

□ Procedure No.: PS/00430/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before the JEREZ CAPITAL ASSOCIATION, with CIF.: G01621408, owner of the website: <http://www.empleojerez.es>, (hereinafter, "the claimed party"), by virtue of the claim filed by A.A.A., in the name and on behalf of the PARTY SPANISH SOCIALIST WORKERS, (PSOE) OF JEREZ DE LA FRONTERA (in hereinafter, "the claimant party"), for alleged violation of the regulations of data protection, and taking into account the following:

FACTS

FIRST: On 10/06/20, a written claim entered this Agency, which, among others, stated:

"On the web: <http://www.empleojerez.es> they collect personal data. This portal does not complies with current regulations on Data Protection, in what is refers to the "Privacy Policy", the "Cookies Policy" and the security of the Web".

SECOND: On 11/18/20 and 11/30/20, this Agency sent two separate writings to the entity claimed requesting information regarding the claim filed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the protection of personal data and guarantee of digital rights, ("LOPDGDD").

According to a certificate from the Electronic Notifications and Electronic Address Service, the request sent to the claimed entity, on 11/18/20, through the service of NOTIFIC@ notifications, was rejected at destination on 11/29/20.

According to a certificate from the State Post and Telegraph Society, the requirement

sent to the claimed entity, on 11/30/20, through the SICER service, it was

returned to destination, with the message “unknown”, on 12/18/20.

THIRD: On 02/03/21, by the Director of the Spanish Agency for

Data Protection agreement is issued for the admission of processing of the claim

presented, in accordance with article 65 of the LPDGDD Law, when assessing possible

reasonable indications of a violation of the rules in the field of competences

of the Spanish Agency for Data Protection.

FOURTH: On 07/06/21, this Agency carried out the following

checks on the claimed website, <http://www.empleojerez.es>:

a.- On the level of security in the processing of personal data on the web:

When accessing the web page, the Chrome browser warns that the page is not

secure, because it uses the security protocol "http://" for its communications,

offering the following message:

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“Not secure: We recommend that you do not enter personal or private information

in this page. If possible, please do not use this website. It is not safe: be careful.

The connection of this website has some serious privacy problem. it's possible

that another user can see the information you send or receive through this site.

You may see a "Login not secure" or "Payment not secure" message.

Dangerous: Avoid this website. If a red warning screen appears

that occupies the entire page, it means that the Safe Browsing function has marked the

website as not secure. Your information is very likely to be compromised by

use it”.

b.- Regarding the processing of personal data:

1.- Through the existing link at the top of the main page,

<<register>>, the website displays a form where you can enter data

personal, such as name, email. Before submitting the form

You must check the box: “_ I agree to the <<terms of use>>”.

2.- Personal data of users can also be obtained through the

<<contact us>> tab, <http://www.empleojerez.es/contact-us/>, located

at the bottom of the main page, where personal data can be included

such as name, email, phone number and the subject to be discussed.

c.- About the “Privacy Policy”:

1.- Through the link, <<conditions of use>>, located in the registration form or

registration and at the bottom of the main page, the web redirects to a new

page, <http://www.empleojerez.es/politica-de-privacidad/>, where it is reported, among

others, of the following aspects:

Regarding the identification of the person responsible for the web, it is indicated that: The address of

our website is: <http://www.empleojerez.es>.

In addition, information is provided on: what personal data they collect and why;

about media; about cookies; about embedded content

other websites; what rights you have over the data and where they send the data.

2.- Through the link, <<data protection>>, located at the bottom of the

redirects to a new page,

Homepage,

<http://www.empleojerez.es/proteccion-de-datos/>, where information is provided, among others, about:

the Web

Who is responsible for data processing and is informed of: for what purpose

process personal data; how long they keep the data; which is the legitimacy for data processing; which recipients will be communicated to data; what are the rights when the data is provided and how they can exercise them.

d.- About the Cookies Policy:

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1.- Upon entering the home page of the web, (first layer), it is verified that without perform any action or accept cookies, own cookies are used not required, like: `_gid`; `_ga` and `_gat`.

2.- The banner about cookies that appears on the main page provides the following information:

“We use cookies to ensure that we give you the best experience on our website.

SEE COOKIE POLICY. If you continue to use this site, we will assume that you are

<<Accept>>

agree with it.

<<No>>

<<Data Protection>>

If you choose not to accept non-technical or necessary cookies, by clicking on the option, <<No>>, it is checked how the web continues to use cookies that are not required, such as: `_ga` and `_gid`”.

If you choose to access the "protection policy", through the link <<protection of data>>, the web redirects to the same page indicated above,

<http://www.empleojerez.es/proteccion-de-datos/>, through which there is a link to

the "cookies policy", also existing at the bottom of the main page, at through which the web redirects to a new page <http://www.empleojerez.es/politica-de-cookies/> where information is provided on: What is a cookie and for what is used these technologies; what type of cookies they use; how to manage and delete cookies through the links that redirect users to videos.

If you choose to accept non-technical or necessary cookies, by clicking on the option, <<accept>>, it is checked how the website continues to use unnecessary cookies “_ga” “_gat” and “_gid”.

FIFTH: Dated 10/26/21, in view of the facts and the verifications

carried out by this Agency, the Director of the Spanish Agency for the Protection of Data, agreed to initiate sanctioning proceedings against the entity claimed for:

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Violation of article 32.1 of the RGPD, regarding the lack of security detected on the web page of its ownership, directing it a warning and requiring it to take appropriate steps to adapt the page website, <http://www.empleojerez.es>, including technical measures and organizational structures that allow a level of security appropriate to the risk.

Violation of article 22.2 of the LSSI, regarding the non-existence of "Policy of Cookies", of the claimed web page, verifying the existence of cookies not techniques, with an initial penalty of 1,000 euros, (one thousand euros) and requiring to take the appropriate measures to adapt the website, <http://www.empleojerez.es>, to the new regulations in force regarding cookies, including in it, a mechanism that makes it impossible to use of non-technical or necessary cookies without the prior consent of the interested. Modify the cookie information banner on the page

main including in it, information on the purposes for which

cookies will be used and if they are their own or also from third parties and include

in the cookies policy information on the identification of the cookies that

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uses the web and the time they are active in the terminal equipment, in addition to

modify the option to reject all cookies in the main banner,

ensuring that the use of said option will not use cookies that are not

technical or necessary.

SIXTH: The initiation of the file was notified on 11/07/21, as of today, there is no

that the respondent has made allegations to the agreement to initiate the procedure.

In this sense, article 64.2.f) of the LPACAP -provision reported by the

claimed in the agreement to open the procedure- establishes that, "if no

they make allegations within the stipulated period on the content of the initiation agreement,

when it contains a precise statement about the responsibility

imputed, may be considered a resolution proposal."

In the present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the current regulations

attributed to the defendant and the sanction that could be imposed. Therefore, taking into

consideration that the respondent has not made allegations to the agreement to start the

file and in accordance with the provisions of article 64.2.f) LPACAP, the aforementioned

Initiation agreement is considered in this case resolution proposal.

PROVEN FACTS

1º.- According to the claim, on the web <http://www.empleojerez.es> you can collect personal data of users, but does not comply with current regulations on of Data Protection, in what refers to the "Privacy Policy", to the "Policy of Cookies" and to the "Security of the web".

2º.- According to what this Agency has been able to verify, the web page claimed, <http://www.empleojerez.es>, has the following characteristics regarding the "Policy Privacy" and the "Cookies Policy" and "Security":

- About the security of the page

, it has been found that, when accessing the web page, the Chrome browser warns that the page is not secure, because uses the "http://" security protocol for its communications, offering the following information about it, recommended that you do not enter personal or private information on the page.

- About the processing of personal data

, it has been found that, through of the link, <<register>>, the website displays a form where you can enter personal data, such as name, email. I also know can obtain personal data from users through the tab <<contact us>>, where personal data such as the name, email, phone number and the subject to be discussed.

- About the "Privacy Policy"

, it has been found that, through the links, <<conditions of use>> and <<data protection>>, the web redirects two new pages, where it is reported, among others: who is responsible of data processing on the web, what personal data they collect and why what; about media; about the embedded content of others

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websites and on the management of the rights that you have in terms of data protection and where they send the data.

- About the Cookies Policy,

It has been verified that, when entering the page website, without performing any action or accepting cookies, are used Non-necessary own cookies, such as: _gid; _ga and _gat. If you choose to access to the "protection policy", through the link <<data protection>>, where information is provided about, what a cookie is and what it is for use these technologies; what type of cookies they use; how to manage and delete cookies through the links that redirect users to informative videos.

FOUNDATIONS OF LAW

I.- Competition:

- On the processing of personal data, security protocols used on the website and the "Privacy Policy":

Is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data (RGPD) and as established in arts. 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5,

Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD),

- About the Cookies Policy:

Is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, in accordance with the provisions of art.

43.1, second paragraph, of Law 34/2002, of July 11, on Services of the Information Society and Electronic Commerce (LSSI).

II.-

About the "http" security protocol used in the transfer of data in the

website: <http://www.empleojerez.es>

The website may collect personal data, such as name, email

email or phone number, through various existing forms in the

Contact us

page: <<register>> and <<

>>.

When accessing the web page, the Chrome browser warns that the page is not secure, since it uses the http:// protocol for its communications, offering the following message:

"Not secure: We recommend that you do not enter personal or private information in this page. If possible, please do not use this website. It is not safe: be careful.

The connection of this website has some serious privacy problem. it's possible that another user can see the information you send or receive through this site.

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You may see a "Login not secure" or "Payment not secure" message.

Dangerous: Avoid this website. If a red warning screen appears

that occupies the entire page, it means that the Safe Browsing function has marked the website as not secure. It is very likely that your private information is compromised by use it"

The HTTP code is a communication protocol that allows the transfer of information on the Internet, but totally insecure, being subject to attacks that allow to easily obtain the information that is being transferred from one website to another other.

In this sense, article 32 of the RGPD indicates, on the security of the treatment of personal data, which:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others: a) pseudonymization and data encryption personal; b) the ability to ensure confidentiality, integrity, availability and permanent resilience of treatment systems and services; c) capacity to restore the availability and access to personal data quickly in case of physical or technical incident; d) a process of verification, evaluation and regular assessment of the effectiveness of technical and organizational measures to guarantee the safety of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

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

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

The known facts constitute an infraction for violation of article 32.1 of the RGPD, as the website lacks technical and organizational measures that guarantee an adequate level of security when processing personal data of personal character.

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For its part, article 73.f) of the LOPDGDD, considers a serious infringement, for the purposes of prescription, “The lack of adoption of those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of the RGPD”.

This infraction can be sanctioned with a fine of €10,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for the

of greater amount, in accordance with article 83.4.a) of the RGPD.

In accordance with these criteria, it is considered appropriate to direct a "WARNING", for

the infringement of article 32.1 of the RGPD, as the web page in question lacks

appropriate technical and organizational measures to ensure a level of security

adequate in the processing of personal data.

III- About the "Cookies Policy" of the website: <http://www.empleojerez.es>:

a).- Regarding the installation of cookies in the terminal equipment prior to

consent:

Article 22.2 of the LSSI establishes that users must be provided with information

clear and complete information on the use of storage devices and

data recovery and, in particular, on the purposes of data processing.

This information must be provided in accordance with the provisions of the GDPR. So,

when the use of a cookie entails a treatment that enables the

identification of the user, those responsible for the treatment must ensure the

compliance with the requirements established by the regulations on the protection of

data.

However, it is necessary to point out that they are exempt from compliance with the

obligations established in article 22.2 of the LSSI those necessary cookies

for the intercommunication of the terminals and the network and those that provide a service

expressly requested by the user.

In this sense, the GT29, in its Opinion 4/201210, interpreted that among the cookies

excepted would be the user input Cookies" (those used to

filling in forms, or managing a shopping cart); cookies from

user authentication or identification (session); user security cookies

(those used to detect erroneous and repeated attempts to connect to a site

Web); media player session cookies; session cookies to balance

load; user interface customization cookies and some of

plugin (plug-in) to exchange social content. These cookies would remain

excluded from the scope of application of article 22.2 of the LSSI, and, therefore, it would not be

necessary to inform or obtain consent on its use.

On the contrary, it will be necessary to inform and obtain the prior consent of the user.

before the use of any other type of cookies, both first and

third party, session or persistent.

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In the verification carried out on the claimed website, it was found that, when

enter the main page and without performing any action on it and without accepting

cookies, non-technical or necessary cookies were used.

b).- About the existing cookie information banner in the first layer

(Homepage):

The banner on cookies of the first layer must include information regarding the

identification of the editor responsible for the website, in the event that your data

identifiers do not appear in other sections of the page or that their identity cannot

obvious detachment from the site itself. It must also include a

Generic identification of the purposes of the cookies that will be used and if they are

own or also third parties, without it being necessary to identify them in this first

layer. In addition, it must include generic information on the type of data to be collected.

collect and use in case user profiles are created and must include

information and the way in which the user can accept, configure and reject the use of cookies, with the warning, where appropriate, that if a certain action, it will be understood that the user accepts the use of cookies.

Apart from the generic information about cookies, in this banner there must be a clearly visible link to a second informative layer on the use of the cookies. This same link can be used to lead the user to the control panel. cookie configuration, provided that access to the configuration panel is direct, that is, that the user does not have to navigate inside the second layer to locate it.

In the case at hand, in the cookie information banner on the first layer of the denounced web, with the message: "We use cookies to ensure that we give you the best experience on our website. SEE COOKIE POLICY. Yes If you continue to use this site, we will assume that you agree with it". identify the purposes for which cookies will be used and whether they are their own or also from third parties.

c).- Regarding consent to the use of unnecessary cookies:

For the use of non-excepted cookies, it will be necessary to obtain the express consent of the user. This consent can be obtained clicking on, "accept" or inferring it from an unequivocal action performed by the user that denotes that the consent has occurred unequivocally. By Therefore, the mere inactivity of the user, scrolling or browsing the website, is not be considered for these purposes, a clear affirmative action in any circumstance and not will imply the provision of consent by itself. Similarly, access to the second layer if the information is presented in layers, as well as the navigation necessary for the user to manage their preferences in relation to cookies in the control panel, it is also not considered an active behavior that can be

derive the acceptance of cookies.

The existence of "Cookie Walls" is not allowed either, that is, windows pop-ups that block the content and access to the web, forcing the user to accept the use of cookies to be able to access the page and continue browsing.

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If the option is to go to a second layer or cookie control panel, the link it should take the user directly to that configuration panel. To facilitate selection, the panel can be implemented, in addition to a management system granular cookies, two more buttons, one to accept all cookies and one to reject them all. If the user saves his choice without having selected any cookie, it will be understood that you have rejected all cookies. In relation to this second possibility, in no case are pre-marked boxes admissible in favor of accepting cookies.

If for the configuration of cookies, the web refers to the browser configuration installed in the terminal equipment, this option could be considered complementary to obtain consent, but not as the only mechanism. Therefore, if the publisher opts for this option, it must also offer, and in any case, a mechanism that allows you to reject the use of cookies and/or do it in a granular way, on your own Web page.

On the other hand, the withdrawal of the consent previously given by the user It should be possible to do it at any time. To this end, the publisher must offer a mechanism that makes it possible to withdraw consent easily at any

moment. This facility will be considered to exist, for example, when the user have simple and permanent access to the management or configuration system of the cookies.

If the editor's cookie management or configuration system does not allow to avoid the use of third-party cookies once accepted by the user, it will be provided information about the tools provided by the browser and third parties, It must be noted that, if the user accepts third-party cookies and subsequently wishes to delete them, you must do it from your own browser or the system enabled by the third parties for it.

In the case at hand, in the banner of the first layer there is the option of reject all cookies, by clicking on <<No>>, but if you opt for this option, check that the website continues to use the same non-technical or necessary cookies.

In the second layer (Cookies Policy), the website refers to the configuration of the browser installed on the terminal equipment for the management of cookies, there being no a mechanism that allows to reject all cookies or to do it in a granular way.

d).- On the information provided in the second layer (Policy of Cookies):

More detailed information about cookies should be provided in the Cookies Policy. characteristics of cookies, including information about, definition and function generic cookies (what are cookies); about the type of cookies used and its purpose (what types of cookies are used on the website); the identification of who uses the cookies, that is, if the information obtained by the cookies is treated only by the publisher and/or also by third parties with identification of the latter; the period of conservation of cookies in the terminal equipment; and if it is the case,

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information on data transfers to third countries and the preparation of profiles involving automated decision making.

In the case at hand, the information about cookies that is provided in the second layer of the web, it has been detected that the identification of the cookies that are used, if they are their own or from third parties, nor the time that will be active on the terminal equipment.

IV- About the infraction in the "Cookies Policy" of the website:

The deficiencies observed on the website regarding the cookie policy, suppose by the claimed entity the commission of an infraction of article 22.2 of the LSSI, since it establishes that:

“Service providers may use storage devices and recovery of data in terminal equipment of the recipients, provided that they have given their consent after they have been provided clear and complete information on its use, in particular, on the purposes of the data processing, in accordance with the provisions of Organic Law 15/1999, of 13 December, on the protection of personal data.

Where technically possible and effective, the recipient's consent to Accepting the processing of the data may be facilitated through the use of the parameters from the browser or other applications.

The foregoing will not prevent the possible storage or access of a technical nature to the sole purpose of effecting the transmission of a communication over a communications network electronic or, to the extent that is strictly necessary, for the provision of a service of the information society expressly requested by the

addressee".

This Infraction is typified as "minor" in article 38.4 g), of the aforementioned Law, which considers as such: "Use data storage and retrieval devices when the information has not been provided or the consent of the recipient of the service in the terms required by article 22.2.", and may be sanctioned with a fine of up to €30,000, in accordance with article 39 of the aforementioned LSSI.

After the evidence obtained in the preliminary investigation phase, and without prejudice to whatever results from the investigation, it is considered appropriate to graduate the sanction to impose in accordance with the following aggravating criteria, established by art. 40 of the LSSI:

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The existence of intentionality, an expression that must be interpreted as equivalent to a degree of guilt according to the Judgment of the National High Court of 11/12/07 relapse in Appeal no. 351/2006, corresponding to the denounced entity the determination of a system of Obtaining informed consent that is in accordance with the mandate of the LSSI.

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In accordance with these criteria, it is considered appropriate to impose a penalty of 1,000 euros (one thousand euros), for the infringement of article 22.2 of the LSSI, regarding the policy of cookies made on the website in question.

In accordance with the foregoing, by the Director of the Spanish Agency for

Data Protection,

RESOLVES:

FIRST: IMPOSE the entity, ASOCIACIÓN JEREZ CAPITAL, with CIF.:

G01621408, owner of the website: <http://www.empleojerez.es>, the following

sanctions, for:

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The infringement of article 32.1 of the RGPD, regarding the lack of security in the website in the processing of personal data, directed by a warning.

The Infraction of article 22.2 of the LSSI, regarding the "Cookies Policy" of the website, with a penalty of 1,000 euros (one thousand euros)

SECOND: ORDER him that, within a period of one month from the notification of this resolution, take the necessary measures on the website of its ownership to adapt it to current regulations on data protection:

- Regarding security measures in the processing of personal data, taking the appropriate measures to adapt the website, including in the same technical and organizational measures that allow a level of security appropriate to the risk.

- Regarding the "Cookies Policy", taking the appropriate measures to adapt the website to current regulations on cookies, including in it, a mechanism that makes the use of cookies impossible technical or necessary without the prior consent of the interested party. Modify the information banner about cookies on the main page including in the same, information about the purposes for which it is will use cookies and if they are their own or also from third parties and include in

the cookie policy information on the identification of the cookies that uses the web and the time they are active on the terminal equipment. Finally, you must modify the option to reject all cookies in the main banner, ensuring that the use of said option will not use cookies that are not technical or necessary.

THIRD: NOTIFY this agreement to start sanctioning proceedings to the SHERRY CAPITAL ASSOCIATION,

FOURTH: Warn the sanctioned party that the sanction imposed must be made effective once

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

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

Common to Public Administrations, within the voluntary payment period indicated in the

Article 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 17

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December, by depositing it in the restricted account N° ES00 0000 0000 0000

0000 0000, opened in the name of the Spanish Agency for Data Protection in the

Bank CAIXABANK, S.A. or otherwise, it will be collected in

executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

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

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

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

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

Against this resolution, which puts an end to the administrative procedure (article 48.6 of the

LOPDGDD), and in accordance with the provisions of articles 112 and 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, the interested parties may optionally file

appeal for reconsideration before the Director of the Spanish Data Protection Agency

within one month from the day following the notification of this

resolution or directly contentious-administrative appeal before the Chamber of the

Contentious-administrative of the National Court, in accordance with the provisions of the

Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulatory of the Contentious-administrative Jurisdiction, in the term of

two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, 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/](https://sedeagpd.gob.es/sede-electronica-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 Agency for Data Protection.

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