

□ File No.: EXP202105696

## 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 6, 2023, the Director of the Spanish Agency for

Data Protection agreed to initiate sanction proceedings against ROMBOC

COMMUNICATIONS (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202105696

### 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: On 11/16/2021, a document submitted to this Agency was entered

by A.A.A. (hereinafter, the claiming party), through which the claim is made

against ROMBOC COMUNICACIONES with NIF B90488610 (hereinafter, the party  
claimed). The reasons on which the claim is based are the following:

"I am receiving advertising calls with deceptive techniques, where the person who  
llama identifies herself as "my energy advisor" and calls me by my first name  
giving me consumption data of my power line.

This person is identified by the name of B.B.B. ROMBOC company

COMMUNICATIONS.

At no time have I given my explicit consent to this company to be  
can contact me to offer me publicity and according to what the  
operator who calls me, has said data for having been an Endesa customer at some point.  
moment, to which I reply that I haven't been an Endesa customer for many years, plus  
of 5 specifically, that it is not possible for said company to have my consent  
Express to send advertising on your part, at least to third parties.

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When requesting a contact email or a site where I can exercise my rights, I have been  
said that they are on the website of said company, without offering me clear information or the  
specific url or any other email or contact where to exercise said rights. To the  
Doing a search for that name on the net brings me to this page that matches  
in name and characteristics with the information that they have given me by telephone, but not  
there is no place where you can exercise your rights, not even legal notice, information  
of cookies or privacy policy. I have therefore found it impossible to exercise my  
rights while being completely defenseless in the face of this type of abuse.”

SECOND: In view of the facts denounced, on 12/10/2021 this Agency agreed to  
to the website [www.rombocomunicaciones.com/](http://www.rombocomunicaciones.com/), being verified that  
Through the contact form they collect personal data such as: name, email,  
phone and address. However, it does not have a privacy policy.

In accordance with article 65.4 of Organic Law 3/2018, of December 5, of  
Protection of Personal Data and guarantee of digital rights (hereinafter  
LOPDGDD), on 12/17/2021 said claim was transferred to the claimed party,

to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements established 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 Public (hereinafter, LPACAP), was collected on 12/28/2021 as stated in the acknowledgment of receipt in the file.

On 12/28/2021, this Agency received a written response stating, In short, that "in order to be able to analyze the claim and send this Agency the requested information, we must know the data of the person making the complaint.

THIRD: On 02/16/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FOURTH: On 03/08/2022 the General Sub-directorate of Data Inspection proceeded to the carrying out preliminary investigation actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in article 57.1 and of the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

A.A.A. filed a claim against ROMBOC COMUNICACIONES, with NIF B90488610 with address at C/ HORNACHOS 2 - 06220 VILLAFRANCA DE LOS BARROS (BADAJOZ), for receiving commercial calls from this entity in which Provides consumption data from the affected party's energy supply point. Add that do not have your consent to process your data and that, when requesting personal data contact to exercise your rights, you have been informed that they appear on the website of the

responsible. Once you access [www.romboccomunicaciones.com](http://www.romboccomunicaciones.com), check that

It lacks legal notice, cookie information and privacy policy.

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Made a request for information to the ROMBOC administrator, on date

03/16/2022 on the procedure to inform the complaining party according to the

article 13 GDPR and for the information cookies and privacy policy of your website in your

data collection form, it states that:

“1.- ROMBOC COMUNICACIONES, S.L., has a collaboration agreement with the

company CONCENTRA CENTRAL DE COMPRAS Y SERVICIOS, S.L., with CIF

B84537935 and address for notification purposes in Logroño (La Rioja), Avenida

General Vara del Rey, 69, Low. This Entity is the one that provides us with the bases of

data to be able to offer you energy services.

We are aware, although we cannot document it, that

Concentra acquires the bases of ATRATO MEDIA SL, and this in turn to ABSER

TECHNOLOGIES SL, BICLAMEDIA SLU AND BOX 24 2050 SL.

2.- Our website is for information purposes and we do not have any procedure to

Being able to call customers without them previously contacting us or by phone

or by mail.”

The following information is incorporated through three procedures:

- As of 03/08/2022, a screenshot of the Facebook account of ROMBOC COMU-

NICATIONS, since the web page search has not produced any results.

do on the date mentioned.

- As of 03/18/2022 accesses to the ROMBOC COMMUNICATIONS website:

home page, collaborators and job offers: administrative, commercial and

telemarketer included in the documents:

or web\_Romboc\_20220318

o Collaborate with us\_ROMBOC COMUNICACIONES Your Energy Advisory  
getica.

o Administrative\_a\_ROMBOC COMMUNICATIONS Your Energy Consulting.

o Commercial for PYMES\_ROMBOC COMUNICACIONES Your Energy Consulting  
getica.

o Teleoperador\_a\_ROMBOC COMUNICACIONES Your Energy Consulting.

- As of 07/18/2022 cookie information from the ROMBOC COMUNICA website-

TIONS <https://www.rombocomunicaciones.com/>.

FIFTH: On 01/10/2023 this Agency accessed the website again

[www.rombocomunicaciones.com/](https://www.rombocomunicaciones.com/), proving that a

Privacy Policy.

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FUNDAMENTALS OF LAW

Competition and applicable regulations

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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

breached obligation

The purpose of the GDPR is to guarantee the right to data protection of the Physical persons. Article 4.1 of the GDPR understands by "personal data": "all information about an identified or identifiable natural person ("the data subject"); HE An identifiable natural person shall be considered any person whose identity can be be determined, directly or indirectly, in particular by means of an identifier, such as for example a name, an identification number, location data, a online identifier or one or more elements of physical identity, physiological, genetic, psychological, economic, cultural or social of said person;".

Article 4.2 of the GDPR defines "processing" as "any operation or set of of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, comparison or interconnection, limitation, deletion or destruction;".

The principles that must govern the treatment are listed in the article

5 of the GDPR. In this sense, section 1 letter a), states that: "Personal data

will be:

a) Treated in a lawful, loyal and transparent manner in relation to the interested party

(lawfulness, loyalty and transparency);

(...)"

The principle of transparency is regulated, fundamentally, in articles 12 to 14 of the

GDPR. In this sense, article 12 of the GDPR establishes that "1. The person in charge of

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treatment will take the appropriate measures to provide the interested party with all information

indicated in articles 13 and 14" and contains various rules on the "form" in the

that must and can provide the information that is mandatory. The content of the

information related to the processing of the data that is obligatory to provide to the

interested party is regulated in the GDPR in articles 13 and 14 that distinguish two hypotheses:

that the data is collected from the interested party (article 13 GDPR) or obtained from another

source (article 14 GDPR).

Article 13 of the GDPR provides:

"1. When personal data relating to him or her is obtained from an interested party, the

responsible for the treatment, at the time they are obtained, will provide you with

all the information listed below:

a) The identity and contact details of the person in charge and, where appropriate, their

representative;

to)

b)

the contact details of the data protection officer, if applicable;

the purposes of the processing for which the personal data is used and the basis

legal treatment;

c) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

d)

recipients or categories of recipients of personal data, in

Their case;

e) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to the adequate or appropriate guarantees and to the means to obtain

a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will provide the interested party, at the time the data is obtained

personal data, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this term;

to)

the existence of the right to request the data controller access to

personal data relating to the interested party, and its rectification or deletion, or the

limitation of your treatment, or to oppose the treatment, as well as the right

to data portability;



b) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9(2)(a), the existence of the right to withdraw the

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consent at any time, without affecting the legality of the

treatment based on consent prior to its withdrawal;

c) the right to file a claim with a control authority;

d) if the communication of personal data is a legal or contractual requirement, or a

necessary requirement to sign a contract, and if the interested party is obliged to

provide personal data and is informed of the possible consequences

not to provide such data;

and)

the existence of automated decisions, including profiling, to

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

expected consequences of such processing for the data subject.

3. When the person responsible for the treatment plans the subsequent processing of data

personal information for a purpose other than that for which it was collected, will provide the

data subject, prior to said further processing, information about that other purpose

and any additional information relevant under section 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.”

In this sense, Recital 60 of the GDPR says that "The principles of treatment

fair and transparent demand that the interested party be informed of the existence of the treatment operation and its purposes. The data controller must provide the interested party, as much complementary information as is necessary to guarantee a fair and transparent treatment, taking into account the circumstances and context in which the personal data is processed. You must also inform the concerned of the existence of profiling and the consequences of said elaboration. If personal data is obtained from data subjects, it is also must inform them of whether they are obliged to provide them and of the consequences in case that they didn't."

Classification and classification of the offense

II

The facts revealed by the complaining party are specified in the receipt of commercial calls from the claimed entity, with data from consumption of its electrical line without the affected party having given their consent for the processing of your data. In addition, you have not been able to exercise your rights by not provide the claimed party with a contact or exist on its website

<https://www.romboccomunicaciones.com> legal notice, cookie information or policy

Of privacy.

In the screenshots made by this Agency on 10/12/2021, it is noted that in the website of the claimed entity, personal data is collected through a contact form (name, email, telephone and address), but lacks the proper

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Privacy Policy. As of 03/08/2022, the aforementioned website does not exist, but as of 07/18/2022

It is accessed again and it is observed that it has information about cookies, but it does not privacy policy when it is mandatory when collecting personal data to through a contact and work form.

On 01/10/2023, this Agency verifies that the claimed entity has incorporated into its website a privacy policy. However, in view of the documentation that is disposed of at this stage of the proceedings, it is considered that the respondent entity violated until the indicated date the obligation imposed by article 13 of the GDPR to inform the owner of the personal data being processed.

The infringement, attributable to the claimed entity, is typified in article 83.5.b) of the GDPR, precept that establishes:

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 total annual global business volume of the previous financial year, opting for the highest amount:

to)

(...)

a) The rights of the interested parties in accordance with articles 12 to 22;"

For the purposes of the statute of limitations for offences, article 72.1 h) of the LOPDGDD qualifies as very serious "The omission of the duty to inform the affected party about of the processing of your personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law". The limitation period of the very serious infringements provided for in Organic Law 3/2018 is three years.

IV.

Sanction proposal

The corrective powers available to the Spanish Agency for the Protection of data, as a control authority, are established in article 58.2 of the GDPR. Between them they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term -article 58. 2 d)-.

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, taking into account the facts exposed and without prejudice to what results from the instruction of the procedure, it is considered that the sanction that

It would be appropriate to impose an administrative fine. The fine imposed shall be, in each individual case, effective, proportionate and dissuasive, in accordance with the

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Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

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2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing.  
personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have included the commission  
of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the  
infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to  
alternative conflict resolution mechanisms, in those cases in which  
there are controversies between those and any interested party".

The balance of the circumstances contemplated makes it possible to establish as an initial assessment a  
a fine of €2,000.00 (two thousand euros) for the violation of article 13 of the GDPR.

V

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, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...". 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:

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INITIATE SANCTIONING PROCEDURE

FIRST:

RHOMBOC

COMMUNICATIONS, with NIF B90488610, for the alleged violation of article 13

of the GDPR, typified in article 83.5.b) of the GDPR.

SECOND: THAT for the purposes provided in article 64.2.b) of LPACAP, the sanction that could correspond would be an ADMINISTRATIVE FINE of 2,000.00 euros (two thousand euros), without prejudice to what results from the instruction.

Likewise, the imputed infringement, if confirmed, may lead to the imposition of measures in accordance with the provisions of article 58.2 d) of the GDPR.

THIRD: 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).

FOURTH: 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.

FIFTH: NOTIFY this agreement to ROMBOC COMMUNICATIONS, with NIF B90488610, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the 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).

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 1,600.00 euros, resolving the procedure with the imposition of this sanction and the corresponding measures.

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 1,600.00 euros and its payment will imply the termination of the procedure, with the imposition of the corresponding measures.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment

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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

In this case, if both reductions were to be applied, the amount of the penalty would remain established at 1,200.00 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 (1,600.00 euros or 1,200.00 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.

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 February 8, 2023, the claimed party has proceeded to pay of the sanction in the amount of 1200 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.

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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

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 EXP202105696, in accordance with the provisions of article 85 of the LPACAP.

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SECOND: NOTIFY this resolution to ROMBOC COMMUNICATIONS.

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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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