

□ File No.: EXP202200863

## 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 May 25, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against CLUB NATACIO  
LLEIDA (hereinafter, the claimed party), through the Agreement that is transcribed:

<<

File No.: EXP202200863

### AGREEMENT TO START A SANCTION PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the complaining party) dated January 14, 2022  
filed a claim with the Spanish Data Protection Agency. claims her-  
tion is directed against the entity CLUB NATACIO LLEIDA with NIF G25030651 (in addition,  
lante, the party claimed). The grounds on which the claim is based are as follows:

“That OMS BEG SLU has been the lessee in the 2012-2021 period of the business  
Bar/restaurant carried out in the premises owned by the reported entity and located  
do within the Club itself.

that said Club has installed inside the leased premises, without informing the  
claimant, a video surveillance camera that is oriented to the cashier area of the state-  
establishment, without, in the same way, being marked by the mandatory

informative posters of video-surveillance area”.

They provide images of the alleged location of the camera and Burofax sent by legal representatives of the claimant to the claimed Club stating their disagreement with the installation of the camera.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-dated 01/27/22, to proceed with its analysis and inform this Agency on the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/8

period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

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 Public Administrations cas (hereinafter, LPACAP), was notified on 01/27/22 as stated in the acknowledgment of receipt that works in the file.

THIRD: On March 1, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter RGPD), grants each authori-control and as established in articles 47, 48.1, 64.2 and 68.1 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 formal procedures ted by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiario, by the general rules on administrative procedures."

II

In the present case, we proceed to examine the claim dated 01/14/22 by me- from which the following fact is transferred: "(...) that said Club has installed in the interior of the leased premises, without informing the claimant, a video surveillance camera that is oriented to the cashier area of the establishment, without, in the same way, being It is signposted by means of the mandatory informative posters of the video surveillance zone. da"-folio nº 1--.

The art. 5.1 c) RGPD provides the following: The personal data will be: "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

The Civil Code regulates the lease-art. 1542 CC—"The lease it can be of things, or of works or services".

The main right of the lessee is the use and enjoyment of the property during the period duration of the contract and under the conditions agreed by them, which are governed by the "principle of freedom of agreements" but taking into account what is established, no obs- much in art. 6 LAU.

When deciding to install a security camera it is essential to take into account

Take into account that with it the rights of third parties may be affected, and you must adopt take the necessary measures to preserve the right of the same and informing in legal form to the tenant of the premises in case of their presence.

In the contract that is formalized, the presence of the same in the corresponding section (contractual clause), the responsibility of both parties in relation to them (lessor / lessee), the purpose of the treatment (e.g. security reasons of the installations), as well as the way of con- preserve the images and other requirements determined in the applicable regulations.

Likewise, in the case of a "simulated" device, you must put knowledge of the contractual parties the nature of the same, by creating in it as the expectation of a situation of permanent and excessive control.

III

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 defendant proceeded to install a video camera deo-surveillance without informing the lessee of such aspect a priori, being able to exercise an unjustified control through the "processing of third-party data".

The parties had to formalize a "Lease Agreement" where must reflect everything related to the contractual conditions, including those related to the data protection policy in case there is a video camera surveillance that treats data of third parties, and where appropriate, indicate the person in charge and in your case in charge of the treatment, as well as the purpose of the "data treatment".

The known facts could constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) RGPD, previously transcribed.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/8

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

a) The basic principles for the treatment including the conditions for the consent under articles 5,6,7 and 9 (...)"

In accordance with the above, it is considered correct to propose an initial sanction

€1,200, by having a video-surveillance device in the leased premises.

without having allegedly given any explanation about the presence of the same to the tenant, nor about the purpose of the same (object of the treatment), being able to be considered a disproportionate measure as it affects the right of third parties. ros, a sanction located on the lower scale for this type of behavior, as it is a negligent conduct in complying with the obligations of the protection regulations data tion.

v

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 responsible or in charge of the treatment

I guarantee that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period. cified...”. The imposition of this measure is compatible with the sanction consisting of administrative fine, as provided in art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered classified 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.

The claimed party must provide all the necessary documentation for the ex-application on the device(s) in question, notwithstanding any other claim that it deems accurate in relation to the facts described.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency data protection law,

HE REMEMBERS:

FIRST: START SANCTIONING PROCEDURE against the CLUB entity

NATACIO LLEIDA, with NIF G25030651, for the alleged violation of article 5.1 c)

RGPD], typified in article 83 section 5 letter a) RGPD, being punishable by

in accordance with art-58.2 RGPD.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/8

SECOND: APPOINT B.B.B. and, as secretary, to C.C.C., indi-

stating that any of them may be challenged, where appropriate, in accordance with the provisions

ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime

of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim

filing filed by the claimant and its documentation, as well as the documents

documents obtained and generated by the General Subdirectorate for Data Inspection in

actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-

tubre, of the Common Administrative Procedure of the Public Administrations the

sanction that could correspond would be €1,200, without prejudice to what results from the

instruction.

FIFTH: NOTIFY this agreement to CLUB NATACIO LLEIDA, with NIF

G25030651, granting him a hearing period of ten business days to formulate

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

Allegations must provide your NIF and the number of the procedure that appears in the en-

header 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).

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 final agreement; which will entail a 20% reduction in the sanction to be imposed in this proceeding. With the application of this reduction, the sanction would be established in [Enter the text corresponding to 960 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which supposes a reduction of 20% of its amount. With the application of this reduction, the sanction would be established in [Enter the text corresponding to 960 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding reduction for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €720.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or waiver of any action or resource in the administrative process. deal against the sanction.

C/ Jorge Juan, 6



28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/8

In case you chose to proceed to the voluntary payment of any of the amounts indicated above €960 or €720, you must make it effective by paying into account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency Data Protection Label at 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 it is accepted.

Likewise, you must send proof of income to the General Subdirectorate of Ins-request to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-do this period will produce its expiration and, consequently, the filing of proceedings; 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 LPA-CAP, against this act there is no administrative appeal.

Sea Spain Marti

Director of the Spanish Data Protection Agency

935-110422

>>

SECOND: On June 17, 2022, the claimed party has proceeded to pay the sanction in the amount of 720 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

Yo

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/8

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.

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 EXP202200863, of

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

SECOND: NOTIFY this resolution to CLUB NATACIO LLEIDA.

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/8

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

936-040822

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)