

□ File No.: PS/00396/2020

## 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 February 22, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against the COMMUNITY OF  
OWNERS A.A.A. (hereinafter, the claimed party), through the Agreement that  
is transcribed:

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Procedure No.: PS/00396/2020

### 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: B.B.B. (hereinafter, the claimant) dated August 13, 2020  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against COMMUNITY OF PROPRIETORS A.A.A. with NIF  
\*\*\*NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are  
succinctly the following:

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"I notice that there is a camera installed on the facade of the house located in front of mine, focusing both on the pool area (located next to the house that I had rented), like the patio and the living room of my vacation home. I check that in the pool area there are signs indicating that it is an area video surveillance, as required by Instruction 1/2006 of the Spanish Agency for Data Protection in its section 3a, but the person responsible is not identified before who can exercise the rights referred to in articles 15 and following Organic Law 15/1999, on the Protection of Personal Data in these posters (...)"

Along with the claim, provide documentary evidence that proves the presence of the cameras, as well as the presence of posters without indicating the "responsible for the treatment" of the data.

SECOND: On 09/14/20, the claim is TRANSFERRED to the demanded so that it can allege in law what it deems pertinent.

THIRD: On 10/20/20 a letter of allegations is received from the entity claimed arguing that they have an informative poster(s) where the responsible for the treatment.

Attached photograph (s) that proves the statement.

Likewise, a screen printout of the monitor is provided, where it is verified that the camera is oriented in the distance towards the pool area, affecting the courtyard of the inferior comunero, as well as that laterally captures public space without cause justified.

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## FOUNDATIONS OF LAW

Yo

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 resolve this procedure.

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II

In the present case, we proceed to examine the claim dated 08/13/20 by means of which the following is transferred as the main fact:

"I notice that there is a camera installed on the facade of the house located in front of mine, focusing both on the pool area (located next to the house that I had rented), like the patio and the living room of my vacation home. I check that in the pool area there are signs indicating that it is an area video surveillance, as required by Instruction 1/2006 of the Spanish Agency for Data Protection in its section 3a, but the person responsible is not identified before who can exercise the rights referred to in articles 15 and following Organic Law 15/1999, on the Protection of Personal Data in these posters (...)"

The facts are specified in the existence of a video-surveillance system

oriented towards the pool area, without the informative poster reporting  
duly from the address before which you can exercise the rights regulated in the  
regulations in force.

The physical image of a person, in accordance with article 4.1 of the RGD, is a  
personnel and their protection, therefore, is the subject of said Regulation. In article 4.2  
of the RGD defines the concept of "treatment" of personal data.

The exposed facts may suppose a violation of art. 5.1 c) GDPR,  
"Personal data will be: c) adequate, pertinent and limited to the  
necessary in relation to the purposes for which they are processed ("minimization of  
data")".

It should be remembered that individuals are responsible for ensuring that the systems  
installed comply with current legislation.

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The installation of this type of device is remembered must have the mandatory  
informative poster, indicating the purposes and responsible for the treatment in its case of the  
Personal data.

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

"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 in  
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.

In any case, the person in charge of the treatment must keep available to the

affected the information referred to in the aforementioned regulation”

In any case, the cameras should preferably be oriented towards the space

particular, avoiding intimidating neighboring neighbors with this type of device, as well

how to control their transit areas without just cause.

Security cameras installed in private spaces will not be able to obtain

images of public spaces, the security function of public spaces

corresponds exclusively to the State Security Forces and Bodies, not to

Private Security Companies.

III

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 security camera system

video-surveillance that obtains images of public areas, allowing images to be obtained

from the adjoining road.

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The known facts could constitute an infraction, attributable to the

claimed, for violation of the content of art. 5.1 c) GDPR.

IV

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

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, 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;

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

-That the denounced system is oriented towards the public area in a disproportionate, obtaining images of the adjoining cart and vehicles that transit through it, (art. 83.2 a) RGPD).

-the intentionality or negligence of the infringement (art. 83.2 b RGPD).

In accordance with the foregoing, an initial sanction encrypted in the

amount of €1,500, (one thousand five hundred euros), amount located on the lowest scale for these types of offenses.

The person in charge of the Community of owners must explain the reason for the

installation, as well as that it conforms to current legislation, providing all the

necessary documentation for this purpose (eg photograph of the poster, Minutes of the Board of owners, etc.).

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: START A SANCTIONING PROCEDURE for the COMMUNITY OF PROPIETARIOS A.A.A., with NIF \*\*\*NIF.1, for the alleged violation of art. 5.1 c) RGPD, infringement typified in art. 83.5 a) RGPD, being punishable by in accordance with art. 58.2 GDPR.

SECOND: 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).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, all of them part of the administrative file.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €1,500 (one thousand five hundred Euros), without prejudice of what results from the instruction.

FIFTH: NOTIFY this agreement to the COMMUNITY OF OWNERS A.A.A., with NIF \*\*\*NIF.1, granting a hearing period of ten business days to to formulate the allegations and present the evidence it deems appropriate. In your brief of allegations must provide your NIF and the number of the procedure that appears at the top 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).

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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 the present procedure. With the application of this reduction, the sanction would be established at €1,200, 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 €1,200 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 900 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 €1,200 or €900, 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 heading of this document and the reason for the reduction of the amount to which welcomes

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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.

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Director of the Spanish Data Protection Agency

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SECOND: On March 9, 2021, the claimed party has proceeded to pay

the sanction in the amount of 900 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

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said [www.aepd.es](http://www.aepd.es)

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Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00396/2020, of

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

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

A.A.A.

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

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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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