

□ File No.: EXP202202023

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On May 5, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against JOYPAZAR, S.A. (in
hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: EXP202202023

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: On 02/14/2022, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against JOYPAZAR, S.A. with NIF
A28711893 (hereinafter, the claimed part), for the installation of a system of
video surveillance located at *** ADDRESS.1, with indications of a possible
Non-compliance with the provisions of the data protection regulations
staff.

The reasons underlying the claim are as follows:

“After my 2019 claim (...). The establishment removed the surveillance camera
that I was focusing on the playground where my daughter plays, I would like to claim that

said camera has been placed again as can be seen in the photos.

[...]"

Attach a photo of the location of the video surveillance camera.

SECOND: In accordance with article 14.2 of Law 39/2015, of October 1,

of the Common Administrative Procedure of the Public Administrations (in

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2/13

hereinafter, LPACAP), this Agency through electronic means made available

of the claimed one a first Request for information on 02/17/2022, being

accepted on 02/21/2022, as stated in the certificate issued by the Service of

Unique Authorized Electronic Address (hereinafter, DEHÚ). That same day, you receive

written by the respondent in which he states that "everything that has been requested of us

it was provided to them on 2 occasions (...). In addition, a letter of

allegations on 09/23/2020 (...) in which more information is provided. The number of

procedure is PS/00089/2020."

On 02/22/2022, a new request for information is sent to the party claiming in the

indicating that "the requested information refers in this new claim to the

existence of another outer chamber, different from those that already existed in the previous

process"; being notified on 02/23/2022, as stated in the certificate

issued by the DEHÚ Service.

On 02/27/2022, this Agency receives a letter from the respondent in which

states, in summary, that the establishment has 11 interior chambers and 2

foreign affairs, the latter intended to "dissuasively protect our

facilities, and, in case of theft, to be able to facilitate the authorities to investigate the case the images captured by them. His captures are as follows, oriented in the maximum that they allow us, to our own installations." It adds that "the monitors of the images captured by the cameras They are located in an interior area of the premises, not accessible to the public. have access to the same person in charge of the room and the 2 general managers (...), by means of a password to the video surveillance program. The retention period is 15 days. It provides the images that are seen through the monitor, as well as photographs of the room where it is located and the video surveillance zone sign on the facade of the establishment.

THIRD: On 03/01/2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

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3/13

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

The images generated by a camera or video camera system are data from personal nature, so its treatment is subject to the protection regulations of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Regarding the treatment for video surveillance purposes, article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out carry out the processing of images through camera systems or video cameras in order to preserve the safety of people and property, as well as their installations.

The processing of personal data is subject to the rest of the principles of the treatment contained in article 5 of the RGPD. We will highlight the principle of minimization of data contained in article 5.1.c) of the RGPD that provides that the

personal data will be “adequate, relevant and limited to what is necessary in relation to for the purposes for which they are processed”.

This means that in a specific treatment only the data can be processed.

timely personal, that come to the case and that are strictly necessary

to fulfill the purpose for which they are processed. The treatment must be adjusted and proportional to the purpose to which it is directed. The relevance in the treatment of data must occur both at the time of data collection and in the subsequent treatment of the same.

In accordance with the above, the processing of excessive data must be restricted or proceed to their removal.

The application of the principle of data minimization in the field of video surveillance entails that images cannot be captured from public roads, since the treatment of images in public places, unless authorized governmental, can only be carried out by the Security Forces and Bodies.

On some occasions, for the protection of private spaces, where installed cameras on facades or inside, it may be necessary to ensure the security purpose the recording of a portion of the public highway.

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4/13

That is, cameras and video cameras installed for security purposes may not obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid it due to their location. And in that case

extraordinary, the cameras will only be able to capture the minimum portion necessary to

preserve the safety of people and property, as well as its facilities.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation and, in particular, not being able to affect public spaces

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

Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area.

It is not allowed, therefore, the placement of cameras towards the private property of

neighbors with the purpose of intimidating them or affecting their private sphere without cause justified.

Nor can images be captured or recorded in spaces owned by third parties.

without the consent of their owners, or, as the case may be, of the people who find.

Likewise, it is disproportionate to capture images in private spaces, such

such as changing rooms, lockers or worker rest areas.

IV

In accordance with the foregoing, the processing of images through a system

of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

1.- Individuals or legal entities, public or private, can establish a system

video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less

intrusive to the rights and freedoms of citizens. personal data only

should be processed if the purpose of the processing could not reasonably be achieved by

other means, considering 39 of the RGPD.

2.- The images obtained cannot be used for a later purpose

incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles

12 and 13 of the RGPD, and 22 of the LOPDGDD.

In this sense, article 22 of the LOPDGDD provides in relation to video surveillance

a system of “layered information”.

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5/13

The first layer must refer, at least, to the existence of the treatment

(video surveillance), the identity of the person in charge, the possibility of exercising the rights

provided for in articles 15 to 22 of the RGPD and where to obtain more information about the

treatment of personal data.

This information will be contained in a device placed in a sufficiently

visible and must be supplied in advance.

Second layer information should be readily available in one place

accessible to the affected party, whether it is an information sheet at a reception, cashier, etc...,

placed in a visible public space or in a web address, and must refer to the

rest of the elements of article 13 of the RGPD.

4.- The treatment of images through the installation of camera systems or

video cameras must be lawful and comply with the principle of proportionality and that of

minimization of data, in the terms already indicated.

5.- The images may be kept for a maximum period of one month, except in

those cases in which they must be kept to prove the commission of acts

that threaten the integrity of people, goods or facilities.

In this second case, they must be made available to the authority

competent within a maximum period of 72 hours from the knowledge of the

existence of the recording.

6.- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGD.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation

of impact on data protection, to detect those derived from the implementation

of the video surveillance system, assess them and, where appropriate, adopt the measures of

appropriate security.

8.- When a security breach occurs that affects the processing of

cameras for security purposes, whenever there is a risk to the rights and

freedoms of natural persons, you must notify the AEPD within a maximum period of

72 hours.

A security breach is understood as the accidental or accidental destruction, loss or alteration of

illicit of personal data transmitted, conserved or treated in another way, or the

unauthorized communication or access to said data.

9.- When the system is connected to an alarm center, it can only be

installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

The Spanish Agency for Data Protection offers through its website

[<https://www.aepd.es>] access to:

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6/13

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”),

the Guide on the use of video cameras for security and other purposes,

the Guide for compliance with the duty to inform (both available in the

section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the

facilitates free tool (in the “Guides and tools” section), which, through

specific questions, allows to assess the situation of the person in charge with respect to the

treatment of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures

guidelines considered minimum.

v

The claim is based on the alleged illegality of the installation by the

claimed from a video surveillance camera located outside the

establishment, located at ***ADDRESS.1, which could capture images of areas of

public transit, disproportionately.

As proof of these statements, the claimant provided a photograph in which

the existence of a video surveillance camera on the exterior side of the

Respondent's premises that could be targeting a public playground for children

near.

As indicated in the "Facts" section, second point, of this agreement, the party Claimed acknowledges in its response to the Request for additional information to have installed, not just one, but two cameras on the outside of your premises. In the pictures of the monitor, it is observed that the camera placed in the access door to the establishment captures the entrance and a space proportional to it. Nevertheless, the camera located on the side of the property, and that it be removed as a consequence of the previous sanctioning procedure, captures images, not only of the wall of the premises, but also quite an extension of the children's public park (swings or benches, among other elements).

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the exposed facts violate what is established in the article 5.1.c) of the RGPD. This conduct could constitute a violation typified in article 83.5.a) of the RGPD, a provision that establishes the following: "The Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

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For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

(...)”

SAW

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

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, taking into account the exposed facts and without prejudice to what results from the instruction of the procedure, it is considered that the sanction that should be imposed is an administrative fine. The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the article 83.1 of the RGPD. In order to determine the administrative fine to be imposed,

to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will 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 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 suffered by the interested parties;

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8/13

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, 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 person in charge or the person in charge of the treatment;

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;

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

measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or 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 RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned 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 treatment of personal information.

c) The profits obtained as a result of committing the offence.

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

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9/13

f) Affectation of the rights of minors

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party”.

In accordance with the precepts transcribed, in order to set the amount of the penalty to

impose in the present case for the infringement typified in article 83.5 a) of the RGPD,

In the first assessment, the following are considered concurrent as aggravating factors:

aspects that reveal greater unlawfulness and/or culpability in the conduct of the

reclaimed:

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Any previous infraction committed by the person in charge or the person in charge of the

treatment (article 83.2.e) RGPD). The party complained against has already been the subject of

sanction in PS/00089/2020, where it was determined that there was indeed

installed a video surveillance camera outside your establishment

that captured images of the entire width of the sidewalk located in front of the

recreational facility.

The balance of the circumstances contemplated, with respect to the infraction committed

by violating the provisions of article 5.1.c) of the RGPD, it allows to set as a valuation

initial fine of €2,000 (two thousand euros).

7th

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of

appropriate measures to adjust their actions to the regulations mentioned in this

act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...”.

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined:

- Prove that you proceeded to remove the camera or video camera system of the current place or to its reorientation, in such a way that the viewing of the images that are observed show that transit areas are not captured public, specifically, the playground.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

viii

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10/13

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against JOYPAZAR, S.A., with NIF

A28711893, for the alleged infringement of article 5.1.c) of the RGPD, typified in the

article 83.5.a) of the RGPD,

SECOND: THAT for the purposes provided in article 64.2.b) of Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations (LPACAP, hereinafter), the sanction that should be imposed would be €2,000 (two thousand euros), without prejudice to what results from the instruction.

Likewise, the imputed infractions, if confirmed, may lead to the imposition of of measures in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD.

THIRD: APPOINT B.B.B. and, as secretary, to C.C.C., indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Subdirector General for Inspection of Data on actions carried out prior to the start of this penalty procedure.

FIFTH: NOTIFY this agreement to JOYPAZAR, S.A., with NIF A28711893, granting him a hearing period of ten business days to formulate the pleadings and submit any evidence you deem appropriate. In his writing of allegations you must provide your NIF and the procedure number that appears in the header of this document

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the term granted for the formulation of allegations to the present initial agreement, which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the penalty would be established at €1,600 (one thousand six hundred euros), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction,

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11/13

the sanction would be established at €1,600 (one thousand six hundred euros) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €1,200 (one thousand two hundred euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

indicated above (€1,600 or €1,200), you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorato of Inspection to proceed with the procedure in accordance with the quantity entered.

The sanctioning procedure will have a maximum duration of nine months from from the date of the start-up agreement or, if applicable, the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 76.4 of the LOPDGDD and if the amount of the sanction imposed is greater than one million euros, it will be published in the Official State Gazette the information that identifies the offender, the infraction committed and the amount of the penalty imposed.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On May 26, 2022, the claimed party has proceeded to pay of the sanction in the amount of 1,600 euros using one of the two reductions provided for in the Start Agreement transcribed above. Therefore, it has not

acknowledgment of responsibility has been confirmed.

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12/13

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home Agreement.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

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13/13

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of the procedure EXP202202023, of

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

SECOND: NOTIFY this resolution to JOYPAZAR, S.A.

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

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

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

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

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

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.

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