

□ File No.: EXP202210733

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 April 4, 2023, the Director of the Spanish Agency for
Data Protection agreed to initiate sanction proceedings against UNITED PARCEL
SERVICE ESPAÑA LTD Y COMPAÑIA SRC (hereinafter, the claimed party),
through the Agreement that is transcribed:

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File No.: EXP202210733

AGREEMENT TO START THE SANCTION PROCEDURE

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

FACTS

FIRST: D.A.A.A. (hereinafter, the claiming party) dated August 24,
2022 filed a claim with the Spanish Data Protection Agency. The
claim is directed against UNITED PARCEL SERVICE ESPAÑA LTD. AND CIA SRC
with NIF C28328508 (hereinafter, UPS). The reasons on which the claim is based are
the following:

The claiming party states that it was the recipient of a shipment whose delivery was
Fulfilled by UPS. The courier in charge of the delivery, delivers the shipment without his
consent in a commercial premises, and not at your home, exposing your data
postcards and their telephone number, which was printed on the package from which it was

recipient, to third parties. This is also listed on the delivery note.

Along with the claim, the following is provided:

1.- Proof of delivery in which you can read:

"Dear Customer:

This notice serves as proof of delivery for the shipment appearing on
continuation.

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Tracking number:

(CONFIDENTIAL)

Weight:

0.20 kg

Service:

UPS Express Know

Delivered/invoiced on

08/22/2022

Delivered on:

08/23/2022 14:57

Delivered in:

XXXXXXXXXX

Received by:

B.B.B.

left in

Establishment

Reference number(s)

(...)

Thank you for giving us the opportunity to serve you. The details are only available for shipments delivered in the last 120 days. print it to save as a record if you need information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 08/24/2022 9:26 EST”.

2. Audio that, according to the claimant, is from the WhatsApp application, in the which can be heard:

"I tell you that I have left the package for you in the ice cream parlor that you have downstairs, in the ice cream parlor ***ICE CREAM.1”

SECOND: On behalf of the Spanish Agency for Data Protection, a transfer was made of said claim to UPS, so that it could 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 data protection regulations.

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

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Public (hereinafter, LPACAP), was collected on October 17, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On November 16, 2022, this Agency received a written response

indicating:

"In this regard, this party must point out that the conduct described, the delivery of the package

in a commercial establishment close to the claimant's home raises doubts about

in accordance with the requirements derived from Organic Law 3/2018, of 5

December, Protection of Personal Data and Guarantee of Digital Rights

(hereinafter, LOPDGDD). It is understood that this is not actually attributable to UPS, in

the extent that:

i) the distribution is made in accordance with a contract in which the

safeguards for the protection of senders' personal data and,

ii) the label on which such personal data is collected that could have been

release is not made by UPS but by the shipper of the product, which my

principal is limited to transport.

However, given the situation produced and the claim filed, UPS has taken

the precise measures so that an event like this does not happen again. In

In particular, it has modified its operating procedures to clearly clarify

specifies the distribution of commercial establishments open to the public in the event of

Absence of the addressee from your address is not allowed according to the current

UPS operating procedures, which have been modified to clarify this

extreme".

(...)

UPS adds that: "It is respectfully understood that there are no other measures that

can be taken To the extent that we are dealing with conduct contrary to the

company practices, it is about reinforcing this notion by clarifying

its operating procedures.

With this, the requirement is answered within the term in the terms of article 37.2

of the LOPDGDD. And with the reaction of my client, the lack of need to initiate a disciplinary procedure, in accordance with article 68 of said norm. UPS's reaction guarantees that the events will not be reproduced. This, unique to the social and legal insignificance of the facts in question, makes the continuation of the file is unnecessary."

Attached as Document 1 is a certificate from the company, dated December 16, November 2022, in which it can be verified that this communication is made by the UPS entity.

Also, in this writing it can be observed:

"Although the modification of the operating procedures has universal effects for all shipping services contracted to UPS, it is specifically indicated that the It is adopted as a consequence of the initiation of the informative file EXP202210733, for the purpose of certifying the implementation of the most resounding measure possible (the express prohibition of the conduct that has given rise to the opening of the

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informative procedure) and that with this the protection of the rights of those potentially affected.

THIRD: On November 22, 2022, in accordance with article 65 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), the claim was admitted for processing submitted by the complaining party.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), 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 Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 and 4.2 of the GDPR, consists of the processing of personal data, since UPS performs the collection and conservation of, among others, the following personal data of natural persons: name and surname, telephone number and address, among other treatments. UPS performs this activity in its capacity as data controller, since is who determines the purposes and means of such activity, by virtue of article 4.7 of the GDPR.

For its part, article 4 section 12 of the GDPR defines, in a broad way, the "personal data security violations" (hereinafter security breach) as "all those violations of security that cause the destruction,

accidental or unlawful loss or alteration of personal data transmitted, stored
or otherwise processed, or unauthorized disclosure of or access to such data.”

In the present case, it is clear that there has been a data security breach
personal information, categorized as a breach of confidentiality, having accessed
improperly to the personal data of the complaining party, as a consequence of
the delivery of a package that contained, on the label located in a visible part of the

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the personal data of the complaining party, in an establishment that does not
had authorization to do so, which has meant a violation of the principle of
confidentiality of the personal data of the complaining party.

Within the principles of treatment provided for in article 5 of the GDPR, the
integrity and confidentiality of personal data is guaranteed in section 1.f)
of article 5 of the GDPR. For its part, the security of personal data comes
regulated in article 32, 33 and 34 of the GDPR, which regulate the security of the
treatment, the notification of a breach of the security of personal data to
the control authority, as well as the communication to the interested party, respectively.

II

Integrity and confidentiality

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate data security

personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or organizational procedures ("integrity and confidentiality")."

In the present case, it is clear that the personal data of the complaining party (name and surnames, telephone and address) have been unduly exposed to a third party, in the to the extent that the personal data of the complaining party appeared on the label of the package to be delivered to the complaining party, label that is in a visible place for anyone who has access to that package. In this way, having the delivery of the package occurred in a place that was not enabled for it, has could suppose a violation of the principle of confidentiality of the data personal information of the complaining party.

Therefore, according to the evidence available at this time agreement to initiate disciplinary proceedings, and without prejudice to what results from the instruction, it is considered that the known facts could constitute a infringement, attributable to UPS, for violation of article 5.1.f) of the GDPR.

Classification and qualification of the infringement of article 5.1.f) of the GDPR

IV.

If confirmed, the aforementioned violation of article 5.1.f) of the GDPR could lead to the commission of the offenses typified in article 83.5 of the GDPR that under the

The heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the

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total annual global business volume 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; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679. (...)"

Penalty proposal for infringement of article 5.1.f) of the GDPR

V

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of agreement to start disciplinary proceedings, and without prejudice to what results from the instruction, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR:

As aggravating factors:

- The nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the processing operation in question such as the number of interested parties affected and the level of damages that have suffered (section a): for having transferred the personal data of the party claimant (name and surname, telephone and address), to an unauthorized third party for this every time a package was delivered with the aforementioned information to who should not

- Any previous infraction committed by the person in charge or in charge of the treatment (section e): There is, in this Agency, a disciplinary procedure in which a resolution decision was adopted on September 20, 2022 by the same facts, charged to UPS.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in section 2 of article 76 "Sanctions and measures corrective measures" of the LOPDGDD:

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As aggravating factors:

- The linking of the activity of the offender with the performance of treatment of personal data (part b): UPS routinely and continuously carries out the Treatment of personal data

The balance of the circumstances contemplated in article 83.2 of the GDPR and 76.2 of the LOPDGDD, with respect to the offense committed by violating what is established in the article 5.1.f of the GDPR, allows to initially set a penalty of €100,000 (one hundred thousand

euro).

SAW

Treatment safety

Article 32 "Security of treatment" of the GDPR establishes:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of processing, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical and appropriate organizational measures to guarantee a level of security appropriate to the risk, which may include, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular consideration will be given to take into account the risks presented by data processing, in particular as consequence of the destruction, loss or accidental or illegal alteration of data personal information transmitted, preserved or processed in another way, or the communication or unauthorized access to such data.

3. Adherence to an approved code of conduct pursuant to article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and have access to personal data can only process such data by following

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instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

In this case, UPS had to deliver a package to the address of the party claimant. However, since it is not possible to make the agreed delivery, we proceed to the delivery to an establishment without authorization to do so. The consequence of this action has meant that the personal data of the complaining party were exposed to outsiders. Also, in this case, it is necessary to take into account that, despite the fact that the label with the personal data of the complaining party had been prepared by the sender, precisely due to the fact of having data

Personal information such as first and last name, as well as address and telephone number, UPS should have taken extreme measures so that the package was not delivered to another person other than the recipient of the shipment or someone authorized by him. In this In this sense, UPS has stated that it has incorporated, in November 2022, a protocol so that this type of situation does not repeat itself, but it was after the produced this case.

Therefore, from all of the foregoing, it has been verified that UPS did not have the appropriate measures in the event of a situation such as the alleged that concerns us

Therefore, in accordance with the evidence available in this agreement to initiate the disciplinary procedure, and without prejudice to what is of the instruction, it is considered that the known facts could constitute an infraction, attributable to UPS, for violation of article 32 of the GDPR.

Classification and classification of the infringement of article 32 of the GDPR

VII

If confirmed, the aforementioned infringement of article 32 of the GDPR could lead to the commission of the offenses typified in article 83.4 of the GDPR that under the

The heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infracciones" establishes that

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 73 "Infracciones considered serious" of the LOPDGDD indicates:

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"Based on what is established in article 83.4 of Regulation (EU) 2016/679, are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679". (...)

Penalty proposal for infringement of article 32 of the GDPR

VIII

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of draft decision to initiate disciplinary proceedings, and without prejudice to what resulting from the instruction, it is considered appropriate to graduate the sanction to be imposed according to in accordance with the following criteria established in article 83.2 of the GDPR:

As aggravating factors:

- The nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the processing operation in question such as the number of interested parties affected and the level of damages that suffered (paragraph a): In the present case, UPS did not have in place the necessary measures according to the risk, for cases in which it is not possible deliver correctly.
- Any previous infraction committed by the person in charge or in charge of the treatment (section e): There is, in this Agency, a disciplinary procedure in which a resolution decision was adopted on September 20, 2022 by

the same facts, charged to UPS.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in section 2 of article 76 "Sanctions and measures corrective measures" of the LOPDGDD:

As aggravating factors:

- The linking of the activity of the offender with the performance of treatment of personal data (part b): UPS routinely and continuously carries out the

Treatment of personal data

The balance of the circumstances contemplated in article 83.2 of the GDPR and 76.2 of the LOPDGDD, with respect to the offense committed by violating what is established in the Article 32 of the GDPR, allows initially setting a penalty of €40,000 (forty thousand euro).

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IX

adoption of measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, without prejudice in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may "order the person responsible or processor that the processing operations comply with the provisions of this Regulation, where applicable, in a certain way and within a specified period...". The imposition of this measure is compatible with

the sanction consisting of an administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against UNITED PARCEL SERVICE ESPAÑA LTD Y COMPAÑIA SRC, with NIF C28328508, for the alleged violation of article 5.1.f) of the GDPR, typified in article 83.5 of the GDPR.

INITIATE SANCTION PROCEDURE against UNITED PARCEL SERVICE ESPAÑA LTD Y COMPAÑIA SRC, with NIF C28328508, for the alleged violation of article 32 of the GDPR, typified in article 83.4 of the GDPR.

SECOND: APPOINT as instructor C.C.C. and, as secretary, to D.D.D., indicating that any of them may be challenged, if applicable, in accordance with the 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 into 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 Sub-directorate General of Inspection of Data in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations sanction that could correspond would be:

- For the alleged violation of article 5.1.f) of the GDPR, typified in article 83.5

of said regulation, an administrative fine of 100,000 euros

- For the alleged infringement of article 32 of the GDPR, typified in article 83.4 of

said regulation, an administrative fine of 40,000 euros

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FIFTH: NOTIFY this agreement to UNITED PARCEL SERVICE ESPAÑA

LTD Y COMPAÑIA SRC, with NIF C28328508, granting a hearing period of

ten business days to formulate the allegations and present the evidence that

deem convenient. In your pleadings you must provide your NIF and the

procedure number that appears in the heading of this document.

If, within the stipulated period, he 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, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

Pursuant to article 85 of the LPACAP, a proceeding

disciplinary measure, if the offender acknowledges his responsibility, the problem may be resolved

procedure with the imposition of the appropriate sanction.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the period granted for the formulation of allegations to the

present initiation agreement; which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 112,000.00 euros, resolving the

procedure with the imposition of this sanction.

In the same way, it 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 112,000.00 euros and its payment will imply the completion of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if both reductions were to be applied, the amount of the penalty would remain established at 84,000.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (112,000 euros or 84,000.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency 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 receives.

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Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On April 18, 2023, the claimed party has proceeded to pay the sanction in the amount of 84,000 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition 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 appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), 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 Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

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Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202210733, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to UNITED PARCEL SERVICE SPAIN LTD AND COMPANY SRC.

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

Against this resolution, which puts an end to the administrative process as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal administrative litigation before the Administrative Litigation 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 for in article 46.1 of the referred Law.

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Director of the Spanish Data Protection Agency

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