

□ File No.: EXP202206224

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: FISCAL POSITION OF \*\*\*LOCATION.1 (\*hereinafter, the party claiming-  
te) on 05/27/22 filed a claim with the Spanish Protection Agency  
of data. The claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the par-  
claimed you). The reasons on which the claim is based are the following:

“Inspection of the Bazaar B.B.B. that does not have distinctive informers both  
both outside and inside the establishment (...)” –folio 1 of the Complaint Act--.

The claimant provides the Complaint Act dated May 26, 2022 in the  
which shows that the claimed party is responsible for an establishment  
that has a video surveillance system in its facilities that is not  
It is duly marked by means of the mandatory informative signs of  
video-surveilled area, also lacking informative forms regarding protection.

Protection of data available to customers and users.

SECOND: On July 29, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate disciplinary proceedings against the claimed party,  
for the alleged violation of Article 13 of the GDPR, typified in Article 83.5 of the  
GDPR.

THIRD: Notified the aforementioned start-up agreement in accordance with the established regulations  
in Law 39/2015, of October 1, of the Common Administrative Procedure of the  
Public Administrations (hereinafter, LPACAP) and after the period granted  
for the formulation of allegations, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the party was informed-

claimed in the agreement to open the procedure - establishes that if the

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility, possibly

It will be considered a resolution proposal. In the present case, the initiation agreement

of the sanctioning file determined the facts in which the imputation materialized.

the infraction of the GDPR attributed to the defendant and the sanction that could be imposed

nerse. Therefore, taking into consideration that the claimed party has not formulated

allegations to the agreement to start the file and in attention to what is established in the article

Article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present

proposed case resolution.

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FOURTH: After consulting the database of this Agency, the Agreement was notified

of Start in the BOE dated 08/30/22, after the double attempt was unsuccessful

of notification in the place indicated by the Security Forces and Bodies of the

State.

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. The facts bring cause of the claim dated 05/27/22 through the

which is transferred as main fact the following:

“Inspection of the Bazaar B.B.B. that does not have distinctive informers both both outside and inside the establishment (...)” –folio 1 of the Complaint Act--.

Second. It is accredited as the main responsible A.A.A., after the data contributed by the acting force.

Third. There is evidence of the absence of informative signage indicating that it is video-monitored area.

Room. There is evidence of the absence of information form(s) available to the clients of the same.

## FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, 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 Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 05/27/22 is examined by means of gave from which the following is transferred as the main fact:

"Installed a video surveillance camera that lacks the mandatory sign in-training in the establishment" (folio no. 1).

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Article 22 section 4 of the LOPDGDD (LO 3/2018) provides: "The duty to inform  
tion provided for in article 12 of Regulation (EU) 2016/679 shall be understood to have been complied with  
by placing an information device in a sufficiently visible place  
identifying, at least, the existence of the treatment, the identity of the person in charge and the  
possibility of exercising the rights provided for in articles 15 to 22 of the Regulation  
(EU) 2016/679. A code of code may also be included in the information device.  
connection or internet address to this information" (\*bold belongs to this Agency)  
Inc).

The facts described above may affect the content of the  
Article 13 GDPR, as the information poster lacks an effective address to which it can  
to be able to address, and must have informed the group of neighbors of the fi-  
purpose of the installation (vgr. protection of the installations, etc).

Article 13 GDPR "Information that must be provided when the data per-  
personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible  
of the treatment, at the moment in which these are obtained, it will provide you with all the information  
information indicated below: a) the identity and contact details of the person in charge  
and, where appropriate, his representative; b) the contact details of the protection delegate  
tion of data, if applicable; c) the purposes of the processing for which the personal data is intended;  
personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to

tion to the limitation period of very serious infractions "will prescribe three

years" and in particular the following:

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (UE) 2016/679 and 12 of this organic law.

Therefore, it is appropriate to initially impute the alleged infringement of article 13 GDPR, by breaching the duty to inform those affected by the treatment of their data, which are collected by the video surveillance system installed under its exclusive responsibility.

II

In accordance with the evidence provided that is available in this disciplinary procedure, it is considered that the claimed party has a system of video-surveillance in the establishment that he runs without having an informative poster and/or information form for this purpose.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

5. The documents formalized by the officials to whom the condition of authority and in which, observing the corresponding legal requirements

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teeth, the facts verified by the former shall be collected, they shall prove the latter except prove otherwise.

The presence of cameras must be signaled outside in a visible area and in the interior, providing, where appropriate, the form(s) if required by the

acting force and/or customers of the establishment.

You can obtain guidance on the website [www.aepd.es](http://www.aepd.es) Video Section-

surveillance "Public Establishments", it is enough that the model form

put the name of the establishment, a space for the request and an indication of the

way to exercise the rights in the current legal framework, as well as the address

authority to contact in your case.

The known facts are therefore constitutive of an infringement, attributable to

the claimed party, for violation of Article 13 GDPR, mentioned above.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount

to a maximum of 4% of the overall annual total turnover of the financial year

previous year, opting for the one with the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22;

In accordance with the foregoing, it is considered correct to impose a penalty of €300

(Three hundred euros), by having a video-surveillance system devoid of poster(s)

informative, although it is taken into account that it is a small establishment with

a low level of apparent income, a sanction located on the lower scale for this

types of behaviors, considering the conduct as "serious" negligence.

V

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who

fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

It is recalled that a new inspection of the scene, without complying with

the required measures can be taken into account when imposing a

new sanction for continued infringement and non-compliance with measures adopted.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for a violation of Article 13

of the GDPR, typified in Article 83.5 of the GDPR, a fine of €300.

SECOND: TO ORDER the person in charge of the establishment so that, within a period of 15

business days, counting from the following of the notification of this act, proceed to

place an informative poster(s) in the access area to the establishment, trying to dis-

make informative forms available to its clients.

THIRD: NOTIFY this resolution to A.A.A. and report the result of

these proceedings to the claimant.

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 Co-Administrative Procedure

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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 of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Spanish Agency ñola of Data Protection in the bank CAIXABANK, S.A.. In case of 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 period is It will run 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

Respondents may optionally file an appeal for reinstatement before the Director of the Spanish Agency for Data Protection within a period of one month from the the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned 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 interested party do states its intention to file a contentious-administrative appeal. If it is-



As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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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 the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the

Agency was not aware of the filing of the contentious-administrative appeal

treatment within two months from the day following notification of this

resolution, would terminate the precautionary suspension.

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