

□ File No.: EXP202210703

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 January 13, 2023, the Director of the Spanish Agency for
Data Protection agreed to initiate sanction proceedings against COMMUNITY OF
OWNERS ***COMMUNITY.1 (hereinafter, the claimed party), through the
Agreement transcribed:

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File No.: EXP202210703

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: D.A.A.A. (hereinafter the claimant) on 10/04/2022 filed
claim before the Spanish Data Protection Agency. The claim is
directed against the COMMUNITY OF OWNERS C/ ***COMUNIDAD.1, with NIF
***NIF.1 (hereinafter the claimed). The reasons on which the claim is based are the following:
following: the claimant declares that the community of owners to which
belongs to his mother has exposed in the elevator of the aforementioned community a
debt requirement, after an unsuccessful attempt to notify the domicile of the
claimant, son of the debtor, who allegedly accredited himself as a representative of
his mother before the community of owners, where the name, surname and

debt of the parent and name and surname of the child.

Provide a photograph of the document.

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 defendant, so that

proceed to 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.

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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) by electronic notification, was not collected by

the person in charge, within the period of availability, understood as rejected

in accordance with the provisions of art. 43.2 of the LPACAP dated 10/27/2022, as stated

in the certificate in the file.

Although the notification was validly made by electronic means, assuming that

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under

information, a copy was sent by postal mail, which was duly notified in

date 11/10/2022. In said notification, he was reminded of his obligation to relate

electronically with the Administration, and they were informed of the means of access to

said notifications, reiterating that, henceforth, he would be notified exclusively

by electronic means.

On 11/16/2022, this Agency received a written response providing emails from the community of owners with a lawyer regarding the claim of the debt owed.

THIRD: On 12/23/2022, 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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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."

Article 58 of the GDPR, Powers, states:

II

"2. Each supervisory authority shall have all the following powers corrections listed below:

(...)

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

instead of the measures mentioned in this paragraph, according to the

circumstances of each particular case;

(...)"

First of all, article 5 of the GDPR establishes the principles that must be

govern the processing of personal data and mentions among them that of "integrity and

confidentiality".

The cited article states that:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the

personal data, including protection against unauthorized processing or

illicit and against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality").

(...)"

II

The documentation in the file offers indications that the

claimed violated article 5 of the RGPD, principles related to the treatment, to the

display a debt requirement in the elevator of the community of owners,

after notification attempt at the domicile of the claimant, son of the debtor, appearing

the name, surname and debt of his parent, as well as the name and surname of the

claimant, violating confidentiality in the treatment of personal data

staff; In this way, access to the data by third parties was made possible.

through a document where he was identified as a debtor.

This duty of confidentiality must be understood as its purpose prevent data leaks without the consent of the owners of the data themselves.

Therefore, the publication in the aforementioned community element under the conditions exposed constitutes a violation of the duty of confidentiality and whose responsible is the defendant, since it is he who decides on the purpose, content and use of the data of the different owners that make it up and who must control the use made of community elements.

Article 9, section h) of the LPH establishes how the debts when they cannot be notified individually: "If a summons is attempted or notification to the owner it was impossible to practice it in the place prevented in the previous paragraph, shall be understood to have been made by placing the communication corresponding on the community notice board, or in a visible place of use authorized for this purpose, with express diligence of the date and reasons why

This form of notification is made, signed by the person exercising the functions of secretary of the community, with the approval of the president. The notification

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practiced in this way will produce full legal effects within three days natural."

This does not allow placement in the elevator, which is not even the plank

advertisements or any place "enabled for this purpose"; with the placement in the elevator enables personal data to be known by other people who come from outside the building.

This duty of confidentiality is an obligation that is incumbent not only on the responsible and in charge of the treatment but to anyone who intervenes in any treatment phase.

IV.

Article 83.5 a) of the GDPR, considers that the infringement of "the principles principles for treatment, including the conditions for consent under of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the overall annual total turnover of the financial year above, opting for the one with the highest amount".

The LOPDGDD in its article 71, Violations, states that: "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

And in its article 72, it considers for the purposes of prescription, which are: "Infractions considered very serious:

1. Based on what is established in article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particular, the following:

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

(...)"

Secondly, article 32 of the GDPR "Security of treatment",

V

states that:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of processing, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical and appropriate organizational measures to guarantee a level of security appropriate to the risk, which may include, among others:

a) the pseudonymization and encryption of personal data;

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b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of effectiveness technical and organizational measures to guarantee the safety of the treatment.

2. When evaluating the adequacy of the level of security, particular attention should be paid to take into account the risks presented by data processing, in particular as consequence of the destruction, loss or accidental or illegal alteration of data

personal information transmitted, preserved or processed in another way, or the communication or unauthorized access to such data.

3. Adherence to an approved code of conduct pursuant to article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to ensure that any person acting under the authority of the controller or the manager and has access to personal data can only process such data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

The violation of article 32 of the GDPR is typified in article 83.4.a) of the aforementioned GDPR in the following terms:

SAW

"4. Violations of the following provisions will be penalized, according to with paragraph 2, with administrative fines of maximum EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge according to articles 8, 11, 25 to 39, 42 and 43.

(...)”

For its part, the LOPDGDD in its article 73, for prescription purposes, qualifies of "Infringements considered serious":

"Based on what is established in article 83.4 of Regulation (EU) 2016/679 are considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the following:

(...)

f) The lack of adoption of those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk

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of the treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679.

(...”).

The GDPR defines breaches of personal data security as

“all those security violations that cause the destruction, loss or

accidental or illegal alteration of personal data transmitted, stored or processed

otherwise, or unauthorized disclosure of or access to such data.”

VII

From the documentation in the file, there are clear indications of

that the defendant has violated article 32 of the GDPR, when an incident of

security by making it possible to access the personal data of the claimant and

his mother, debtor of the community of owners, when exposing in the elevator

information regarding the debt that it maintained with the Community of Owners

violating technical and organizational measures and allowing access to data of

personal nature of the other recipients.

It should be noted that the GDPR in the aforementioned precept does not establish a list of

the security measures that are applicable according to the data that are object of treatment, but it establishes that the person in charge and the person in charge of the treatment will apply technical and organizational measures that are appropriate to the risk that entails the treatment, taking into account the state of the art, the costs of application, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned.

In addition, security measures must be adequate and proportionate to the risk detected, noting that the determination of the measures technical and organizational procedures must be carried out taking into account: pseudonymization and encryption, the ability to ensure confidentiality, integrity, availability and resiliency, the ability to restore availability and access to data after a incident, verification process (not audit), evaluation and assessment of the effectiveness of the measures.

In any case, when evaluating the adequacy of the security level, particular account of the risks presented by data processing, such as consequence of the destruction, loss or accidental or illegal alteration of data personal information transmitted, preserved or processed in another way, or the communication or unauthorized access to said data and that could cause damages physical, material or immaterial.

In this sense, recital 83 of the GDPR states that:

"(83) In order to maintain security and prevent processing from infringing what provided in this Regulation, the person in charge or in charge must evaluate the risks inherent to the treatment and apply measures to mitigate them, such as the encryption. These measures must ensure an adequate level of security, including the confidentiality, taking into account the state of the art and the cost of its application regarding the risks and nature of the personal data to be

protect yourself. When assessing risk in relation to data security, considerations should be

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take into account the risks arising from the processing of personal data, such as the destruction, loss or accidental or unlawful alteration of personal data transmitted, stored or processed in another way, or communication or access not authorized to said data, susceptible in particular to cause damages physical, material or immaterial.

The liability of the defendant is determined by the bankruptcy of security manifested by the claimant, since he is responsible for taking decisions aimed at effectively implementing the technical and appropriate organizational measures to guarantee a level of security appropriate to the risk to ensure the confidentiality of the data, restoring its availability and preventing access to them in the event of a physical or technical incident.

In this case, information regarding the son and the debtor of the community infringing the established regulations and violating technical and organizational measures allowing access to personal data personnel by third parties.

Pursuant to the foregoing, it is estimated that the defendant would be allegedly responsible for the infringement of article 32 of the GDPR, infringement typified in its article 83.4.a).

In order to establish the administrative fine that should be imposed, the observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which

point out:

VIII

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall 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 as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infringement committed by the person in charge or in charge of the

treatment;

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- f) the degree of cooperation with the supervisory authority in order to put remedy the breach and mitigate the potential 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 if the person in charge or the person in charge notified the infringement and, in such a case, what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the losses avoided, direct or indirectly, through the infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) Linking the activity of the offender with the performance of processing of personal data.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate

h) The submission by the person in charge or in charge, with character

voluntary, alternative conflict resolution mechanisms, in those

cases in which there are controversies between those and any

interested."

data.

- In accordance with the transcribed precepts, and without prejudice to what results from

the instruction of the procedure, in order to set the amount of the fine to

impose in the present case for the infringement typified in article 83.5.a) and article

5.1.f) of the GDPR for which the defendant is held responsible, in an initial assessment,

considers it appropriate to establish a penalty of 1,000 euros.

- Secondly, in accordance with the transcribed precepts, and without prejudice to

what results from the instruction of the procedure, in order to set the amount of the

sanction of a fine to be imposed in the present case for the offense typified in the

Article 83.4.a) and Article 32.1 of the GDPR for which the defendant is held responsible, in

an initial assessment, it is considered appropriate to establish a penalty of 500 euros.

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The corrective powers that the GDPR attributes to the AEPD as authority of

control are listed in article 58.2, sections a) to j). Among others, he mentions, in the

paragraph i), impose an administrative fine in accordance with article 83 of the GDPR; in it section d), order the person in charge or person in charge of the treatment that the operations treatment comply with the provisions of the GDPR, where applicable, of a certain way and within a specified period.

Article 83.5. of the GDPR establishes a sanction of an administrative fine (article 58.2.i) for the conducts that are typified therein, without prejudice to the fact that, as provided in the article 83.2. of the GDPR, administrative fines can be imposed together with other corrective measures provided for in article 58.2 of the GDPR.

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

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

- Accredited having proceeded to adopt adequate measures to avoid that in the future incidents such as those that have caused the opening of the procedure ensuring the confidentiality of the data and avoiding the publication of Comprehensive documents of debts related to neighbors / community members and identification of the same in places not established or indicated by law.

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.

Therefore, according to what has been stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1. INITIATE SANCTION PROCEDURE against the COMMUNITY OF

OWNERS C/ ***COMUNIDAD.1, with NIF ***NIF.1:

- For the alleged infringement of article 5.1.f) of the GDPR, typified in article

- For the alleged violation of article 32.1 of the GDPR, typified in article

83.5.a) of the aforementioned GDPR.

83.4.a) of the aforementioned GDPR.

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2. APPOINT A.A.A. Instructor. and Secretary to B.B.B., indicating that any of

they may be challenged, if applicable, in accordance with the provisions of articles 23 and

24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector

(LRJSP).

3. INCLUDE the claim in the disciplinary file, for evidentiary purposes.

filed by the claimant and their documentation, the documents obtained and

generated by the Inspection Services; documents, all of which make up the

proceedings.

4. THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1 and

Article 58.2.b) of the GDPR, the sanction that may correspond for the violation

of articles 5.1.f) and 32.1 of the GDPR would be €1,000 (one thousand euros) and €500

(five hundred euros) respectively, without prejudice to what results from the instruction.

5. NOTIFY this Agreement to the COMMUNITY OF OWNERS C/

***COMUNIDAD.1, with NIF ***NIF.1, expressly indicating their right to

hearing in the procedure and granting a period of TEN BUSINESS DAYS to

to formulate the allegations and propose the evidence it deems appropriate. In its

pleadings must provide your NIF and the procedure number that appears

at the top of this document.

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

It may be considered a resolution proposal, as established in the

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

Common for Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of

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

of the term granted for the formulation of allegations to the present initiation agreement; it

which will entail a reduction of 20% of the appropriate sanctions

impose in this proceeding. With the application of this reduction, the sanction

total for the infractions would be established at 1,200 euros, resolving the

procedure with the imposition of this sanction.

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

present procedure, carry out the voluntary payment of the proposed sanctions,

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

reduction, the total sanction for said infractions would be established at 1,200 euros

and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to that

corresponds to apply for the recognition of responsibility, provided that this

acknowledgment of responsibility is revealed within the term

granted to formulate allegations at the opening of the procedure. The pay

voluntary payment of the amount referred to in the preceding paragraph may be made at any time before resolution. In this case, if it were appropriate to apply both reductions, the amount of the total sanction would be established at 900 euros.

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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 (1,200 or 900 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

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

The procedure will have a maximum duration of nine months from the date of the 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 February 7, 2023, the claimed party has proceeded to pay of the penalty in the amount of 900 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal 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...".

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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

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."

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According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202210703, in

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

SECOND: ORDER COMMUNITY OF OWNERS ***COMMUNITY.1 to

that within one month notify the Agency of the adoption of the measures

described in the foundations of law of the Commencement Agreement transcribed in the
present resolution.

THIRD: NOTIFY this resolution to COMMUNITY OF OWNERS

C/ ***COMMUNITY.1.

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

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

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided for in article 46.1 of the

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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