

□ File No.: EXP202205892

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 8, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate sanctioning proceedings against MH VILASECA S.L.
(hereinafter, the claimed party), through the Agreement that is transcribed:

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File No.: EXP202205892

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

SEPRONA TEAM ***LOCATION.1 (hereinafter, the part

FIRST: The

claimant) dated March 3, 2022 filed a claim with the Agency
Spanish Data Protection against MH VILASECA S.L. with NIF ***NIF.1 (in
hereinafter, the claimed party) located at ***ADDRESS.1, for the installation of a
video surveillance system located in the establishment with signs of a
possible breach of the provisions of article 13 of the RGD.

The complaining party states that the video surveillance system installed by the party
claimed, both inside and outside, lacks informative posters of
the existence of such a system.

It provides images of the situation of the cameras.

SECOND: These facts were the subject of a claim before this Agency, processing file AT/01155/2022. From this Agency they communicated to the claimed party the requirements to carry out data processing through this type of device, indicating that, in the event of not adopt the necessary measures to comply with those requirements, would incur a infringement of the provisions of the data protection regulations, which could lead to at the beginning of the investigative and sanctioning actions. This communication was notified on April 4, 2022.

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THIRD: On May 23, 2022, the respondent has filed before this Agency a new claim against the party claimed by the same facts.

The complaining party provides the Complaint Act dated May 12, 2022, in which evidences that the respondent party is responsible for an establishment that It has a video surveillance system both inside and outside, without being duly marked by the mandatory signs informative video-surveillance area and without informative forms on the matter data protection available to customers and users.

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 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

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.

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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.

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 RGD.

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 RGD-. The

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

IV

Video surveillance obligations

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.

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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 RGD.

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 the terms already indicated.

4.- Images of public roads cannot be captured, since the treatment of

images in public places, unless there is government authorization, only

It can 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.

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.

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.

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.

Images cannot 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.

It is disproportionate to capture images in private spaces, such as changing rooms, lockers or worker rest areas.

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.

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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 RGPD.

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.

v

Possible administrative infraction

The claim is based on the lack of an informative poster of the video-monitored area in the establishment of the claimed party MH VILASECA S.L. located at ***ADDRESS.1.

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As evidence of these statements, the claimant provided a police report and several photographs in which the existence of cameras is observed both inside as outside the premises and the lack of the mandatory poster that informs about the presence of the cameras and on the identity of the data controller data, so that interested persons can exercise the rights provided in Articles 15 to 22 of the GDPR.

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 13 of the RGD, so they could lead to the commission of an infringement typified in article 83.5.b) of the RGD, 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 LOPDGD, 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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i)

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 €400 (four hundred euros).

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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 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 A SANCTIONING PROCEDURE against MH VILASECA S.L., with NIF ***NIF.1, for the alleged infringement of article 13 of the RGPD, typified in the article 83.5.b) of the RGPD.

SECOND: SECOND: THAT for the purposes set forth in article 64.2 b) of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP), the sanction that could correspond would be a ADMINISTRATIVE FINE of €400 (four hundred euros), without prejudice to what result of 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.

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THIRD: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., 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 in the actions prior to the start of this sanctioning procedure.

FIFTH: NOTIFY this agreement to MH VILASECA S.L., with NIF ***NIF.1,

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, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent to €80 (eighty euros). With the application of this reduction, the penalty would be established at €320 (three hundred and twenty 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, equivalent to €80 (eighty euros).

With the application of this reduction, the sanction would be established at €320 (three hundred twenty 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. If it were appropriate to apply both reductions, the amount of the penalty would be established at €240 (two hundred and forty).

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 (€320 and €240) you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the

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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 Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of 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 July 12, 2022, the claimed party has proceeded to pay the sanction in the amount of 240 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the 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 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."

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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.

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 EXP202205892, of

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

SECOND: NOTIFY this resolution to MH VILASECA S.L.

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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