

□ Procedure No.: PS/00318/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on the following

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 03/13/2019 filed claim before the Spanish Data Protection Agency. The claim is directs against CITY COUNCIL OF PIÉLAGOS with NIF P3905200F (hereinafter the claimed or TOWN HALL). The grounds on which the claim is based are: that it has been concurrent in the bidding file for the Management services contract, Organization and Operation of the Municipal School of Music of the City Council of Pielagos; that in the same had to be provided the relationship of the teaching staff that would give the teachings object of the contest, requiring indication of their data identifiers; that the data of the attendees, of a sensitive and personal nature, is have been exhibited and publicized by the City Council on its website and, furthermore, when This contest was awarded in October 2018.

SECOND: Upon receipt of the claim, the Subdirector General for Data Inspection proceeded to carry out the following actions:

On 05/13/2019, reiterated on 05/24/2019, the claim was transferred to the defendant submitted for analysis and communication to the claimant of the decision adopted regard. Likewise, it was required that within a month he send to the Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

On 07/16/2019, the respondent sent a letter in which he stated, in summary: that contracting of the service called Management, Organization and Operation of the Municipal School of Music of the Municipality of Piélagos, which that entails the contribution of specialized teachers in the different instruments musicals; that the Administrative Clauses Document required the ascription of personal and material means and a nominal relationship of the teaching staff was requested; that the contracting has been carried out by open procedure; that in the Law of

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Public Sector Contracts establishes the obligation to publish the profile of the contracting party, among others, the evaluation report of the award criteria quantifiable by value judgment of each of the offers, an obligation that it is also established in the Law of Transparency of Public Activity.

THIRD: On 08/23/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 02/07/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5.1.c), e) and f) of the RGPD contemplated in article 83.5.a) of the aforementioned Regulation and sanctioned in accordance with the provisions of article 77.2 of the LOPDGDD.

FIFTH: Notification of the aforementioned start-up agreement, in writing dated 02/26/2020, the claimant presented a brief of allegations reiterating and basically formulating what was stated in writing dated 12/03/2019 and that therefore, it was the claimant who provided implicitly consent to the processing of personal data provided in your offer, accepting the conditions of the Specifications Administrative; that the people affected by the publication of their data personal have not filed any claim; that the administration has proceeded to weigh up the rights and interests involved, giving preponderance of compliance with the requirements of publicity and transparency required in Law 9/2015, of November 8, on Public Sector Contracts; that he legal regime applicable to the identification of the interested parties in the notifications through announcements and publications of administrative acts, it is planned in the Seventh Additional Provision of Organic Law 3/2018, of December 5, of Protection of Personal Data and Guarantee of Digital Rights, dictating, subsequently, a Recommendation from the Spanish Agency for Data Protection, dated March 4, 2019, in such a way that, based on this consideration, said regulation turns out to be subsequent to the moment in which the City Council proceeded to publication of the evaluation reports of the offers in the procedure of contracting (October 2018), so, although it is true that the submission to the processing of personal data must be adequate, relevant and not excessive, in application of article 4.1 of Organic Law 15/1999, it is also true that there was no

a detailed regulation of the regime of application to the identification of the

interested in the publication of acts, until D.A.7ª of the LOPDGDD.

SIXTH: On 06/02/2020, a Resolution Proposal was issued in the sense of

that the defendant be sanctioned with a warning for violation of article 5.1

sections c), e) and f) of the RGPD, typified in article 83.5.a) of the aforementioned Regulation

and sanctioned in accordance with the provisions of article 77.2 of the LOPDGDD.

After the period established for this purpose, the respondent has not submitted a written

allegations at the time of issuing this resolution.

SEVENTH: Of the actions carried out in this proceeding,

the following have been accredited,

PROVEN FACTS

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FIRST. On 03/13/2019 there is an entry in the AEPD written by the claimant

stating that he had participated in the bidding file for the contract for

services Management, Organization and Operation of the Municipal School of Music

of the Municipality of Piélagos; and that the data of the attendees, of a

sensitive and personal, are exposed and publicized by the aforementioned

City Council its website, with free access, as can be seen in the

following link: ***LINK.1, in the heading faculty report, where you can

observe your identification data when said contest was awarded in the me

October 2018.

SECOND. There is a screen print of 04/08/2019 related to the access made

to the web and link referenced in the previous point in which the Assessment of the Proposal for an Educational Project School of Music of the Municipality of Piélagos submitted by the claimant. Attached to the Report of the Education Inspector that It also contains the analysis and resolution, there is the nominal list of the teaching staff in two sections: Degrees for Elementary Education and Degrees for Non-regulated teachings in which they appear together with the name and surnames, ID number, degree, etc

THIRD. The respondent has indicated in writing dated 07/16/2019, among other issues, which in the Administrative Clauses Specification required the assignment of personal and material resources and a nominal relationship of faculty; that the contracting has been carried out by open procedure taking into account various criteria, including personal resources contributed; that the Contract Law requires publishing in the contracting party's profile "the report assessment of the quantifiable award criteria through value judgment of each of the offers", a measure also imposed by the Transparency Law.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

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

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

(...)"

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Article 5, Principles relating to processing, of the GDPR states that:

"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");

(...)

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of

scientific or historical research or statistical purposes, in accordance with article

89, paragraph 1, without prejudice to the application of technical and organizational measures

measures imposed by this Regulation in order to protect the rights and

freedoms of the interested party ("limitation of the conservation period");

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

(...)"

III

The documentation in the file offers clear indications that the claimed, violated article 5 of the RGPD, principles related to the treatment, the continue displaying the personal data on the website of the claimed person that may be known by third parties, when said contest had already resulted awarded in October 2018.

It should be noted that the respondent processed the hiring of the service "Management, Organization and Functioning of the Municipal School of Music of the Municipality of Piélagos" (File 1593/2018), which entailed the contribution of teachers specialized in the different musical instruments.

In the Administrative Clauses Document, the ascription of personal and material means and, between these, a nominal relationship of teaching staff (name, surnames and D.N.I.), their qualifications, work commitment, etc.

According to the claimant, in writing dated 03/13/2019, the personal data of the contestants are exposed and published on the website of the claimed party, free access to third parties, as can be seen at the link: ***ENLACE.1, in the epigraph faculty report, where the identification data appears when said contest was awarded in the month of October 2018.

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The documentation provided to the administrative file contains a copy of the

access on 04/08/2019 made to the website of the claimed party and the link above

referenced in which the Assessment of the Educational Project Proposal appears

Piélagos City Council Music School presented by the claimant. Y

attached to the Report of the Education Inspector that also contains its analysis and

Resolution contains the nominal list of teachers in two sections: Degrees

for Elementary Education and Degrees for non-regulated Education in which

It appears next to the name and surnames, ID number, degree, etc.

It should be noted that the administrative contracting procedure is articulated

traditionally in two phases: the preparatory actions and the adjudication

itself. The first has the purpose of administrative predetermination of

most of the defining elements of the object (project and specifications

prescriptions) and the content of the contract (folding of administrative clauses). To the

file will include the specifications of particular administrative clauses and the

technical prescriptions that will govern the contract.

Article 63 of the Public Sector Contracts Law (LCSP) regulates the Profile

contracting party, and in section 3, letter e) indicates that:

"3. In the case of information relating to contracts, it must be published at

minus the following information:

(...)

e) The number and identity of the bidders participating in the procedure,

as well as all the minutes of the contracting table related to the procedure of

adjudication or, in the event that the table does not act, the resolutions of the service or body

of corresponding contracting, the assessment report of the criteria of

award quantifiable through a value judgment of each of the bids, in

your case, the reports on the offers involved in presumption of abnormality to which

Article 149.4 refers and, in any case, the contract award resolution".

Also Law 1/2018, of March 21, on Activity Transparency

Public in its article 27, Transparency in public contracting, establishes:

1. Without prejudice to the provisions of the regulations governing the contracts of the public sector regarding the procedures for awarding and modifying the contracts, the subjects included in article 4 of this law must publish, in their respective electronic offices, portals or web pages, the information relating to the following contracts:

(...)

h) Number of bidders participating in the procedure.

i) Identity of the successful bidder, as well as its economic and financial solvency, and technical or professional, or where appropriate, classification.

(...)

m) Bid assessment report.

(...)

Law 19/2013, of December 9, on transparency, access to information

and good governance, establishes in its article 8, Limits to the right of access to public information, noting:

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"1. To exercise the right of access to public information, the

limits established in article 14 of Law 19/2013, of December 9, of

transparency, access to public information and good governance and those established in

sectoral laws. In any case, your application will be carried out as

provided in the basic state legislation, and must be interpreted, whenever it is possible, in favor of access to public information.

2. When the requested information contains personal data both of the requesting person as third parties will be subject to the provisions of the Law Organic 15/1999, of December 13, Protection of Personal Data.

3. In the event that the requested information is applicable to any of the limits referred to in the first section of this article will be granted, whenever possible, partial access to public information, in accordance with the provisions of the basic regulations on access to public information.

And article 15, Protection of personal data, states:

“(…)

3. When the requested information does not contain data especially protected, the body to which the request is addressed shall grant prior access sufficiently reasoned weighing of the public interest in the disclosure of the information and the rights of those affected whose data appear in the information requested, in particular their fundamental right to the protection of personal data staff.

To carry out the aforementioned weighting, said body will take particularly in consideration the following criteria:

a) The least damage to those affected derived from the expiration of the terms established in article 57 of Law 16/1985, of June 25, on Heritage Spanish Historical.

b) The justification by the applicants of their request in the exercise of a right or the fact that they have the status of researchers and motivate access for historical, scientific or statistical purposes.

c) The slightest prejudice to the rights of those affected in the event that the

documents only contain data of a merely identifying nature of those.

d) The greatest guarantee of the rights of those affected in the event that the data contained in the document may affect your privacy or your security, or refer to minors.

4. The provisions of the preceding sections shall not apply if access is performed prior dissociation of personal data in such a way as to prevent the identification of affected people.

5. The personal data protection regulations will be applicable to the subsequent treatment of those obtained through the exercise of the right of access”.

IV

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In the present case, it is considered that the respondent's conduct violates the article 5 of the RGPD, principles related to the treatment, materialized in that the data of a personal nature of the participants in the bidding procedure for the service "Management, Organization and Functioning of the Municipal School of Music of the City Hall of Piélagos" (File 1593/2018), have been exhibited and published by the City Council on its website, moreover, when said contest had resulted awarded in October 2018, thus violating the time limitation during which they should have been exposed according to the purposes of the treatment. making it necessary to relate the principles of data minimization, limitation of term of conservation and of integrity and confidentiality.

Article 5 establishes that:

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated.

In other words, only data that is adequate, pertinent, and limited, that is, not excessive in relation to the specific and legitimate purpose for the that have been obtained; In addition, the relevance in the treatment of the data of personal nature prevents the treatment of those that are not necessary to the purpose that justifies the treatment, and the treatment of the data must be restricted excessive or proceed to suppress them.

Recital 39 states that:

"...Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treaties"

e) maintained in a way that allows the identification of the interested parties for no longer than is necessary for the purposes of data processing personal; ...

Although it is already established that the data must be canceled when they cease to be be useful for the purpose for which they were collected, the RGPD in addition to limiting the term of conservation establishes the obligation to include terms for the suspension or Periodic revision.

Recital 39 states that: "...To guarantee that the personal data are not kept longer than necessary, the data controller must establish deadlines for its suppression or periodic review".

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

Recital 39 states that: "...Personal data must be treated with a way that guarantees adequate security and confidentiality of the data including to prevent unauthorized access or use of such data and of the equipment used in the treatment.

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The National Court in a judgment of 12/01/2017 states that: "The Chamber shares the exposed criterion, because the truth is that the obligations of publicity and transparency of public action and especially in the procedures of patrimonial sales as it occurs in the present case, must always be applied in a harmonious way with the rest of the legal system, and for more that the precepts that the appellant invokes require it to expressly mention and detailed description of the object, parties and specific litigation, said publicity was not a price that held open and therefore accessible to anyone, but it is a information that is only required for the knowledge of the bidders or in the time of award.

In short, the facts are that in a disposal proceeding of 32 promotions (housing for rent and for rent with the option of purchase, garages, storage rooms and premises) belonging to the Housing Institute of Madrid, published in the Official Gazette of the Community of Madrid (BOCAM), on 7 June 2013, the Bidding Document with all the Annexes was published in the profile

of the contracting party, openly, and on the website of the Community of Madrid, on 7 June 2013, and was available for 19 days. The documentation that could download contained data relating to dwellings and premises (Annex I), as well as a list of litigation proceedings in which 41 dwellings of tenants were listed involved in various legal proceedings (Annex VIII). in the information Regarding the address of the dwelling, the name and surname of the tenants appeared, Although not your ID.

Consider the Chamber, which was unnecessary at that first moment of disclosure of the Specifications, that the personal data of the tenants involved with your personal identification data were made known freely and in open, because that is not the requirement of the Law that the appellant invokes, but rather could perfectly comply with the legal mandate, publishing such data in a restricted and only accessible to bidders or at the time of bidding. Estimate the Room that the personal data of the tenants were not relevant for them to be accessible as widely as was done by the Community of Madrid, constituting, therefore, an excessive and irrelevant disclosure.

Accordingly, we must dismiss the present claim and confirm the contested resolution, in which, we reiterate, what is sanctioned is not the fact simply of having included personal data of the tenants, but the moment in which it is done, when the Specifications are published in the BOCAM, and the form, openly and without restrictions via the internet, when the appellant could perfectly having complied with the legal mandate, publishing said data, in a more restricted and only to those interested.

In the case examined, the exposure on the website of the "Assessment report of the quantifiable award criteria by trial of value of each of the offers", of the contract. However, the infraction that

analyzes focuses on disclosure on the aforementioned website including personal data:

name and surnames, ID number and other data of the attendees, facilitating the

knowledge of the same to third parties who access the website.

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The claim itself when it refers to article 15, Data Protection

personal information, of Law 19/2013, of December 9, on transparency, access to

public information and good governance, states that "In the present case, and not yet

there being an express weighting, it has been considered preponderant to guarantee the

transparency in access to the assessment of the proper application of the criteria of

assessment of the personnel provided by the company and their due qualifications, being the

essential object of the publicity of the valuation report, in such a way that, it has been

considered that proceeding to the publication of the report with the personal data

dissociated, it would be impossible to guarantee how and with what criteria their

assessment."

Therefore, the exposure and publication of the aforementioned data in light of the RGPD is

considers that it is neither adequate, nor pertinent, nor limited to what is necessary in relation to

with the purposes for which they are processed; Contrary to the principle of limiting the term of

conservation of personal data that aims to reduce

temporarily the use of personal data, for which it is necessary to cease its treatment

when these are no longer necessary for the intended purpose and, in addition,

contrary to the principle of confidentiality by not being treated in a way that

guarantees the adequate security of the data, being able to be known by third parties

through web access.

It should be noted that the dissemination of personal data on a website these characteristics implies, publishing said page on a server and performing operations necessary to make it accessible to people who are connected to the Internet, providing universal access.

In the present case, it must be deduced that knowledge by the public in general personal data of the people included in the tender is not found enabled by any of the regulations that the respondent points out. It is not in doubt that the number and identity of the bidders participating in the procedure or identity of the successful bidder or the assessment report of the criteria of award quantifiable through a value judgment of each of the bids, but not that may contain identifying elements of the people contained in Qualifications for Elementary Teaching and Qualifications for Teaching not open set. In addition, publication in venues should not be confused electronic, portals or web pages of all that information referring to the public contracts, regarding the exercise of the right of access to information.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9”.

v

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

“Infringements considered very serious:

1. Based on the provisions of 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 particularly the following:

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

(...)"

However, the LOPDGDD in its article 77,

Regime applicable to

certain categories of controllers or processors, establishes the

Next:

SAW

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

- a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.
- b) The jurisdictional bodies.
- c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.
- d) Public bodies and public law entities linked or dependent on the Public Administrations.
- e) The independent administrative authorities.
- f) The Bank of Spain.
- g) Public law corporations when the purposes of the treatment related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

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Likewise, when the infractions are attributable to authorities and managers,

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of

Data, it will publish on its website with due separation the resolutions

referred to the entities of section 1 of this article, with express indication of the

identity of the person in charge or in charge of the treatment that would have committed the

infringement.

When the competence corresponds to a regional protection authority

of data will be, in terms of the publicity of these resolutions, to what is available

its specific regulations.

According to the available evidence, said conduct

constitutes by the claimed the infringement of the provisions of article 5.1 in its

letters c), e) and f) of the RGPD.

It should be noted that the RGPD, without prejudice to the provisions of article 83,

contemplates in its article 77 the possibility of resorting to the sanction of warning

to correct the processing of personal data that is not in accordance with your

forecasts, when those responsible or in charge listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law.

graduation of sanctions whose existence has been proven,

Therefore, in accordance with the applicable legislation and having assessed the criteria for

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF PIÉLAGOS, with NIF P3905200F, by

an infringement of article 5, c), e) and f) of the RGPD of the RGPD, typified in article

83.5 of the RGPD, a penalty of warning in accordance with article 77.2 of

the LOPDGDD.

SECOND: REQUEST the CITY COUNCIL OF PIÉLAGOS, with NIF P3905200F,

so that within a month from the notification of this resolution, prove the

adoption of measures that are necessary and pertinent in accordance with the

regulations regarding the protection of personal data in order to prevent

incidents such as those that have given rise to the

claim correcting the effects of the possible infraction, adapting the information

and publication of personal data on the entity's website to the

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mentioned measures and adapt to the requirements contemplated in article 5, letters c),

e) and f) of the RGPD.

THIRD: NOTIFY this resolution to the CITY COUNCIL OF PIÉLAGOS,

with NIF P3905200F.

FOURTH

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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.

48.6 of the LOPDGDD, 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 appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

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