

□ Procedure No.: PS/00459/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: DG CIVIL GUARD - COMMAND OF ***LOCALITY.1 (in
hereinafter, the claimant) on November 19, 2019 filed a claim
before the Spanish Agency for Data Protection. The claim is directed against
COMMERCIAL VIGOBANDY, S.L. with NIF B94168531 (hereinafter, the claimed).

The reasons on which the claim is based are the installation of a video camera-
surveillance, devoid of the mandatory information poster inside the premises, after the
inspection of the same (folio nº 1).

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed
that the data controller is the claimed party.

THIRD: On January 13, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

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

In this proceeding, the following are considered proven facts:

FACTS

First. On 11/19/19, a claim from the Guardia Civil against the establishment Comercial VigoBrandy S.L for the installation of a system video-surveillance system that does not comply with current legislation.

"No informative distinctive of the recording is observed, as well as no person or company responsible for the file" (folio No. 1 Act of Infraction LOPDGDD fecha 10/26/19).

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Second. There is evidence of the absence of an approved information poster, indicating the responsible for the treatment and, where appropriate, the purpose of the treatment.

Third. There is no evidence that the establishment has an information form(s) available to its clients.

Fourth. The database of this organization consulted on 02/25/20 does not contain any allegation in this regard or that the denounced irregularity has been repaired.

Fifth. There is a previous file E/05810/2019 associated with the accused, where was already widely informed of the measures to be adopted.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, 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 solve this procedure.

II

In the present case, the claim dated 11/19/19 is examined by me- gave from which the following is transferred as the main fact:

“No informative distinctive is observed informing of the presence of cá- video-surveillance gangs inside the establishment” (folio nº 1).

The facts described above suppose an infringement of the content of the art. 12 RGPD, by having a video-surveillance system, which breaches the duty to inform about the purpose and the main person in charge before whom to exercise in its case the rights recognized in articles 15 to 22 RGPD.

Article 22 section 4 of the LOPDGDD provides the following: “The duty to information provided for in article 12 of Regulation (EU) 2016/679 shall be understood accomplished by placing an informative device in a sufficiently visible identifying, at least, the existence of the treatment, the identity of the responsible and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulation (EU) 2016/679.

A connection code or

Internet address to this information. In any case, the data controller must keep available to those affected the information referred to in the ci- all regulations”.

The person in charge must have an informative poster in a visible area homologated in accordance with the regulations in force, where an effective address is indicated before which

address, as well as inform that it is a video-monitored area.

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You can obtain an approved sign at any establishment (eg Ferre-store, large area, etc) or on the website of this Agency www.aepd.es

"Video surveillance".

It will be enough to place the informative badge in a sufficiently visible place,

both in open and closed spaces. Therefore, it would be advisable that if

Being from a building subject to video surveillance, at the entrance of the same, it will be located the informative poster.

III

In accordance with the evidence available in this proceeding,

sanctioning procedure, it is considered that the defendant has committed an infraction of the content of art. 12 RGPD, by not having the mandatory information poster in the vi-possible.

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

"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 Security Forces and Bodies displaced to the place of the cons-the presence of the system, devoid of any informative poster indicating the responsible.

The art. 83.5 RGPD 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 equivalent amount. equivalent to a maximum of 4% of the total global annual turnover of the fiscal year previous financial statement, opting for the highest amount:

b) the rights of the interested parties according to articles 12 to 22.

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

- That the accused had already been warned in advance by this organ- same, without any corrective measure being adopted, not even at the request of the acting force (art. 83.2 e) RGPD).
- That the conduct gives rise to a Complaint that is subject to transfer to this AEPD by the State Security Forces and Bodies (art. 83.2 h) RGPD).

For the reasons stated, it is considered correct to impose a sanction encrypted in the amount of €1,500 (one thousand five hundred Euros), having been previously warned by this Agency, and not having adopted any measure to remedy the situation since described, an infraction located on the lower scale for this type of contrary conduct de-right.

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All of this without prejudice to accrediting before this Agency by reliable evidence cient the placement of the informative badge in a visible area (eg contribution of photo-graph with date and time).

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE COMERCIAL VIGOBANDY, S.L., with NIF

B94168531, for an infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the RGPD, a fine of €1,500 (One Thousand Five Hundred Euros).

SECOND: NOTIFY this resolution to COMERCIAL VIGOBANDY, S.L. and

REPORT the result of the actions D.G. CIVIL GUARD - COMMAND

FROM ***LOCATION.1

THIRD: 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

Data Protection Policy at Banco CAIXABANK, S.A. Otherwise, it

will proceed to its collection in executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary 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 will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

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Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPA-

CAP, the firm resolution may be provisionally suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the city

tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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