

□ File No.: EXP202203839

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 31, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against EURO DONER
KEBAB (B.B.B.) (hereinafter, the claimed party), by means of the Agreement
transcribe:

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File No.: EXP202203839

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated March 25, 2022
filed a claim with the Spanish Data Protection Agency. claims her-
tion is directed against EURO DONER KEBAB (B.B.B.) with NIF ***NIE.1 (hereinafter,
the claimed party). The grounds on which the claim is based are as follows:

"It has a video surveillance camera outside the premises in the upper part of the
upper left of the shutter of the closing of the premises, focusing on the public road and is not in-
focusing on the facade of their premises (...) lacking an informative poster in this regard"—folio
No. 1--.

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 hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-dated 03/29/22, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

THIRD: On 05/05/22 a response is received from the claimed party acknowledging claiming to be responsible for the installation of the video-surveillance device.

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2/8

“There is a single camera outside. It is provided as Document 1 (photo 1),

Document 2 (photo 2) and Document 3 (photo 3)”

Provides an informative poster photograph indicating the person responsible for the treatment of the data.

“The owner of the business whose activity is the distribution and sale of food at retail

minor, it was necessary to install an exterior camera that was duly re-

registered in the system of the Data Protection Agency, since as can be seen

see in document number 4 (photo 4 mobile screen) there is a space that appears

It is fenced by the local police, which is for the exclusive use of the premises and which is intended for loading and unloading”.

“The fact of putting the camera has been in order to be able to denounce and accredit

before the police the interference of that space and the only thing that has derived is a damage

for its owner with the opening of this file”.

FOURTH: On 05/18/22, a new document is received from the respondent, proceeding

do to modify the angle of capture of the camera at the request of this organism.

Attach documentary evidence (photographs nº 1-2 Annex).

FIFTH: On May 18, 2022, in accordance with article 65 of the LO-PDGDD, the claim filed by the claimant was admitted for processing.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679, hereinafter RGPD), grants each authority control and as established in articles 47, 48.1, 64.2 and 68.1 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 formal procedures regulated by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

In the present case, we proceed to analyze the claim dated 03/25/22 by means of which was given from which the following is transferred as the main fact:

II

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3/8

"It has a video surveillance camera outside the premises in the upper part of the

upper left of the shutter closing the premises, focusing on the public road and is not in-
focusing on the facade of their premises (...) lacking an informative poster in this regard”—folio
No. 1--.

Given that the respondent has proven the availability of an information poster, the
facts are specified in the presumed excessive orientation towards public space of the
camera installed.

The art. 5.1 c) RGPD provides the following: The personal data will be:
“adequate, relevant and limited to what is necessary in relation to the purposes
for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, proving that it complies with all
the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding
intimidate neighboring neighbors with this type of device, as well as control zo-
nas of transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.
co, as this is the exclusive competence of the State Security Forces and Bodies
ted.

The recording of personal conversations both in the company and in communities
of proprietors (ace), supposes an invasion of the intimacy of the user, reason why with the
except that there is prior judicial authorization and the recordings are made
by the people competent to do so do not allow this type of behavior.
cough.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or transit of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and of its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

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III

4/8

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 defendant has a video system surveillance poorly oriented towards public space, without just cause.

After analyzing the initial explanations of the respondent, it is considered that the space captured with the camera is excessive for the intended purpose, without the cause put forward justifies the breadth of capture of public space.

The known facts could constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) RGPD, previously cited-do.

According to article 72 section 1 LOPDGDD (LO 3/2018, December 5) "Infringements considered very serious" "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 established in article 5 of Regulation (EU) 2016/679.

IV

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

In accordance with the above, an initial penalty of €300 is proposed, as it is a legal entity with a low income level, which has made a response initial to this Agency, although the negligent orientation towards public area without just cause, a sanction located on the lower scale for this type of sanction.

v

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 responsible or in charge of the treatment I guarantee that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period. cified...". The imposition of this measure is compatible with the sanction consisting of

administrative fine, as provided in art. 83.2 of the GDPR.

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5/8

It is noted that not meeting the requirements of this body may be considered classified 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.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency data protection law,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against the entity EURO DONER KEBAB (B.B.B.), with NIF ***NIE.1, for the alleged violation of article 5.1 c) RGPD, typified in article 83.5 RGPD.

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, where appropriate, in accordance with the provisions ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filing filed by the claimant and its documentation, as well as the documents documents obtained and generated by the General Subdirectorate for Data Inspection in actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1- tube, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be €300, without prejudice to what results from the
truction.

FIFTH: NOTIFY this agreement to EURO DONER KEBAB (B.B.B.), with
NIF ***NIE.1, granting a hearing period of ten business days to formulate
the allegations and present the evidence it deems appropriate. In his writing of
Allegations must provide your NIF and the number of the procedure that appears in the en-
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
feel start agreement; which will entail a 20% reduction in blood
tion to be imposed in this proceeding. With the application of this re-
reduction, the sanction would be established at 240 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 supposes
will give a reduction of 20% of its amount. With the application of this reduction, the

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6/8

The payment would be established at 240 euros and its payment will imply the termination of the procedure.

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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 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or waiver of any action or resource in the administrative process. deal against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above €240 or €180, you must make it effective by paying into account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency Data Protection Label at 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 it is accepted.

Likewise, you must send proof of income to the General Subdirectorate of Ins-request to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-do this period will produce its expiration and, consequently, the filing of actions; in accordance with the provisions of article 64 of the LOPDGDD.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, in the event tive, the notifications sent to you will be made exclusively electively.

electronically by appearance in the electronic office of the General Access Point of the Administration or through the unique Authorized Electronic Address and that, if not act-give in to them, their rejection will be recorded in the file, considering the transaction as completed. mite and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of availability tion of notifications and that the lack of practice of this notice will not prevent the non-certification is considered fully valid. Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPA-CAP, against this act there is no administrative appeal.

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7/8

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SECOND: On June 14, 2022, the claimed party has proceeded to pay the sanction in the amount of 180 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.

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.

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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 EXP202203839, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to EURO DONER KEBAB (B.B.B.).

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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