

□ File No.: EXP202201385

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 01/25/2022, he entered this Spanish Agency for
Data Protection a document presented by A.A.A. (hereinafter, the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
below, the claimed party), for the installation of a video surveillance system
located at ***ADDRESS.1, there being indications of a possible breach of the
provided in the personal data protection regulations.

The reasons for the claim are the following:

"We have our address in the house built located at ***ADDRESS.1 (...)
that we occupy under the lease signed by A.A.A. on the 19th of
February 2020 with C.C.C. (...). You currently own the rental property
C.C.C. (...).

On April 7, 2021 D^a C.C.C. required us to leave the house before the
June 12, 2021 (...), Mrs., apparently with the collaboration of her brother D.
D.D.D. who lives in another of the buildings in whose fence the
cameras, and his current partner D. B.B.B., began to carry out acts (...),
materialized in the following facts:

At the end of March 2021, they began to install surveillance cameras.
video surveillance on the existing fences inside the plot owned by Mrs.
C.C.C., in the common area of the plot where our house is located, cameras
directed directly at the facade of our home (...); they placed new ones

video surveillance cameras that cover the common areas of the plot and have placed a poster announcing the existence of cameras with recording system 24 hours. In total, it has placed four video surveillance cameras at different points whose angle of vision allows them to directly cover the access door to the plot, the parking, common passageways, the balcony and terrace of our home, the corridor and the entrance door to the apartment and the windows of the house where we live (...). Some of these cameras appear to be remote controlled.

[...]

Attach the following documentation:

- Copy of the rental contract of the house dated 02/19/2020.
- Descriptive and graphic consultation of cadastral data of the plot where the located the property and registry note.

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- Notarial act dated 04/29/2021 that includes photographs of the location of multiple cameras.
- Plan on which indicates the location of the cameras and spotlights and a report photograph of them.

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), on 02/04/2022 said claim was transferred to D.D.D. and C.C.C., so that they proceed to their analysis and inform this Agency within the period of one month, of the actions carried out to adapt to the requirements established in

data protection regulations. In both cases notification was attempted through of postal mail, resulting in the first "Returned to origin by incorrect address" and the Second "Delivered" on 02/14/2022, according to the Notices issued by Correos.

THIRD: On 03/03/2022, this Agency receives a letter from C.C.C. in which states, in summary, that the person in charge of the video surveillance system is B.B.B. (provide your personal data), which consists of 4 cameras and that all of them "are within my property and collect only and exclusively elements of it (including the exterior of my home and my brother's home), with the exception of the vehicle of my tenants, who have permission to park inside the property, and of those vehicles that occasionally park within the property". contributes Photographs of the location of the devices and what they capture as of 02/16/2022.

FOURTH: On 04/25/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FIFTH: On 06/20/2022, the Director of the Spanish Agency for the Protection of Datos agreed to initiate disciplinary proceedings against the defendant, in accordance with the provided in articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged violation of article 5.1.c) of the GDPR and article 13 of the GDPR, typified in article 83.5.a) and b) of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), on 07/27/2022 the claimant has proceeded to pay the penalty corresponding to the violation of article 13 of the GDPR in the amount of €180 making use of the two reductions provided for in the initiation agreement, which implies the recognition of responsibility.

Regarding the violation of article 5.1.c) of the GDPR, on 07/01/2022 the party

The defendant submitted a pleadings brief in which, in summary, it stated that:

“[...]

This party has paid voluntarily, and recognizing responsibility, in
regarding the sanction for violation of article 13 of the GDPR, being therefore the same
reduced to the aforementioned amount.

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For this purpose, proof of payment is provided as (...) and a sign has been installed
information of the responsible person, and an email, as can be seen in
the following photos.

That notwithstanding, this party does not consider that article 5.1.c) of the
GDPR, since the provisions of the GDPR have been complied with at all times.

To understand this allegation, it is necessary to take into account that the house of the
merited rustic farm is made up of two floors, as can be seen in the
next photograph. In addition, in the images provided above it is observed
that the cameras only capture the ground floor of said house and the areas
common.

The claimant indicates that she is the tenant of said home by virtue of the contract
lease of February 19, 2020, and due to this the Spanish agency of

Data Protection considers that the cameras focus on the terrain and the façade
of this lady's house. Said contract includes the lease, precisely,
of the house on the top floor (...). Well, it is evident that only LA was leased

FIRST FLOOR OF THE HOUSE, AND NOT THE GROUND FLOOR WHICH IS THE ONE

IT APPEARS ON THE CAMERAS (...). Therefore, the cameras DO NOT CAPTURE IN ABSOLUTELY THE HOME THAT THE CLAIMANT HAS RENTED, since only capture the ground floor of said house and its land, property of (...)

To avoid the commission of criminal acts in the same, the merits were installed cameras, trying to dissuade potential offenders and capture them for later complaint, but never with the purpose of invading the privacy of the claimant, therefore that were specifically oriented so as not to affect the first floor of the house.

[...]"

It provides, among other things, the following documentation:

- Copy of the housing lease, dated 02/19/2020.
- Two photographs of the new informative poster of the video-surveilled area and its location, and another one of the facade of the property.

-
Image of the camera monitor and what they capture on 02/16/2022.

SEVENTH: On 08/02/2022, the instructor of the procedure agreed to open a period of practice of evidence, taking the claim as incorporated filed by the claimant and her documentation, the documents obtained and generated during the phase of admission to processing of the claim; as well as the allegations to the agreement to open this disciplinary procedure, presented by the defendant and the documentation that accompanies them.

EIGHTH: On 10/28/2022, the investigating body of the sanctioning procedure formulated a resolution proposal, in which he proposed the imposition of a fine for amount of €300, for the violation of article 5.1.c) of the GDPR, typified in article

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83.5.a) of the GDPR. Likewise, it was ordered that, within a period of ten working days from the date on which the resolution that agrees so is notified, the party claimed prove the following:

- Having proceeded to complete the information contained in the informative poster of video surveillance area.

- Keep available to those affected the information referred to in the

Articles 13 and 14 of the GDPR.

- To have proceeded to remove the cameras that give rise to a capture excessive, or accredit the regularization of the same in accordance with the regulations in force.

On 11/09/2022, this Agency received a letter from the party claimed in the that adduces allegations to the motion for a resolution in which, in summary, stated that:

“[...]”

In said agreement the allegation is admitted for being a party, on July 1, 2022, when it was proven that the video surveillance cameras only captured the plant ground floor of the house and common areas. (...)

SECOND.- However, with all due respect, the collection of common areas in order to avoid the commission of crimes does not affect in any way the privacy of the claimant, since the aforementioned areas have some inherent characteristics that implies the lack of incidence in privacy.

This is due to the fact that the car park and the access door are areas that, in addition to not having been expressly leased as can be seen in the contract

provided in the brief of allegations of July 1, 2022, they do not reveal

some circumstances of an intimate or personal nature.

This argument is shared by Judgment number 320/2014, of May 26, of

the Provincial Court of Seville, where the plaintiff considered that his

right to privacy due to the installation of security cameras oriented

towards common areas of a community of owners. In said judgment,

concluded that there was no invasion of the actor's privacy, since the cameras

captured common areas in which personal circumstances were not revealed

of an intimate, personal or reserved nature of the plaintiff.

The well-deserved sentence is also blunt when considering that "the placement of cameras

security is not an act circumscribed to the privacy of a person".

Likewise, also in criminal court, in Judgment number 179/2021, of April 20

of the Provincial Court of Barcelona, and in Judgment number 187/2017, of 15 December

May, from the Provincial Court of Málaga, evidence provided by the

consisting of the recording of criminal activities by security cameras

installed in the dwelling and that captured common areas (...).

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In addition, the motion for a resolution lacks arguments that prove the effective

violation of the privacy of the claimant, limiting himself to saying that the capture of

the common areas COULD AFFECT, but not that they affect. In fact I don't know

produces any harm to the claimant, but in any case a consistent benefit

also in the protection of their assets through these cameras whose purpose is to capture

the commission of criminal activities given the location of the farm, especially if you have

Bear in mind that, as has already been said, only the first floor of the building has been leased.

property and not its parking lot.

[...]"

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: A claim is filed for the installation of 4 video surveillance cameras

outside the plot, located at ***ADDRESS.1, where the

property leased by the claimant (1st floor). In addition, the informative poster

only warns of the presence of cameras in the enclosure, without contemplating the

Other information required by the GDPR.

SECOND: He is identified as the main person responsible for the B.B.B.

with NIF ***NIF.1, who denies that the cameras capture images of the 1st floor of the

property, domicile of the claimant. Specifically, it states that "only

capture the ground floor of said house and the common areas".

THIRD: In the photograph of the viewing of the cameras provided by the party

claimed, it is proven that as of 02/16/2022 none of the devices captures

Images of the domicile of the complaining party, only of the lower part of the property. Without

However, different common or transit areas (parking) can be seen.

FOURTH: On 06/28/2022, an income amounting to €180 is received

corresponding to the infringement of article 13 of the GDPR in application of the two

reductions for voluntary payment and recognition of responsibility by the party

claimed.

FIFTH: The placement of a new information sign for the area is accredited

video surveillance in which the following data is collected:

- Responsible: B.B.B..
- You can exercise your data protection rights before: ***EMAIL.1.
- More information on the processing of your personal data: empty.

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FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

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

Allegations adduced

In relation to the allegations adduced to the agreement to initiate this

disciplinary procedure, the following was answered.

With regard to the infringement of article 13 of the GDPR, this is terminated

disciplinary procedure for voluntary payment and recognition of the

liability on the part of the claimant within the term granted for this purpose. The fine

proposed for said offense was €300 but, having taken advantage of both

reductions, the amount entered is €180.

However, in accordance with article 58.2.d) of the GDPR, the

measures listed in the initiation agreement, since the information contained in the

informative poster of video surveillance area placed by the claimed party is not

sufficient to understand the legal requirement of the GDPR fulfilled. Well, in the first

section must indicate, not only the identity of the person responsible, but also his

contact address; and in the third, the place that the visitor can visit must be indicated.

concerned to receive more information about data processing. In addition,

You must have the rest of the information required in articles 13 and 14 of the GDPR at

available to those affected.

Regarding the infringement of article 5.1.c) of the GDPR, the claimed party understands that

the aforementioned precept has not been infringed, since "they do not capture at all the housing that

the claimant has leased, since they only capture the ground floor of said dwelling and the

land of the same, property of ROCÍO LUQUE". It adds that, "the

worthy cameras, trying to dissuade potential offenders and capture them to

its subsequent complaint, but never with the purpose of invading the privacy of the

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claimant, for which reason they were specifically oriented so as not to affect the first floor plan of the house.

In the photograph of the viewing of the cameras, dated 02/16/2022, it can be seen that none of the 4 devices is focused on the domicile of the complaining party, they are limited to capturing the lower part of the reviewed property. However, the field of vision of cameras 1, 2 and 3 extends to common areas (parking, gate access, among others), and may affect the privacy of the complaining party each time transit or make use of them. It should be noted that it is the claimed party itself that recognizes the latter in its pleadings to the start-up agreement, indicating that "They only capture the ground floor of said house and the common areas."

In relation to the allegations made in the proposed resolution of this disciplinary procedure, we proceed to respond to them.

The defendant alleges that "the collection of common areas in order to avoid the commission of crimes does not in any way affect the privacy of the claimant", since which understands that "they have some inherent characteristics that imply the lack of incidence of privacy. Thus, it considers that "the car park and the gate of access are areas that, in addition to not having been expressly leased (...), they do not reveal any circumstances of an intimate or personal nature", according to in accordance with Judgment No. 320/2014, of May 26, of the Provincial Court of Sevilla.

While it is true that the lease signed by the complaining party is limited to the first floor of the property, C.C.C., owner of the property and property, acknowledges in the response to the transfer that "my tenants have permission to park inside the property"; and, furthermore, the claimed party does not deny in any way moment the existence of common areas (entrance door to the plot and parking). Thus, the complaining party is making an authorized use of the

themselves, not being able to affect the video surveillance system installed by the party
claimed to your free transit zone and, consequently, to your personal data
staff.

In the monitor images, dated 02/16/2022, provided by the claimed party

In its statement of allegations against the initiation agreement, it is noted that "Chamber 2"

It not only focuses on the entrance door to the farm, but also on the entire area
parking space shared with the claimant.

Likewise, the claimed party uses security reasons for the installation of the
video surveillance cameras, resulting beneficial for the protection of the assets of
the complaining party. In this sense, article 22 of the LOPDGDD provides for the
possibility of "carrying out image processing through imaging systems
cameras or camcorders in order to preserve the safety of people and
assets, as well as its facilities. However, this treatment must attend to
the principles listed in article 5 of the GDPR.

In this case, the claimed party does not comply with the principle of "minimization of
data" enshrined in section c) of the aforementioned precept. The capture of images
the parking area in its entirety entails data processing

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disproportionate to the purpose pursued, which implies a deviation from the
primary purpose of this type of device. Well, the privacy of the part
claimant is affected from the moment the claimed party has access
to monitor images and therefore ability to control inputs/

Departures of the complaining party, visits, among others.

Lastly, with respect to the three judgments mentioned by the defendant in his pleadings brief (Sentence No. 320/2014, of May 26, of the Hearing Provincial of Seville, Judgment No. 179/2021, of April 20 of the Provincial Court of Barcelona, and Judgment No. 187/2017, of May 15, of the Provincial Court of Málaga), it should be noted that the issues raised are not related to the purpose of this sanctioning procedure. The three resolutions refer to the admissibility of photographs/recordings from video surveillance cameras as evidence documentary in court. In no case do they pronounce on issues related to with the matter of protection of personal data.

Consequently, in accordance with the evidence available in this moment of resolution of the disciplinary procedure, it is considered that the facts known are constitutive of an infringement, attributable to the claimed party, for violation of article 5.1.c) of the GDPR.

Classification of the infringement of article 5.1.c) of the GDPR

II

The aforementioned infringement of article 5.1.c) of the GDPR supposes the commission of the infringement typified in article 83.5.a) of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, 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 this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

2The acts and behaviors referred to in sections 4,
5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result
contrary to this organic law”.

For the purposes of the limitation period, article 72 Offenses considered very
serious” of the LOPDGDD indicates:

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

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

Penalty for violation of article 5.1.c) of the GDPR

IV.

The corrective powers available to the Spanish Agency for the Protection of
Data, as a control authority, are established in article 58.2 of the GDPR. Between
they have the power to impose an administrative fine in accordance with the
article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or
processor that the processing operations comply with the
provisions of the GDPR, where applicable, in a certain way and within a certain
specified term - article 58. 2 d).

In the present case, it is considered appropriate to sanction the party claimed by the

violation of article 5.1.c) of the GDPR for which it is responsible, with the imposition of an administrative fine that must be individual, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. In order to determine the fine administrative procedure to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of 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 such as the number of interested parties affected and the level of damages that 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 processor, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the controller or processor;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;

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h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge 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,

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

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

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing. personal information.
- 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 included the commission of the offence.

- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 5.1.c) of the GDPR, it allows setting a fine of €300 (three hundred euros).

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V

imposition of measures

Under the provisions of article 58.2 d) of the GDPR, the party is ordered to claimed that, within ten working days from the date on which the resolution

In that so agreed, you will be notified, certify:

- Having proceeded to complete the information contained in the informative poster of video surveillance area.

- Keep available to those affected the information referred to in the

Articles 13 and 14 of the GDPR.

- To have proceeded to remove the cameras that give rise to a capture

excessive, or accredit the regularization of the same in accordance with the

regulations in force.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 5.1.c)

of the GDPR, typified in article 83.5.a) of the GDPR, a fine of €300 (three hundred euro).

SECOND: TO ORDER B.B.B., with NIF ***NIF.1 that, within ten days

working days from the notification of the resolution of this disciplinary procedure

certify before this body:

- Having proceeded to complete the information contained in the informative poster of video surveillance area.

- Keep available to those affected the information referred to in the

Articles 13 and 14 of the GDPR.

- Having proceeded to withdraw the camera that gives rise to a capture

excessive, or accredit the regularization of the same in accordance with the regulations in force.

THIRD: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

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of procedure that appears in the heading of this document, in the account

restricted IBAN number: ES00-0000-0000-0000-0000 (...), open in the name of the

Spanish Agency for Data Protection at the bank CAIXABANK, S.A..

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the

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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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