

Procedure No.: PS/00354/2018

938-0319

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

GURMELIA S.C. (TAPERÍA ALBEDRÍO), by virtue of a claim filed by the

Local Police of the City Council of Lorca and based on the following:

BACKGROUND

FIRST: On July 5, 2018, a written entry is registered in this Agency

of the Local Police of the City Council of Lorca realizing that on the occasion of the

police action carried out in the public establishment "TAPERÍA ALBEDRÍO", located

at ***ADDRESS.1, the following was found:

"That the Agents belonging to my command, belonging to the Unit of

Administrative Security, carried out an inspection visit at the establishment

reviewed, verifying that there are indeed video cameras installed

surveillance on the facade of the establishment reviewed.

That the Agents observed that they were fully operational, capturing

images of the street and the terrace of the premises.

That asked about the authorization of the same and of the files, not the

presented."

Attached to the aforementioned writing is a photograph showing a facade

with two video surveillance cameras, which are identified in the report as

belonging to said establishment. Also, a copy of the

document presented by the legal representative of the Community of Owners of the

Residencial Martín Carrillo before the City Council of Lorca, Department of Security

Citizen, requesting remission of a copy of the Minutes drawn up on the occasion of the

police action carried out on April 21, 2018 in the aforementioned

establishment.

SECOND: On July 12, 2018, by the Inspection Services of

this Agency, the person in charge of the aforementioned establishment is requested documentation

detailed that can prove that the video surveillance installation is in accordance with the

data protection regulations, taking place on October 9, 2018

new request for additional documentation in relation to certain aspects not

clarified in the response received on August 14, 2018.

With dates October 14 and 22, 2018, two separate writings are registered

of GURMELIA, S.C., the company that owns the aforementioned establishment and is responsible for

video surveillance system installed in it, from which the

following facts:

- In relation to the technical characteristics of the system,

documentation from the installation company of the location and type of cameras installed

and the recording period, in which it is stated that the CCTV surveillance system

installed in the premises is made up of a total of six cameras, four of which

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control different areas inside the premises while the two remaining cameras,

located on the exterior facade of the building in which the establishment is located,

control the area of tables on the terrace and the Brioches area, both located on the street

public.

The system records the images captured by the cameras on a hard drive that

completes its capacity in 8 days and 20 hours, after which period the system automatically performs the recording of the new information on the already stored.

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The entity responsible for the treatment, and owner of the establishment, points out that the purpose of the treatment is the security and surveillance of people and goods, control of labor activity and time control of staff.

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From the photographic report provided, with images made with dates July 25, August 7 and October 16, 2018, it appears that the premises have Informative posters of "Video Surveillance Zone" both outside the premises and in the inside of it.

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The premises have provided a copy of the informative form made available of the interested parties, providing information about the personal data obtained by the video surveillance cameras installed in the establishment.

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From the impression of the image captured on October 16, 2018 by the exterior camera that controls the Brioche area, it is verified that the camera captures areas of public thoroughfare that exceed the surface occupied by the furniture elements located in that space.

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Since March 10, 2017, the company that owns the premises has municipal authorization for the occupation of spaces for public use with terraces for install a series of elements at number 1 of the street ***ADDRESS.1.

Likewise, on September 18, 2018, said company has requested the

Lorca City Council authorization for the occupation of spaces for public use with terraces, specifically, a new terrace on the side of the premises (** ADDRESS.2).

THIRD: On January 9, 2019, and in accordance with the provisions of the Article 58.2.b) of the aforementioned RGPD, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against GURMELIA S.C. (TAPERY ALBEDRÍO (hereinafter, the defendant), for the alleged violation of article 5.1.c) of the RGPD, typified in article 83.5.a) of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and the free circulation of these data, (hereinafter, RGPD), and qualified as very serious to effects of prescription in article 72.1.a) of the LOPDGDD,

The aforementioned start-up agreement was notified to GURMELIA, S.C. dated 11 January 2019, as stated in the certificate issued by the Notification Service Electronics and Authorized Electronic Address of the National Currency Factory and Stamp-Royal Mint.

FOURTH: There is no evidence that the notification was made, GURMELIA, S.C. have exercised their right to make allegations within the period granted for such purposes in the mentioned initial agreement, therefore, in accordance with articles 64.2.f) of the

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Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), a resolution is issued.

PROVEN FACTS

FIRST: On July 5, 2018, a written entry is registered in this Agency of complaint realizing that on April 21, 2018 agents belonging to the Local Police of the City Council of Lorca carried out an action police in the establishment of public concurrence called "TAPERÍA ALBEDRÍO", located at ***ADDRESS.1, stating in said complaint the following:

"That the Agents belonging to my command, belonging to the Unit of Administrative Security, carried out an inspection visit at the establishment reviewed, verifying that there are indeed video cameras installed surveillance on the facade of the establishment reviewed.

That the Agents observed that they were fully operational, capturing images of the street and the terrace of the premises.

That asked about the authorization of the same and of the files, not the presented."

SECOND: GURMELIA, S.C., company that owns the "TAPERÍA ALBEDRÍO", also holds the status of responsible for the treatment derived of capturing and recording images through the video surveillance system installed in the local reviewer.

THIRD: The video surveillance system, according to the certificate issued on the 31st of March 2017 by the security company installing it, presents the following technical characteristics:

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The CCTV surveillance system is made up of the following elements:

Two cameras controlling the panorama of the restaurant; A camera controlling the warehouse area; A camera monitoring the kitchen handling area; A camera controlling the tables in the brioche area; A camera controlling a panoramic view of the tables on the terrace; NVR IP8 for 8 IP cameras, with hard drive

a TB.

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The system records the images captured by the cameras on a disc which completes its capacity in 8 days and 20 hours, after which period the

The system automatically records the new information on the already stored.

FOURTH: GURMELIA, S.C. has stated that the purpose of the treatment is the security and surveillance of people and goods, control of labor activity and control staff hours. Likewise, said company has accredited that the premises have

Informative posters of "Video Surveillance Zone" located outside the premises as in the interior of the same, in which the person in charge of the treatment is identified and facilitates its postal and electronic address. It also has informative forms available for disposal of the interested parties in which the information provided for in article 13 of the GDPR.

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FIFTH: The file contains, among others, the following graphic documentation:

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Photograph provided by the Local Police of the City Council of Lorca, which this identifies as the facade of the "TAPERÍA ALBEDRÍO", in which there are two video surveillance cameras facing the street.

- Image capture captured on October 16, 2018 by the exterior camera that controls the Brioche zone, where it is visualized that the zone of public roads

captured not only exceeds the surface occupied by the elements of the furniture located in said space, but rather covers practically the entire width of the sidewalk of the street towards which the camera is pointing video surveillance.

FOUNDATIONS OF LAW

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By virtue of the powers that articles 55.1, 56.2 and 58.2 of the RGPD recognize to each control authority, and as established in articles 47 and 48 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency of Data Protection is competent to resolve this procedure.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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 64.2.f) of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, of October 2, 2015, in hereinafter LPACAP, provides that:

"The initiation agreement must contain at least: (...)

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the stipulated period on the content of the resolution of initiation, it may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility." (the underlined

corresponds to the AEPD).

In the present case, such prescriptions have been observed, since in the initial agreement warned of the provisions of article 64.2.f) of the LPACAP, it was specified the alleged infraction committed together with its corresponding typification, the sanction of warning to be imposed, if applicable, was determined in accordance with the criteria taken into account based on the evidence obtained on that date and established certain measures in accordance with the provisions of article 58.2.d) of the

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GDPR.

In consideration of the foregoing and in accordance with the provisions of the Article 64.2.f) of the LPACAP, the agreement to initiate this proceeding sanctioning is considered a Resolution Proposal, since it contained a precise pronouncement on the imputed responsibility and, after notification in the manner described in the third factual record, the respondent has not formulated allegations to the same within the period granted for such purposes.

III

The capturing of images of natural persons identified or identifiable through through video surveillance cameras, or other capture systems, with the purpose of guaranteeing the safety of people, goods and facilities constitutes a processing of personal data that, in accordance with the provisions of article 6.1.e) of the RGPD, finds its legitimacy in the fulfillment of a mission of public interest.

The treatment of images through a video surveillance system to be

In accordance with current data protection regulations, you must respect the principles of limitation of the purpose and minimization of data collected by the sections b) and c) of article 5.1 of the RGPD.

In this case, it is elucidated whether the processing of images for the purpose of video surveillance carried out by the defendant could exceed the private sphere of the establishment of public attendance of its ownership. Note that the video surveillance cameras installed for security purposes in private spaces not can capture images of public spaces, since in accordance with the Law Organic 4/1997, of August 4, which regulates the use of video cameras by the Security Forces and Corps, and its Development Regulations, approved by means of Royal Decree 596/1999, of April 16, the capturing of images of the road for security purposes must be carried out by the Police Forces and Bodies Security.

Just as the person responsible for processing for video surveillance purposes does not can capture private spaces owned by third parties without the consent of their holders or, as the case may be, of the people who are in them, cannot treat images of the public road for security purposes as it is a treatment reserved for the Security Forces and Bodies.

Therefore, the data controller for video surveillance purposes must take the necessary measures so that the cameras are oriented towards your property private. However, on some occasions the protection of private spaces, condition not enjoyed by the terrace and the brioche area of the establishment located in public thoroughfare, it is only possible if the cameras on the facades or inside capture a minimum and essential portion of public road to fulfill the purpose of security or, in your case, it is impossible to avoid it due to the situation of the cameras.

Sometimes it is necessary to capture accesses, doors or entrances, so that

it is inevitable not to record the area of the public road that is captured. By what is

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exception is applicable, there should be no possibility of alternative installation,

it must be taken into account that:

- The person responsible for processing the data carried out through cameras and/or video cameras will adapt the use of the installation, so that the impact on human rights of pedestrians is the minimum possible.

- 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

surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

- In any case, any unnecessary data processing should be avoided in order to the purpose pursued.

However, it is stated in the procedure that the defendant, responsible for the

processing of images resulting from the video surveillance system installed in the

establishment of your ownership, captures images of public roads, which are also

recorded, through the two video surveillance cameras placed on the facade of the local.

This conduct leads to imputing the defendant the violation of the provisions of the

article 5.1.c) of the RGPD, which establishes, with respect to the “Principles related to the treatment”, the following:

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

For its part, article 22 of the LOPDGDD, under the heading "Treatments with video surveillance purposes", it establishes in its sections 1 and 2 that:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

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

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

IV

In this case, both of the actions carried out, dated April 21, 2018, by the Local Police of the Lorca City Council in the establishment of public concurrency called "TAPERÍA ALBEDRIO", located at ***ADDRESS.1, as of the graphic documentation provided by the respondent in August and October 2018 to answer the requests for information that were made from this

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Agency after receiving the claim, it is evidenced that the processing of personal data resulting from the images captured by the two cameras located on the facade of the aforementioned establishment affects public spaces.

This statement is based on the fact that these devices focus on the track area where the terrace and the area called "brioche" are located of the premises, collecting and, consequently, processing images of both customers and natural persons (personal data) found in sidewalk spaces occupied by facilities of the claimed as of the pedestrians who pass through the sidewalk area free of said furniture that is also captured by said cameras.

In this regard, it is observed that in the brief made on June 27, 2018 by the Sub-inspector-Chief of the Local Police of the City Council of Lorca realizes of: "That the Agents belonging to my command, belonging to the Unit of Administrative Security, they carried out an inspection visit at the establishment reviewed, verifying that there are indeed video surveillance cameras installed on the facade of the Establishment reviewed. That the Agents observed that they were in full operation capturing images of the public thoroughfare and the terrace of the local". Together with this letter, the Local Police attached a photograph of the facade of the local reference, which shows two video surveillance cameras belonging to the reviewer establishment that are oriented towards the public road instead of pointing to the access to the premises or to the surrounding area of its façade.

In relation to said document, it is pointed out that article 77.5 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, under the heading "Means and trial period", provides the next: "5. The documents formalized by the officials who are recognized the condition of authority and in which, observing the legal requirements

corresponding the facts verified by those are gathered will prove of

unless proven otherwise”.

In parallel, the documentation provided by the respondent also proves the

disproportionate treatment of images in relation to the security purpose

intended, Thus, of the certificate provided, issued on March 31, 2017 by

the installation company of the local video surveillance system, it follows that the

terrace tables and brioche area are controlled by two cameras

video surveillance, while the image taken on October 16, 2018 from the

camera that captures the area called "Brioche" reflects that said device points

not only to the public road space occupied by said installation but also to the

surrounding sidewalk area that is captured in its entirety.

Consequently, of the set of evidence items available in the

procedure, it is considered that GURMELIA, S.C. violates the principle of minimization

of data collected in article 5.1.c) of the RGPD when capturing through the two cameras

of the facade, and then record images of customers located in facilities

of the premises occupied by the public road and of the pedestrians who travel along the sidewalk

surrounding the public space occupied by them and the facade of the premises, all

Once said processing of personal data on public roads, in addition to being

exclusive jurisdiction of the Security Forces and Corps, is inappropriate and

excessive by capturing, disproportionately, images of natural persons who

are found in it, when said information is unnecessary to comply with

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the intended purpose of video surveillance with respect to persons, property and facilities inside the establishment.

v

Sections b), d) and i) of article 58.2 of the RGD provide the following:

“2 Each supervisory authority shall have all of the following powers
corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with
warning when the processing operations have violated the provisions of
this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of
treatment comply with the provisions of this Regulation, where appropriate,
in a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in
instead of the measures mentioned in this paragraph, depending on the circumstances
of each particular case;

Article 83 of the RGD, under the heading “General conditions for the
imposition of administrative fines”, in sections 2 and 5.a), states that:

“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 article 58, paragraph 2, letters a) to h) and j). (...)

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

the largest amount: (...)

a)

basic principles for treatment, including conditions for

consent under articles 5, 6, 7 and 9; “.

For its part, article 72.1.a) of the LOPDGDD establishes that:

“1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679, are considered very serious and infringements will expire after three years.

that suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a)

The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.”

In accordance with what was reasoned in previous Fundamentals of Rights, it has

The violation of the principle of data minimization by the user has been proven.

reclaimed. Said conduct constitutes an infringement of the provisions of article 5.1.c)

of the RGPD in its relationship with the provisions of article 22.1 and 2 of the LOPDGDD,

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typified in article 83.5.a) of the RGPD and classified as very serious for the purposes of

prescription in article 72.1.a) of the LOPDGDD, from whose commission results

responsible the claimed in his capacity as responsible for the treatment of

video surveillance derived from capturing images of public roads through

the two cameras installed on the façade of the “TAPERÍA ALBEDRÍO”.

By virtue of the powers that articles 56.2 and 58.2.b) of the RGPD recognize to each control authority, and according to what is established in article 47 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure with a sanction of warning.

For this, the following circumstances are taken into account: it is a company whose main activity is not linked to the treatment habitual of personal data, absence of intentionality and spirit of profit in the infringing conduct, given that, without prejudice to the violation of the mentioned principle of data minimization, the processing of images of The video surveillance carried out responds to the security of people, goods and facilities, also considering that the administrative fine that could fall in accordance with the provisions of article 83.5.a) of the RGPD would constitute a disproportionate burden on that company.

Confirmed the infraction described, and not being proven in the procedure that GURMELIA, S.C., once received the agreement to start this sanctioning procedure, has adopted measures to cease the treatment of excessive and disproportionate data of images that it has been making capturing images of the public road through the two video surveillance cameras located in the facade of the premises, it is considered appropriate to apply the provisions of the aforementioned article 58.2.d) of the RGPD in order for GURMELIA, S.C., responsible for the analyzed treatment, the technical and organizational measures are carried out necessary for the treatment operations to comply with the provisions of the article 5.1.c) of the RGPD in its relationship with the provisions of article 22.1 and 2 of the LOPDGDD.

For these purposes, it is recalled that articles 24.1 and 25.1 and 2 of the RGPD establish the following regarding the obligations to be fulfilled by the person responsible for the

treatment:

“Article 24. Responsibility of the data controller

1. Taking into account the nature, scope, context and purposes of the treatment

as well as the risks of varying probability and severity for the rights and

freedoms of natural persons, the data controller will apply measures

appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the

processing is in accordance with this Regulation. These measures will be reviewed and

They will update when necessary.”

“Article 25. Data protection by design and by default

1. Taking into account the state of the art, the cost of the application and the

nature, scope, context and purposes of the treatment, as well as the risks of various

probability and seriousness that the treatment entails for the rights and freedoms of

natural persons, the data controller will apply, both at the time of

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determine the means of treatment as at the time of the treatment itself,

appropriate technical and organizational measures, such as pseudonymisation, designed

to effectively apply the principles of data protection, such as the

minimization of data, and integrate the necessary guarantees in the treatment, in order to

comply with the requirements of this Regulation and protect the rights of

interested.

2. The data controller will apply the technical and organizational measures

with a view to guaranteeing that, by default, they are only processed

the personal data that is necessary for each of the specific purposes of the treatment. This obligation will apply to the amount of personal data collected, to the extension of its treatment, its conservation period and its accessibility. Such measures shall in particular ensure that, by default, personal data is not accessible, without the intervention of the person, to an indeterminate number of people physical.”

The measures ordered to adjust the processing operations to the provided for in the RGPD, they must be adopted within a period of ONE MONTH, computed from the date on which the sanctioning resolution is notified, having to prove its compliance within the same period through the provision of graphic documentation or any other means of proof valid in law that allows verifying the compliance with the ordered measures.

At the same time, it is observed that section 6 of article 83 of the RGPD, states that “6. Failure to comply with the resolutions of the control authority to pursuant to article 58, section 2, shall be sanctioned in accordance with section 2 of the this article with administrative fines of EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount.”

Article 72.1.m) provides that: “1. According to what the article establishes 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of competent data protection in exercise of the powers conferred by article 58.2 of Regulation (EU) 2016/679.”

According to what was stated,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE GURMELIA S.C. (TAPERÍA ALBEDRÍO), with NIF ***NIF.1,

sanction of WARNING for an infringement of article 5.1.c) of the RGPD in its

in relation to the provisions of article 22.1. and 2 of the LOPDGDD, typified in the article

83.5.a) of the RGPD and classified as very serious for prescription purposes in the article

72.1.a) of the LOPDGDD,

SECOND: ORDER GURMELIA S.C. (TAPERÍA ALBEDRÍO), according to

the provisions of article 58.2.d) of the RGPD, which within ONE MONTH contributes before

this Agency documentation that allows:

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5.1. Submit graphic documentation or any means of proof that proves

who, as head of the video surveillance system, has reoriented the two cameras

located on the facade in order not to capture public roads, or that the capture of the same is

limited to the area immediately surrounding the entrances to the establishment or the area

strictly necessary of the facade of the premises.

5.2. Remission of any means of proof that allows visualizing the

images displayed through the monitor originating from each of the two cameras

described exteriors, stating the date and time corresponding to the

contributions provided. For this, photographs of the images may be provided.

collected by the cameras, that is to say photographs or captures of the images

viewed through the monitor or device from which they are viewed.

THIRD: NOTIFY this resolution to GURMELIA, S.C.

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

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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

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

Contentious-administrative jurisdiction, within a period of two months from the

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if

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

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

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

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

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

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

documentation proving the effective filing of the contentious appeal-

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

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

notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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