

□ File No.: EXP202103890

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: COMPAÑÍA DE BALAGUER-GENERAL DIRECTION OF THE CIVIL GUARD--

(\*hereinafter, the complaining party) on October 26, 2021 filed

claim before the Spanish Data Protection Agency. The claim is

directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed party). The motives

on which the claim is based are as follows:

“placement of a video-surveillance system in Bazar XXX without the same

is duly informed, not having an informative form available to

the clients of the establishment” (folio nº 1).

The Inspection Act of the acting force dated 10/21/21 is attached in the

that the facts object of the complaint before this Agency are verified.

SECOND: On October 29, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

clamant.

THIRD: When the database of this Agency has been consulted, it is associated with the same

claimed a previous file with number E/00811/2020, where he was reminded of the

requirements that the installed video-surveillance camera system had to meet.

In the event of not adopting the necessary measures to comply with the requirements

legally established requirements, would incur a violation of the provisions of the

data protection regulations, which could lead to the initiation of actions

of investigation and corresponding sanctions.

FOURTH: On January 10, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: The database of this Agency consulted on 02/01/22 has not been received any response in relation to the facts object of the claim.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### FACTS

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First. The facts bring cause of the transfer of Complaint of the Civil Guard (Compañía Balaguer-Comandancia Lleida) reporting the following alleged infraction administrative tion,

“placement of a video-surveillance system in Bazar XXX without the same is duly informed, not having an informative form available to the clients of the establishment” (folio nº 1).

Second. It is identified as the main responsible A.A.A. with NIF \*\*\*NIF.1.

Third. There is evidence of the presence of a video-surveillance system that "lacks informative label" in breach of current regulations when it comes to facilitating

You exercise the rights 12-22 RGPD to the clients of the establishment.

The foregoing is recorded in the Minutes (Complaint Bulletin) dated 10/21/21, which was attached to the transferred claim.

Fourth. It is accredited that the establishment does not have an information form(s)

tive duly conformed at the disposal of the clients of the establishment in

question.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to re-

solve this procedure.

II

Before going into the substance of the matter, in the Initiation Agreement dated 12/09/21, it was

informed, that in case of not making allegations in a timely manner, the Initial Agreement

decision would be considered a "resolution proposal" in the terms of article 64.2 f) of the

Law 39/2015 (October 1).

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Regulations for Public Administrations (hereinafter LPACAP) -disposition

of which the respondent was informed in the agreement to open the proceeding

to- establishes that if allegations are not made within the stipulated period on the content

of the initiation agreement, when it contains a precise statement about

imputed responsibility, may be considered a resolution proposal. In the

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

cases in which the imputation was specified, the infringement of the RGPD attributed to the re-

claimed and the sanction that could be imposed. Therefore, taking into account that the

respondent party has not made allegations to the agreement to initiate the file and in

attention to the provisions of article 64.2.f) of the LPACAP, the aforementioned initial agreement

cio is considered in the present case resolution proposal.

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In the present case, we proceed to examine the COMPLAINT sent by the Guardia Civil (Comandancia de Lleida) in front of the Bazar XXX establishment, verifying the in-compliance with data protection regulations by not informing customers of the same of the way to exercise the rights in accordance with articles 15-22 RGPD, as it has a video-surveillance system.

The facts described above imply an affectation to article 13 of the current RGPD, since it has a video-surveillance camera system that has not been duly informed to the set of employees and customers of the establishment I lie.

In accordance with the aforementioned article, the person responsible for the "treatment" will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative.
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis presenter;
- treatment schedule; (...).

III

In accordance with the objective evidence available at this time, agreement to initiate the sanctioning procedure, and without prejudice to what is

As a result of the investigation, it is considered that the respondent party has a system of video-surveillance that does not comply with current regulations.

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

"5. The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, teeth the facts verified by those are collected will prove them except prove the contrary".

The acting force transferred to the scene of the events confirms the irregularities from the system installed in the aforementioned establishment, which affect the duty of information regulated in art. 13 GDPR.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of article 13 RGPD.

IV

Reporting on video surveillance according to RGPD is an obligation contained in our legislative framework—art. 13 GDPR--.

To adapt to current regulations, the AEPD published the new mandatory poster river that must be located in spaces that are subject to video surveillance.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

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"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative 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 the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this information”.

The art. 83.5 RGPD provides the following: “Infringements of the following provisions

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

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

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

above, opting for the highest amount:

a)

b)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

the rights of the interested parties under articles 12 to 22;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as

the number of interested parties affected and the level of damages suffered

fried; (art. 83.2 a) RGPD), by having an operational video-surveillance system in the

establishment that it runs, but that lacks a claim form against the

images obtained with it.

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), having already been

previously warned that the system must meet all the requirements

governed by the regulations in force, within the framework of E/00811/2020.

In accordance with the foregoing, it is considered correct to impose a figure-based sanction

amounts to €1,000 (Thousand Euros), as it has a camera system that does not

complies with current regulations, failing to comply with the duty to inform customers

of the same and lacking a claim form if necessary to dis-

their position, a sanction located on the lower scale for this type of behavior.

treatments.

It is recalled that in accordance with art. 58.2 d) RGPD, this body

may additionally impose mandatory measures to proceed

“in a certain way and within a specified period”.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for an infraction of Article 13

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,000 (one thousand euros).

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SECOND: ORDER the person claimed so that within ONE MONTH proceed to the

regularization of the aforementioned system, in accordance with article 58.2 d) RGPD:

-Placement in a visible place of an informative poster(s) indicating that it is  
a video-monitored area.

-Availability of informative form(s) available to clients of the es-  
establishment.

THIRD: NOTIFY this resolution to A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

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

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary 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, through its entry, 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, opened in the name of the Spanish Agency Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, 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 pointed out 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-



In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation

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that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

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