

□ Procedure No.: PS/00003/2020

RESOLUTION R/00522/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT  
VOLUNTEER

In the sanctioning procedure PS/00003/2020, instructed by the Spanish Agency for  
Data Protection to PLAY ORENES, S.L., given the claim filed by  
CITY COUNCIL OF \*\*\*LOCALITY.1, and based on the following,

BACKGROUND

FIRST: On March 12, 2020, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanctioning proceedings against PLAY ORENES, S.L.  
Notification of the initiation agreement and after analyzing the arguments presented, dated  
On September 29, 2020, the proposed resolution was issued as follows:

transcribe:

<<

Procedure no.: PS/00003/2020

926-300320

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

BACKGROUND

FIRST: On October 16, 2019, it had entry in this Spanish Agency

TOWN HALL OF

of Data Protection a document presented by

\*\*\*LOCALIDAD.1 (hereinafter, the claimant), through which he formulates

claim against PLAY ORENES, S.L. with NIF B73002099 (hereinafter, the

claimed), for the installation of a video surveillance system installed in CALLE

\*\*\* ADDRESS.1, regarding which there are indications of a possible breach of the

provided in the data protection regulations.

The reasons underlying the claim are as follows:

"That different residents of this town have repeatedly stated before this City Council that the company Play Orenes S.L.U, with NIF B73002099, company dedicated to sports betting, has installed in its premises located in \*\*\*LOCALIDAD.1, Street \*\*\*ADDRESS.1, video surveillance cameras that due to their positioning and characteristics seem to be covering an important part of the public thoroughfare, more

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beyond the strict access that, due to the surveillance of the building's façade, could be considered adequate.

Faced with this situation, and after assessing the situation with the Municipal Police, decided to go to check this point at said premises, in order to confirm the existence of privacy masks. In person at the premises, on August 9, We were not allowed access to the images, for which purpose a record of the municipal police of the date."

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), being notified on 11/21/2019.

On 12/18/2019, the respondent received a written response in which he stated that:

«[...] 4. Number and characteristics of the cameras. In the event that it is

fictitious cameras must provide the invoice, purchase receipt or any other document that serves to prove that they are fictitious.

The aforementioned establishment has a total of 16 CCTV cameras. In Regarding fictitious cameras, inform that the establishment does not have none of them. (See ANNEX N°1: Sketch of the installation and quadrant of camera shots).

5. Scope of the cameras and places where they are installed, accrediting by means of photography of the images captured by the cameras, as displayed on the monitor or equivalent system, that the space for catchment so as not to affect adjoining land and houses, public roads or any other foreign or reserved space.

Of the four chambers that the establishment has oriented towards the accesses, indicate that one of them is installed inside the establishment and the other three on the façade focusing only on the two pedestrian accesses and minimally public roads as can be seen in the attached frames, dated 2019-11-25/17:14 hours.

6. Indicate the term of conservation of the registered images.

The period of conservation of the images of the recorder is 19 days; maximum capacity programmed depending on the quality and number of cameras that supports said recorder.

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In our Privacy Policy regarding Video Surveillance of all

centers of Play Orenes, S.L., it is determined that the images will be kept a maximum term of 30 days.

(See ANNEX No. 2: Video surveillance privacy policy)

7. Any other information that you consider of interest to assess the adequacy of the installation of video surveillance cameras to the regulations of data protection.

It should be noted that, on the part of our Security Department,

So far this year, a total of 760 Police Officials have been processed, received from both the National Police Corps and the Civil Guard. In large part of said requests, were aimed at interests unrelated to this

Company, and yes for Citizen Security. Mention that, in

these requests for collaboration, have required the contribution of the

images captured by the exterior cameras accessing the different

establishments, being able to clarify how it can be accredited, numerous

criminal acts investigated by police units throughout Spain in

for the safety of citizens.

Regarding data protection, I attach the description of the

treatment, as well as their impact assessments describing the measures

technical and organizational that are part of the treatment, as well as the

different risk analyzes carried out on it.

(See ANNEX No. 3: Record of treatment activities: Video surveillance)

(See ANNEX No. 4: Basic risk analysis: Video surveillance)

(See ANNEX No. 5. Analysis of risks and need for EIPD: Video surveillance).»

THIRD: The claim was admitted for processing by resolution of January 8 of 2020.

FOURTH: On March 12, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with  
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the  
Common Administrative Procedure of Public Administrations (hereinafter,  
LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the  
article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written  
allegations in which it is shown that:

«[...] FIRST.- Nullity of the procedure.

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It is manifested in the antecedents of the notified resolution that by this  
Administration, prior to the claim being processed  
that has given rise to this sanctioning procedure, was transferred to  
PLAY ORENES S.L. of the existing claim - filed by the  
City Council- and in accordance with the provisions of article 65.4 of the  
Organic Law 3/2018, of December 5, on the Protection of Personal Data and  
guarantee of digital rights (hereinafter LOPDGDD), being  
notified such claim on 11/21/2019:

Well, the truth and truth is that it has never been notified to Play  
ORENES SL any claim, and only on the date indicated  
(11/21/2019) we were notified of a “request for information” (CVS:  
\*\*\*CVS.1), whose copy is attached as document nº1:

In response to that request for information - and not to any claim -,

This company filed a reply brief on 12/18/2019, whose

a copy is attached as document no. 2.

Therefore, PLAY ORENES has never been aware of a claim

any with respect to the cameras installed in your establishment nor, therefore,

He has not been able to make any arguments in his defence.

In view of the foregoing, it is evident that this Administration has not acted, as

and as indicated, in accordance with article 65.4 of the LOPDGDD,

violating the right of defense of my client, who has seen as

respond to a request for information, a procedure has been initiated

sanctioning party based on a claim of which he has not even had

knowledge or ability to defend themselves.

In this sense, the jurisprudence of the Third Chamber of the Supreme Court has

declared that no one can be sentenced without being heard (Sentences, among

others, of November 30, 1995, November 5, 2001, June 17,

2002 and June 28, 2002), finding the nullity of the act from which it derives

this helplessness justified by the fact that my client has not been

given the opportunity to assert their own arguments and to use

the pertinent means of proof for the defense of their rights and interests

legitimate protected by the article. 24.1. of the Spanish Constitution.

In this regard, the Judgments of the Constitutional Court number 31/1984,

48/1984, 70/1984, 48/1986, 155/1988 and 58/1989: [...]

For all of the above, we understand that this file does not conform to the

legally established procedure whenever there has been no

compliance with article 65. 4 LOPDGDD and this despite the fact that this

Administration reiterates on several occasions - at the initiation of this

sanctioning party - that it has done so.

It is enough for this Administration to verify in its registry and content of the telematic notification on the day made (11/21/2019) to check what

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this company defends: it only moved to PLAY ORENES S.L. A request of information.

The agreement to initiate this sanctioning procedure includes in its factual background FIRST, SECOND and THIRD the processing of a previous file in accordance with the aforementioned article 65 LOPDGDD, admission to processing of a claim from a third party and after that understands that

This sanctioning procedure must be initiated.

However, this is not true and therefore the resolution that initiates this disciplinary file nor the previous file do not adjust neither to the reality of the facts nor to article 65 LOPDGDD.

Therefore, it is in accordance with law that the agreement of initiation of sanctioning procedure notified, proceeding to file the procedure, every time it brings cause of a previous file that was not adjusts to the legally established procedure (article 65 and concordant), suffering as a result of a vice of nullity or, failing that, cancellation ex article 47 and 48 of Law 39/2015, of October 1.

SECOND.- Compliance with the exception established by article 22 of the LOPDGDD

This Administration states that the claim that has given rise to the

present procedure - to insist that it was never notified to us - is based on the

“alleged illegality of the installation by my client of a system

of video surveillance, composed of four cameras located in the premises located in

STREET \*\*\*ADDRESS.1, which could capture images of the public thoroughfare of

disproportionately, capturing not only the entire width of the sidewalk (if

narrow) (in all of them) but also to parked vehicles

adjoining it (in two of those installed on the façade)”.

In this sense, it is worth remembering article 22 of the LOPDGDD, which establishes the

Next:

"1. Natural or legal persons, public or private, may carry out the

image processing through camera systems or video cameras with

the purpose of preserving the safety of persons and property, as well as

your installations.

2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

that in no case can suppose the capturing of images of the interior of a

private home.”

Well, due to the nature of the business of this company and following the

indications of the LOPD, my client complies with the exception

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contemplated by article 22 that allows the recording of a minimum portion of public roads whenever it is essential to guarantee the purpose of security.

Serve as justification, that on some occasions and due to the design of public roads, when cameras are installed on the façade,

these capture minimally or partially the sidewalks, since they are not

There are few occasions when criminals take advantage of parked vehicles at the entrance of the establishment to hide and rob or assault

our employees and customers at the entrance or exit of the establishment. In

In this sense, it should be remembered that we are dealing with an establishment that combines the hotel and gaming activity, being necessary to collect almost

daily of the machines installed in the same causing that the personnel of

collection -and even customers- are or may be the object of robberies to their exit. That is why compliance with the security purpose of the

cameras requires a plus or reinforcement always within the permitted margins by article 22.

In proof of the foregoing, it is attached as document No. 3,

report from the security department of my client where it is justified

the need to guarantee the security of the establishment through the

placement of certain cameras and their compliance with the

legally required measures.

As indicated in the attached report, the implementation of the measures of security in each establishment is a decision of the security department

in collaboration with the data protection officer of the Orenes Group,

thus guaranteeing compliance with legal requirements in both areas

normative. It is a decision that responds to technical and specialized criteria, measuring in any case the scope of the exception regulated in article 22.

### THIRD.- Disproportionality of the sanction

Subsidiarily, and in the event that this Administration the commission of some type of infraction by this merchant will be appreciated, the disproportionality of a penalty of 20,000 euros would be flagrant, the which is absolutely excessive and devoid of any motivation, resulting be arbitrary.

This Administration does not justify the reasons that support the seriousness of such sanction, taking into account that:

- Claim of any kind was never notified -preventing my represented to be able to exercise their right of defense
- There is no recurrence

This contravenes the principle of proportionality established by the Article 29.3 of Law 40/2015 of October 1, on the Legal Regime of the Public Sector, which provides that, in the imposition of sanctions, the

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Public Administrations must observe the due suitability and necessity of the sanction to be imposed, and its adequacy to the seriousness of the constituent act of the infraction; operating for the graduation the guilt, intentionality, the persistence, damage caused, or recidivism. In this sense, warn this Administration that it is not appropriate to try to justify the

graduation and severity of the sanction here proposed, bringing up the existence of 16 files – which, as you indicate, are of a non-sanctioning – related to video surveillance systems installed in establishments owned by my client.

- Absolute good faith by my client. If the above is not enough, we find that the present procedure comes from the answer exhaustive by my client of a request for information, the which and surprisingly, according to this Administration, it was about a claim (See document no. 1).

It would not be idle to recall that the principle of proportionality performs, in the field of Sanctioning Administrative Law, a capital role and this is not only as an expression of some abstract powers of application of the Law in terms of fairness, but because of the concrete fact that the sanctions against impose are defined in our legal system, in general, in extremely flexible way, in such a way that the same behavior can be deserve the imposition of very diverse sanctions and that move in very wide margins and that, for the same reason, can result, in practice, from extraordinarily diverse amount and period. The principle of proportionality imposes that since the sanctioning activity of the Administration a discretionary activity, but an activity typically legal or application of the rules, (this is recognized by our Court Supreme Court in Judgments of December 23, 1981 [RJ 1981, 5453], December 3, February 1984 [RJ 1984, 1027] and April 19, 1985 [RJ 1985, 1716]), the factors that must govern its application are based on what is available the Legal System in each sector in particular and, very especially, in the concurrent circumstances.

The Supreme Court has declared in its Judgment of July 29, 2014

(Chamber of Contentious-Administrative, Section 1), regarding the principle of proportionality, that:

“The principle of proportionality plays, in the field of Law

Administrative Penalty, a capital role and this not only as an expression

of some abstract powers of application of the Law in terms of equity,

but because of the concrete fact that the sanctions to be imposed are

defined in our system, in general, in an extremely

flexible, in such a way that the same conduct may deserve the imposition of

very diverse sanctions and that move in very wide margins and that, for

the same, can result, in practice, in amount and period

extraordinarily diverse. The principle of proportionality requires that

not be the sanctioning activity of the Administration an activity

discretionary, but a typically legal activity or application of the

norms, (this is recognized by our Supreme Court in Judgments of 23 of

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December 1981 [RJ 1981, 5453], February 3, 1984 [RJ 1984, 1027] and

April 19, 1985 [RJ 1985, 1716]), the factors that must preside over its

application are based on the provisions of the Legal System in

each sector in particular and, very especially, in the circumstances

concurrent.”

It must be remembered, as referred to in the Judgment of the TSJ of the Balearic Islands,

Contentious-Administrative Chamber, Section 1, of July 25, 2006, that:

“The Constitution, which has recognized the legitimacy of sanctions administrative, has been careful to underline the regulated nature of the sanctioning power of the Administration: not that the Administration has “freedom” to choose between different but equally fair solutions -legally indifferent-. All the action of the Administration in the sanctioning ground is thus regulated.”

It is evident that in the present case there is no circumstance that justify the imposition of such a serious sanction and perhaps for this reason it is not reason for this Administration

Be that as it may, and despite the absence of an express requirement by this Administration, in order to demonstrate the good faith of my client, states that he proceeded to withdraw the outer chambers of the establishment, as evidenced by document No. 4. [...]».

The report issued by D. AAA, a member of the Department of Security and responsible for processing images of the Grupo Orenes establishments, attached as document no. 3 states, fundamentally, that the company is complies with the data protection regulations in the installation of its systems of video surveillance being sometimes necessary to capture a minimum portion of the road to guarantee the safety of goods and people, that the Forces and Bodies of Security have required his contribution of images for the investigation of criminal acts, that Madrid stands as the area with the highest rate of criminal acts crimes that affect customers and employees and that for technical reasons, it is not possible to redirect the capture angle of the installed cameras.

SIXTH: On 09/03/2020, the instructor of the procedure agreed to open

a period of practice of evidence, considering reproduced, for evidentiary purposes the claim filed by the claimant, the data obtained and generated by the Subdirector General for Data Inspection and the allegations presented by the reclaimed.

SEVENTH: Attached as an annex is a list of documents in the process.

Of the actions carried out in this proceeding and of the documentation in the file, the following have been accredited:

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PROVEN FACTS

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FIRST: Existence of a video surveillance system installed in a gambling establishment located at STREET \*\*\* ADDRESS.1, made up of 16 chambers, 4 of them oriented towards the outside (3 located on the facades and 1 on the arcade of the entry access) as reflected in the content of the writing and the photographs that accompany the response made by the respondent to the prior transfer of the claim filed. It is credited, through the frames extracted from the monitor system viewing and provided by the claimant, who, through the mentioned 4 outward-facing cameras, the entire width of the sidewalk (albeit narrow), as well as vehicles parked on 2 of them.

SECOND: The person in charge of the video surveillance system is PLAY ORENES S.L.

THIRD: The respondent has proceeded to withdraw 3 of the 4 cameras oriented towards the outside (specifically the 3 installed on the facades), as

accredits in the photographs that accompany the brief, of allegations to the agreement of start, presented on June 11, 2020.

## FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD and in the art. 47 and 48.1 of LOPDGDD.

II

In this case, it is appropriate to examine the claim presented by the City Council of \*\*\*LOCALIDAD.1 on October 16, 2019 in which the installation of a video surveillance system in a PLAY ORENES establishment SL located on STREET \*\*\*ADDRESS.1 of the town that «that due to its positioning and features seem to be encompassing an important part of the public highway, beyond the strict access that due to the surveillance of the facade of the real estate could be considered adequate'.

Article 5.1.c) of the RGPD provides that personal data will be “adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”).”

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This infringement is typified in Article 83.5 of the RGPD:

"Infringements of the following provisions shall be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties according to articles 12 to 22; [...].”

For the purposes of the limitation period of the infraction, it is considered very serious and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years 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 in article 5 of Regulation (EU) 2016/679.

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III

In accordance with the evidence available in this sanctioning procedure, it is considered that the defendant has arranged a system of badly oriented video surveillance in relation to 4 cameras facing the outside. Of



the aforementioned cameras, 3 of them (those placed on the facades) have been removed, as stated in the Third Proven Fact; subsisting presumably located in the arcade of access to the premises, a camera that captures images not only of the entrance to the establishment and a minimum of adjacent sidewalk, but also reaches in its approach to vehicles parked in front of said entrance.

Regarding the allegations presented, it is appropriate to carry out the following considerations:

As regards the application for annulment of the procedure

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motivated by an alleged violation of the defendant's right to defense

Considering that the claim has not been transferred, it is necessary to point out, in

First, that the transfer of the claim contained in article 65.4 of the

LOPDGDD is configured as an optional procedure in the opinion of the Agency

Spanish Data Protection in an attempt to inform the

responsible or in charge that said body has been sent some

facts that could imply the violation of the protection regulations of

data, and all with the aim that on the part of said person in charge or

person in charge can provide information or justification that allows adopting

a reasoned decision about the admission or not to process the claim or

complaint and the subsequent ex officio opening of an investigation file

or a sanctioning procedure.

In this procedure, the core is to provide the person in charge or in charge of the

opportunity to defend oneself with respect to the facts contained in the claim

and this is what has been fulfilled in the present case with the brief sent on

on 11/21/2019, where PLAY ORENES S.L. that "This Agency

has learned of the existence of video surveillance cameras

located on STREET \*\*\*ADDRESS.1, which could be in breach of the data protection regulations [...] For this reason you are requested that, in the Within one month from receipt of this letter, prove that the installation of the cameras is in accordance with the data protection regulations giving response, at least, to the following points [...]”. That is, although it has not been transferred the claim in its entirety as such, if it has been requested information based on the facts that are related to the regulations duly identified data protection. In this case, therefore, not defenselessness has occurred, since the defendant has been aware of the situation presumably likely to violate the regulations of data protection that the claimant has informed the AEPD.

The doctrine that the Constitutional Court has been maintaining in relation to defenselessness is that in order for it to be invoked it is necessary to

It deals with a material defenselessness that implies that it has caused damage real and effective. (among others, SSTC 90/1988, 43/1989, STC, 105/1995, 118/1997, 91/2004).

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In addition, it is necessary to point out that in this case what is requested is a response to the AEPD and not that the person in charge or person in charge responds to whoever has filed the claim or complaint.

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Regarding the possibility, protected by article 22 of the

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LOPDGDD that, in order to guarantee the safety of people and

goods, which empowers the collection of public roads to the extent that it is

It is essential to point out that, in fact, this possibility is collected for,

in accordance with section 1 of the aforementioned article «individuals or legal entities,

public or private”.

Now, what is decisive at this point, for a

conjunction with the principle of data minimization stated in the article

5.1.c) of the RGPD, is that it must be “to the extent that it is

essential”, which means that, if for security reasons it were

necessary to capture public roads —faculty that is generally attributed

to the Security Forces and Bodies in accordance with the provisions of the

Organic Law 4/1997 which regulates the use of video cameras by

Security Forces and Bodies in public places and their regulations on

development—because it is the space adjacent to the property (access area or

perimeter) this must be reduced to a minimum; in the case of a sidewalk you can

capture a portion of it in the part adjacent to that access or perimeter,

but it will not be provided to capture the entire width of it or

reach parked cars so that pedestrians and motorists

who park their vehicles are not excessively affected by their right to

the protection of the physical image.

The possibility of expanding the collection of public roads established by the

article 22.2, refers to strategic goods or entities (must understand these to those defined as such in the National Catalog of Infrastructures Strategic) or to transport infrastructures, a category in which find a business dedicated to the game. Therefore, not belonging to the business of the claimed to the category of strategic asset or entity or transport infrastructure, must respect the criterion of minimum uptake of the public road, and this regardless of the area where the business is located (this aspect that has resulted from a free and voluntary decision of the company), since an unequal application of the mentioned criterion would entail an unequal consideration (and therefore a possible discrimination) in the rights of people transiting through a certain area with respect to those of others.

Therefore, in accordance with the foregoing, the respondent is empowered to dispose of a video surveillance system oriented towards the outside (and even located abroad) whose purpose is to guarantee the safety of the property, employees and customers, but bearing in mind that, in the event of needing to capture public road, this collection must be limited to the essential minimum that It is located adjacent to the access and perimeter.

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As regards the allegation related to the

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disproportionality of the proposed financial sanction, it is necessary to bring

collation of what is included in the agreement to initiate this procedure. In this initial agreement has not been collected at any time the aggravating circumstance of recidivism, but the concurrent circumstances considered for purposes to modulate the proposed sanction are: as aggravating circumstances, intentionality or negligence in the infringement (article 83.2.b) RGPD) and the lack of measures taken by the person in charge or in charge of the treatment to mitigate the damages and damages suffered by the interested parties (article 83.2.c); as mitigating factors, collaboration with this Agency within this procedure, having answered to the transfer of the claim (article 83.2.f) RGPD), non-existence that of linking the activity of the offender with the performance of treatments of personal data (article 76.2.b) LOPDGDD), non-existence of benefits obtained as a result of committing the offense (article 76.2.c) LOPDGDD) and have the figure of the data protection delegate not yet belonging to the set of entities required to have the aforementioned figure (article 76.2.g) LOPDGDD).

As for the aggravating circumstances mentioned, the motivation rests, as points out in the initial agreement, in a prior existence of the record-complaint raised by the Civil Guard of \*\*\*LOCALIDAD.2 and that was presented before the AEPD on February 11, 2019 due to the existence of a system of video surveillance in the premises located at C/ \*\*\*DIRIMIENTO.1 (the same system as the which is the subject of this sanctioning procedure) that would violate the provided in the data protection regulations. On the 26th of the same month sent the respondent a communication informing him of that extreme, where to consult the requirements in this regard and that, if they do not adopt the necessary measures, you could be incurring in an offense classified in the data protection regulations that could initiate actions

investigators and sanctions. To this communication the respondent answered, the

March 26, 2019, that the system met the requirements.

Well, of the facts that have motivated the present procedure

sanctioning party, it is evidenced that the defendant did not implement any

measure in this regard that would have allowed him to verify and, therefore, correct,

the excessive recording of the public thoroughfare that is included in the Proven Fact

First.

Likewise, the mention of the 16 non-sanctioning files opened to the

claimed serves to influence the idea of lack of diligence of the claimed in the

failure to review a video surveillance system installation policy

which has been warned on those occasions by the AEPD about its possible

lack of adaptation to data protection regulations.

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Based on the foregoing, and taking into account that according to the latest accounts

presented (fiscal year 2018) shows that the company had an amount

net turnover of XXX €. and had an average number of

permanent employees of 317.28 and non-permanent employees of 174.58 —which excludes it

of the definition of SME in accordance with Regulation (EU) No. 651/2014 of

the Commission, of June 17, 2014, it was considered proportionate to propose a

penalty of 20,000 euros.

Now, taking into account that the respondent has proceeded to withdraw 3 of the

4 cameras (those located on the facades) that excessively captured public roads,

it is considered that the concurrent circumstance of article 83.2.c) must make from aggravating to mitigating, since measures have been adopted for that tending to avoid harm to those affected who would see their right to the protection of personal data when they are captured by the system of video surveillance.

#### IV

In accordance with the provisions of the RGPD in its art. 83.2, when deciding to impose an administrative fine and its amount in each individual case shall be taken into account aggravating and mitigating factors that are listed in the aforementioned article, as well as any other that may be applicable to the circumstances of the case.

Consequently, the following have been taken into account as aggravating factors:

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The intentionality or negligence in the infringement (article 83.2.b) RGPD),

On the other hand, the following have been taken into consideration, as mitigating factors:

The adoption of measures taken by the person in charge or in charge of the

☐

treatment to alleviate the damages suffered by the interested parties

(article 83.2.c) GDPR)

Collaboration with this Agency within this procedure

☐

having answered the transfer of the claim (article 83.2.f) RGPD)

Non-existence of link between the offender's activity and the

☐

personal data processing (article 76.2.b) LOPDGDD)

Non-existence of benefits obtained as a result of the

☐

commission of the infraction (article 76.2.c) LOPDGDD)

Have the figure of the data protection delegate not yet

□

belonging to the set of entities required to have the aforementioned figure

(article 76.2.g) LOPGDD).

Based on the foregoing, it is appropriate to propose graduating the sanction to be imposed on the claimed and set it at the amount of FIVE THOUSAND EUROS (€5,000).

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If the infraction is confirmed, it could be agreed to impose the person in charge the adoption of appropriate measures to adjust its actions to the aforementioned regulations in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period.

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined:

Prove that you proceeded to remove the camera located in the

□

Entrance arcade (private space of the establishment but outside the premises)

from its current location, or to its reorientation by reducing

the capture angle.



It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGD, 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.

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

That by the Director of the Spanish Agency for Data Protection sanction PLAY ORENES, S.L., with NIF B73002099, for an infraction of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, a fine of FIVE THOUSAND EUROS (€5,000).

That, under the provisions of article 58.2.d) of the RGD, you will be ORDER the respondent that, within ONE MONTH from the date on which the resolution in which you so agree is notified, proceed to the withdrawal of the camera located in the entrance arcade of its current location, or to the reorientation of it by reducing the capture angle.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

You are informed that 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 the amount of the same. With the application of this reduction, the sanction would be established at FOUR THOUSAND EUROS (€4,000) and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

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In case you chose to proceed with the voluntary payment of the amount

specified above, in accordance with the provisions of article 85.2 cited,

You must make it effective by depositing it in the restricted account number ES00 0000

0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in the banking entity CAIXABANK, S.A., indicating in the concept the number

reference of the procedure that appears in the heading of this document and

the cause, by voluntary payment, of reduction of the amount of the sanction. Likewise,

You must send proof of entry to the General Subdirectorate of Inspection for

proceed to close the file.

By virtue thereof, the foregoing is notified, and the

procedure so that within a period of TEN DAYS you can allege whatever you consider

in his defense and present the documents and information that he considers pertinent,

in accordance with article 89.2 of the LPACAP).

BBB

HEAD OF AREA

PROCEDURE INSTRUCTOR

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ANNEX: File Index PS\_00003\_2020

1. Claim of C.C.C.

2. Transfer claim to PLAY ORENES, S.L.

3. Response to the request of D.D.D.

4. Admission for processing to C.C.C.

5. E/02186/2019

6. Check background information

7. Diligence

A. opening to PLAY ORENES, S.L.

8. Allegations of PLAY ORENES SL

9. Notice p. tests to PLAY ORENES, S.L.

>>

: On October 16, 2020, PLAY ORENES, S.L. has proceeded to

SECOND

payment of the sanction in the amount of 4,000 euros making use of the planned reduction

in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via

against the sanction, in relation to the facts referred to in the

resolution proposal.

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

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.

## 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:

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"1. A sanctioning procedure has been initiated, 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 fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment for the alleged responsible, at any time prior to the resolution, will imply the termination of the procedure, except in relation to the restoration of the situation altered or to the determination of compensation for damages caused by the commission of the offence.

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 penalty, these being cumulative with each other. The aforementioned reductions must be determined in

notification of initiation of the procedure and its effectiveness will be conditioned to the abandonment or renunciation of any action or resource in via administrative 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/00003/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to PLAY ORENES, S.L.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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