

□ File No.: EXP202202536

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 July 13, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against B.B.B.Y OTRO MAS

C.B. (hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: EXP202202536

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: Mrs. A.A.A. (hereinafter, the claimant party) dated February 11,

2022 filed a claim with the Spanish Agency for Data Protection against

B.B.B. AND ANOTHER C.B. with NIF E41209826 (hereinafter, the claimed party), by

the installation of a video surveillance system located at ***ADDRESS.1, existing

indications of a possible breach of the provisions of article 13 of the RGPD.

The claimant states that she resides in a dwelling as a tenant and that said

housing is located in a property whose Community of Owners has agreed the

installation of video surveillance cameras in common areas that are linked to a

alarm sensor that means that, when movement is detected, the camera captures

images of the area to which it is oriented. He points out that the camera installed in the

landing of your home is oriented to your home, so you understand that your installation is not suitable. He also indicates that he does not know if installed posters of video surveillance area as established by the regulations of Data Protection.

It provides images of the location of the camera and contacts maintained with the Community Administration on camera.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in C/ Jorge Juan, 6

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hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of making available, understanding rejected in accordance with the provisions of article 43.2 of the LPACAP on March 18, 2022, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of informative, a copy was sent by mail that was reliably notified in

dated March 31, 2022. In said notification, he was reminded of his obligation to communicate electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, in the future, you would be notified exclusively by electronic means.

On May 3, 2022, this Agency received a response letter indicating, in short, that the building belongs to a community of goods made up of two sisters, who live in it together with a tenant (which they suppose is the claimant). The parties to that community of property reached an agreement to put a security camera in the building in the common areas, to control the security of the same, since there have been robberies.

They hired the entity Securitas Direct. The camera is a motion detector that when it detects movement it shoots a photo that is not archived when it is someone known, it is only archived when it comes to an intruder. Does not have recorder images or display monitor, the images (in case of intruders) must extract them the security company. All this information was provided to the party claimant through burofax.

The respondent points out that there is a sign that warns of the existence of a zone video surveillance at the entrance of the building, providing a photograph of it.

In the photograph provided there is an informative poster that there is an alarm. Without However, it is not appreciated that it contains information on the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the data protection regulations.

THIRD: On May 11, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

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FOUNDATIONS OF LAW

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Competition

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

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

The image is a personal data

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

alleged infringement

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.

Article 12.1 of the RGPD indicates that whoever carries out data processing personal, such as capturing images through a system of video surveillance, you must provide the interested parties with the information indicated in the articles 13 and 14 of the RGPD.

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In order for the duty of information provided for in article 12 of the RGPD to be complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the LOPDGDD foresees in relation to video surveillance a system of "information by layers".

In this sense, 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 on the processing of personal data.

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.

It is not necessary to specify the precise location of the video surveillance equipment.

This duty of information shall be understood to be fulfilled by placing a

informative device in a sufficiently visible place, and at least, in the accesses

to the monitored areas, whether indoors or outdoors. In case the space

video-surveillance has several accesses, it must have said identification badge

video-monitored area in each of them.

This information must be provided in advance -considering 39 of the RGPD-. The

The goal is to make the context of the surveillance clear.

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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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 as changing rooms, lockers or worker rest areas.

Video surveillance obligations

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 must be complied with and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

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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 intentional 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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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.

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v

Possible administrative infraction

In accordance with the evidence available at the present time of

agreement to initiate the sanctioning procedure, existence of an informative poster of

that there is an alarm, without recording information about the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the data protection regulations, and without prejudice to what results from the instruction, it is considered that the exposed facts violate what is established in the article 13 of the RGPD, so they could lead to the commission of an infringement typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions 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:

b) the rights of the interested parties according to articles 12 to 22; (...)”.

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:

“(...

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law”.

SAW

sanction proposal

Article 58.2 of the RGPD establishes:

“Each supervisory authority shall have all of the following corrective powers

listed below:

a) (...)

d) order the person responsible or in charge of treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

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(...)

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

the measures mentioned in this section, according to the circumstances of each

particular case".

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine.

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 as the number of stakeholders affected and the level of damage and

damages they have suffered;

a)

the intentionality or negligence in the infringement;

b) any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties;

c) 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 in

under articles 25 and 32;

d)

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

treatment;

e) the degree of cooperation with the supervisory authority in order to remedy

to the infringement and mitigate the possible adverse effects of the infringement;

F)

g)

the categories of personal data affected by the breach;

the way in which the supervisory authority became aware of the infringement, in

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

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

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

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g)

adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42,

any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through 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.

a) The link between the activity of the offender and the performance of treatment of personal information.

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

c) The possibility that the conduct of the affected party could have induced the commission of the offence.

- d) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- e) Affecting the rights of minors.
- f) Have, when not mandatory, a data protection delegate.
- g) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested".

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13, it allows setting as an initial assessment a fine of €300 (three hundred euros).

7th

Possible measures

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

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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 have proceeded to place the informative badge in the areas video-monitored or to complete the information offered in it (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

Certify that you keep the information to which it is referred available to those affected.
refer to articles 13 and 14 of the RGPD.

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

conclusion

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: START PUNISHMENT PROCEDURE against B.B.B. AND ANOTHER C.B., with NIF E41209826, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

SECOND: THAT for the purposes provided in art. 64.2 b) of the LPACAP, the sanction that could correspond would be, due to the alleged violation of article 13 of the RGPD, typified in article 83.5 of said regulation, an administrative fine of 300.00 (three hundred) euros, without prejudice to what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of

measures in accordance with the provisions of article 58.2 d) of the RGPD.

THIRD: APPOINT C.C.C. and, as secretary, to D.D.D.,

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

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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 B.B.B. AND ANOTHER C.B., with NIF

E41209826, granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems 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 the 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 sanction would be established at 240.00 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, the sanction would be established at 240.00 euros and its payment will imply the termination of the process.

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 this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 180.00 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 (240.00 euros or 180.00 euros), you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Agency for Data Protection in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

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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.

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 August 2, 2022, the claimed party has proceeded to pay
of the sanction in the amount of 180 euros making use of the two reductions
provided for in the Start Agreement transcribed above, which implies the
acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to
the opening of the procedure, entails the waiver of any action or resource in via
administrative action against the sanction and acknowledgment of responsibility in relation to
the facts referred to in the Initiation Agreement.

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."

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.

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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.

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 procedure EXP202202536, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to B.B.B. AND ANOTHER CB.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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