the safety of people and property, as well as their installations.

Article 12.1 of the RGPD indicates that whoever carries out data processing personal, such as capturing images through a system of video surveillance, you must provide the interested parties with the information indicated in the articles 13 and 14 of the RGPD.

In order for the duty of information provided for in article 12 of the RGPD to be complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the LOPDGDD foresees in relation to video surveillance a system of "information by layers".

In this sense, the first layer must refer, at least, to the existence of the treatment (video surveillance), the identity of the person in charge, the possibility of exercising the rights provided for in articles 15 to 22 of the RGPD and where to obtain more information on the processing of personal data.

Second layer information should be readily available in one place accessible to the affected party, whether it is an information sheet at a reception, cashier, etc...,

placed in a visible public space or in a web address, and must refer to the

rest of the elements of article 13 of the RGD.

It is not necessary to specify the precise location of the video surveillance equipment.

This duty of information shall be understood to be fulfilled by placing a

informative device in a sufficiently visible place, and at least, in the accesses

to the monitored areas, whether indoors or outdoors. In case the space

video-surveillance has several accesses, it must have said identification badge

video-monitored area in each of them.

This information must be provided in advance -considering 39 of the RGD-. The

The goal is to make the context of the surveillance clear.

The processing of personal data is subject to the rest of the principles of the

treatment contained in article 5 of the RGD. We will highlight the principle of

minimization of data contained in article 5.1.c) of the RGD that provides that the

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personal data will be “adequate, relevant and limited to what is necessary in relation to

for the purposes for which they are processed”.

This means that in a specific treatment only the data can be processed.

timely personal, that come to the case and that are strictly necessary

to fulfill the purpose for which they are processed. The treatment must be adjusted and

proportional to the purpose to which it is directed. The relevance in the treatment of

data must occur both at the time of data collection and in the

subsequent treatment of the same.

In accordance with the above, the processing of excessive data must be restricted or proceed to their removal.

The application of the principle of data minimization in the field of video surveillance entails that images cannot be captured from public roads, since the treatment of images in public places, unless authorized governmental, can only be carried out by the Security Forces and Bodies.

On some occasions, for the protection of private spaces, where installed cameras on facades or inside, it may be necessary to ensure the security purpose the recording of a portion of the public highway.

That is, cameras and video cameras installed for security purposes may not obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid it due to their location. And in that case extraordinary, the cameras will only be able to capture the minimum portion necessary to preserve the safety of people and property, as well as its facilities.

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

Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area.

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 cause justified.

Nor can images be captured or recorded in spaces owned by third parties. without the consent of their owners, or, as the case may be, of the people who

find.

Likewise, it is disproportionate to capture images in private spaces, such as changing rooms, lockers or worker rest areas.

Video surveillance obligations

IV

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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:

1.- Individuals or legal entities, public or private, can establish a system video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less intrusive to the rights and freedoms of citizens. personal data only should be processed if the purpose of the processing could not reasonably be achieved by other means, considering 39 of the RGPD.

2.- The images obtained cannot be used for a later purpose incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles 12 must be complied with and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

4.- The treatment of images through the installation of camera systems or video cameras must be lawful and comply with the principle of proportionality and that of

minimization of data, in the terms already indicated.

5.- The images may be kept for a maximum period of one month, except in those cases in which they must be kept to prove the commission of acts that threaten the integrity of people, goods or facilities.

In this second case, they must be made available to the authority competent within a maximum period of 72 hours from the knowledge of the existence of the recording.

6.- 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.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation of impact on data protection, to detect those derived from the implementation of the video surveillance system, assess them and, where appropriate, adopt the measures of appropriate security.

8.- When a security breach occurs that affects the processing of cameras for security purposes, whenever there is a risk to the rights and freedoms of natural persons, you must notify the AEPD within a maximum period of 72 hours.

A security breach is understood as the accidental or accidental destruction, loss or alteration of illicit of personal data transmitted, conserved or treated in another way, or the unauthorized communication or access to said data.

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9.- When the system is connected to an alarm center, it 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 Spanish Agency for Data Protection offers through its website

[<https://www.aepd.es>] access to:

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”),

the Guide on the use of video cameras for security and other purposes,

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.

Possible administrative infraction

v

The Act-Complaint submitted by the complaining party is based on the presumed illegality of the

installation of a video surveillance system, made up of 32 cameras, inside

and exterior of the defendant’s establishment, located at ***ADDRESS.1, which could

capture images of the public road.

It is also warned that the reviewed property continues without having the mandatory

informative poster of the video-surveillance area informing about the presence of the cameras and the identity of the data controller, so that

Interested persons can exercise the rights provided for in articles 15 to 22 of the GDPR.

As proof of these manifestations, the images of the monitor of the video surveillance system and in them it can be seen that the devices placed on the facade of the establishment (terrace area) they capture images of the street public. In addition, in the photograph of the informative poster of the video-monitored area located inside the premises it is seen that it is not completed with the basic information required.

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 exposed facts violate what is established in the article 5.1.c) and 13 of the RGPD, for which they could suppose the commission of both offenses typified in article 83.5.a) and b) of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

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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 in accordance with article 72.1 of the LOPDGDD, which states that:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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.

(...)

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 the Regulation (EU) 2016/679 and 12 of this Organic Law."

SAW

sanction proposal

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 RGD. Among they have the power to impose an administrative fine in accordance with article 83 of the RGD -article 58.2 i)-, or the power to order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

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:

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"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 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 they have applied under of articles 25 and 32;

- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification 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 may also be taken into account:

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- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when not mandatory, a data protection delegate.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

With respect to infractions committed by violating the provisions of articles

5.1.c) and 13 of the RGPD, a fine of €300 (three hundred euros) and another €300 (three hundred euros), respectively.

7th

Possible measures

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:

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Certify having proceeded to complete the information offered in the same (at least the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

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referred to in articles 13 and 14 of the RGPD.

Certify that you keep the information available to those affected

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Prove that you proceeded to remove the camera system or video cameras of the current place or prove the regularization of the camera of in accordance with current regulations.

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, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

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

Spanish Data Protection,

conclusion

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1,

for alleged infringements of articles 5.1.c) and 13 of the RGPD, typified in the article 83.5.a) and 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 (LPACAP, hereinafter), the sanctions that may correspond would be €300

(three hundred euros) and €300 (three hundred euros), respectively, without prejudice to what result of the instruction.

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

THIRD: APPOINT B.B.B. and, as secretary, to C.C.C.

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 into the disciplinary file, for evidentiary purposes, the Minutes Complaint filed, as well as the documents obtained and generated by the Subdirector General for Data Inspection in actions carried out with prior to the start of this sanctioning procedure.

FIFTH: NOTIFY this agreement to A.A.A., with NIF ***NIF.1, granting it a hearing period of ten business days to formulate the allegations and present tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears in the heading 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).

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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 present initial agreement, which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the penalty would be established at €240 (two hundred and forty euros) for the infringement of article 5.1.c) of the RGD, and €240 (two hundred and forty euros) for the infringement of article 13 of the RGD, €480 (four hundred and eighty euros) in total, 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 €240 (two hundred and forty euros) for the infringement of article 5.1.c) of the RGD, and €240 (two hundred and forty euros) for the infringement of article 13 of the RGD, €480 (four hundred and eighty euros) in total, 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 established at €180 (one hundred and eighty euros) for the infraction of article 5.1.c) of the GDPR and another €180 (one hundred and eighty euros) for Article 13 of the GDPR, €360 (three hundred and sixty euros) in total.

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 (480 euros or 360 euros), you must make it effective through your Deposit in account number ES 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 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 sanctioning procedure will have a maximum duration of nine months from from the date of the start-up agreement or, if applicable, 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 6, 2022, the claimed party has proceeded to pay the sanction in the amount of 360 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.”

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.

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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 EXP202204323, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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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