

□ File No.: EXP202209888

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 March 29, 2023, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against CARROZADOS
TECAI, S.L. (hereinafter, the claimed party), through the transcribed Agreement:

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File No.: EXP202209888

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: A.A.A. (hereinafter, the claimant) on 09/04/2022, filed
claim before the Spanish Data Protection Agency. The claim is
directed against CARROZADOS TECAI, S.L. with NIF B13375217 (hereinafter, the part
claimed), for the installation of a video surveillance system located in

*** ADDRESS.1, there being indications of a possible breach of the provisions of
Article 13 of the GDPR.

The reasons for the claim are the following:

The claiming party states that the claimed party has an account at its facilities
with a video surveillance camera installed on a post that, due to its location and
orientation, is likely to capture the public road that runs next to the aforementioned

facilities, without prior administrative authorization to do so. points

also that they lack informative posters of the video-surveilled area in accordance with the required to the data protection regulations, with only stickers

that warn of the existence of the system, but without specifying who is responsible for it treatment and which address to address to exercise rights.

Provide images of the controversial camera, of a video-surveilled area sticker located at the premises of the claimed party and emails exchanged with the security company of the claimed party.

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The documents provided are:

- Communications exchanged between the claimant and the person responsible for the chamber
- Photo report

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

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of Data Protection.

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 10/04/2022, as stated in the

acknowledgment of receipt in the file.

On 12/12/2022, this Agency received a written response indicating that:

- a) The person in charge of the video surveillance system is: NIF: ***NIF.1 Email: ***EMAIL.1
- b) The number of existing cameras is 7. Photographs of them are attached and screenshot of the software used for its viewing. There is no monitor dedicated to viewing them.
- c) A photograph of the sign warning of the existence of a video surveillance area is attached. No there is not a dedicated monitor for viewing the cameras, but rather software to view via PC or mobile phone.
- d) An invoice for the contract with the installation's security company is attached.
- e) It is reported that the recording period of the images is 7 days.
- f) There are no dummy cameras.

THIRD: On November 24, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

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

The image is a personal data

The physical image of a person, according to article 4.1 of the GDPR, is data personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the GDPR defines the concept of "processing" of personal data:

""treatment": any operation or set of operations carried out on about personal data or sets of personal data, either by means of automated or not, such as the collection, registration, organization, structure-tion, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;"

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

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

Video surveillance obligations

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

II

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 cannot reasonably be achieved by

other means, recital 39 of the GDPR.

2.- The images obtained cannot be used for a subsequent 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 fulfilled

and 13 of the GDPR, 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 the principle of

minimization of data, in the terms already indicated.

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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, property or facilities.

6.- When the system is connected to an alarm center, it can only be

installed by a qualified private security company

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

In a specific treatment, only the appropriate personal data can be processed, which come to the case and that are strictly necessary to fulfill the purpose for which they are treated. The treatment must be adjusted and proportional to the purpose for which which is heading The relevance in the treatment of the data must be produced

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

That is, cameras and camcorders installed for security purposes may not be obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to their location. And in such a 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 admitted. object of the installation and, in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access 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.

In the present case, from the images provided by the claimed party, it is clear that the installed video cameras do not record, in any case, the public road to which the complaining party alludes in his claim, therefore it is considered that his operation is perfectly adjusted to current regulations, not being for therefore subject to administrative sanction.

IV.

alleged infringement

Article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out the treatment of images through systems of cameras or camcorders in order to preserve the safety of people and goods, as well as its facilities.

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

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In order that the duty of information provided for in article 12 of the GDPR is 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 responsible, the possibility of exercising the rights provided for in articles 15 to 22 of the GDPR and where to obtain more information on the processing of personal data.

Second layer information should be easily available in one place accessible to the affected person, 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 other elements of article 13 of the GDPR.

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

This duty of information will be understood fulfilled by placing a

Information device in a sufficiently visible place, and at least, at the entrances

to monitored areas, whether interior or exterior. In case the space

video surveillance has several accesses must have said hallmark of

video surveillance area in each of them.

This information must be provided in advance -recital 39 of the GDPR-. He

The aim is to make the context of surveillance clear.

V

Classification of the offense

The installation of a video camera entails the inescapable obligation to warn of the pre-

its presence through an informative device, in a sufficiently visible place

able, 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 articles 15 to 22 of the GDPR.

In the present case, although the claimed party has provided photographs of a billboard

located next to the cameras, it is observed that it does not meet all the requirements

requirements established for this purpose in article 22 of the LOPDGDD, as it is incomplete and insufficient information provided.

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

instruction, it is considered that the facts exposed violate the provisions of the

Article 13 of the GDPR, so they could involve the commission of an infringement

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

Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of EUR 20,000,000 as

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

maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount:

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

For the purposes of the limitation period, article 74 "Infringements considered minor" of the LOPDGDD indicates:

"The remaining infractions of

merely formal nature of the articles mentioned in sections 4 and

5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679.

SAW

Sanction proposal

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. Therefore, it is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the Article 83.2 of the GDPR, and with the provisions of Article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 GDPR.

For all these reasons, it is considered that the corresponding sanction is a fine.

administrative.

It must be remembered that the voluntary payment of the proposed amounts does not exempt
accredit the regularization of the video surveillance system in accordance with the
regulations in force.

VII

possible measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of
adequate measures to adjust its performance to the regulations mentioned in this
act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the
which each control authority may "order the person responsible 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...".

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

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Evidence of having placed the information device in the
video-surveilled areas or to complete the information offered therein (must
identify, at least, the existence of a treatment, the identity of the
person 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 GDPR.

Evidence that you keep the information available to those affected

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It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

VIII

Conclusion

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE for CARROZADOS TECAI, S.L., with NIF B13375217, for the alleged violation of Article 13 of the GDPR, typified in Article 83.5 of the GDPR.

SECOND: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating that they may be challenged, if applicable, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (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 on actions carried out 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

(LPACAP, hereinafter), the corresponding sanction would be, for the alleged violation of article 13 of the GDPR, typified in article 83.5 of said regulation, fine administrative amount 300.00 euros

FIFTH: NOTIFY this agreement to CARROZADOS TECAI, S.L., with NIF B13375217, 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 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 240.00 euros, resolving the procedure with the imposition of this sanction.

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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 240.00 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 set at 180.00 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

indicated above (240.00 euros or 180.00 euros), you must make it effective

by entering the account number IBAN: ES00-0000-0000-0000-0000-0000 open

in the name of the Spanish Data Protection Agency in the bank

CAIXABANK, S.A., indicating in the concept the reference number 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 disciplinary procedure will have a maximum duration of nine months from

from the date of the start agreement or, where appropriate, the start agreement project.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

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 April 1, 2023, the claimed party has proceeded to pay

the penalty in the amount of 180 euros making use of the two reductions provided

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

responsibility.

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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 via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

FOURTH: In the previously transcribed initiation agreement, it was indicated that, if

Once the infringement is confirmed, it could be agreed to impose on the controller the adoption of

adequate measures to adjust its performance to the regulations mentioned in this

act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the

which each control authority may "order the person responsible 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...".

Having recognized the responsibility for the infringement, the imposition of the measures included in the Initiation 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:

"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

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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 EXP202209888, in

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

SECOND: ORDER CARROZADOS TECAI, S.L. so that within a

month notify the Agency of the adoption of the measures described in the

legal foundations of the initiation agreement transcribed in this resolution.

THIRD: NOTIFY this resolution to CARROZADOS TECAI, 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.

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