

□ Procedure No.: PS/00153/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: COMMUNITY OF OWNERS OF \*\*\*ADDRESS.1 (\*hereinafter, the  
claimant) dated October 3, 2019 filed a claim with the Agency  
Spanish Data Protection. The claim is directed against the entity  
SALBEGAP, S.L. (\*hereinafter, the claimed). The reasons on which the  
claim are succinctly the following:

“breach of agreements by one of the owners of different flats  
of the Community, in relation to the withdrawal of video-surveillance cameras installed  
in different community areas” (folio nº 1).

Along with the claim, provide documentary evidence (doc. No. 1) that proves the  
Installation of cameras in the entrance area to the property.

SECOND: On 11/04/19, the claim was TRANSFERRED to the entity  
denounced so that he could allege what he deemed appropriate in law.

THIRD: On 12/12/19 a letter of allegations is received from the entity  
ESSENCE HERITAGE, S.L. stating the following:

“It is specified that the company Essence Patrimonios S.L only has  
proof of the existence of a single camera on the farm owned by the company  
tenant of the main floor 1st.

Notwithstanding the foregoing, we would appreciate any request for  
formulate clarifications or provide any information, be notified directly to the  
tenant of the apartment in question (SalbeGap S.L), as Essence holds ownership of the

floor, but being completely unrelated to the activity carried out by the tenants

(SalbeGap S.L.)”.

FOURTH. On June 23, 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.

FIFTH. The database of this Agency consulted on 10/20/20 does not contain

any allegation in relation to the facts reported by this body.

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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 10/03/19 a claim is received at this Agency motivated by the following-

following:

“breach of agreements by one of the owners of different flats

of the Community, in relation to the withdrawal of video-surveillance cameras installed

in different community areas” (folio nº 1).

Along with the claim, provide documentary evidence (doc. No. 1) that proves the

Installation of cameras in the entrance area to the property.

Second. It is identified as the main responsible for the installation of the system

of video-surveillance cameras—SalbeGalp S.L--.

Third. There is no evidence that the reported entity has the authorization

of the Board of Owners for the installation of cameras in common areas.

Fourth. There is evidence of the existence of various video-surveillance cameras that process data of third parties, installed in common areas, devoid of informative signs  
tive about it.

Complainant Evidence Document (Annex I) the cameras are installed in  
the wall, controlling access to the property without just cause.

Fifth. The entity denounced has not made any allegation in this regard,  
the Start Agreement of PS/00153/2020 as notified in the database of this  
Agency.

Sixth. There is no accredited evidence that the mandatory information poster is available, indicating  
where appropriate, the data controller and other requirements required by the regulations.  
active in force.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-  
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-  
rector of the Spanish Agency for Data Protection is competent to initiate and  
to solve this procedure.

II

In the present case, the claim dated 10/03/19 is examined by me-  
of which the following facts are brought to the attention of this agency:

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“breach of agreements by one of the owners of different flats

of the Community, in relation to the withdrawal of video-surveillance cameras installed in different community areas” (folio nº 1).

The facts are specified in the installation of various video-surveillance cameras presence by the accused in common areas of the property, without the authentication of the Board of Owners, obtaining images of neighbors of the property.

After the allegations made by the denounced entity, indicated initially mind by the complainant, it is concluded that the person responsible for installing the system is the entity (lessee) of the property—SalbeGap S.L--.

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same must be oriented towards private space, since it is considered that this type of

devices can affect the privacy of third parties, who are intimidated by the herself in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

So that a community of owners can install surveillance cameras in their common areas, it is necessary that said installation be agreed by the Board of owners, taking into account, for this, what is established in article 17 of the Law of Horizontal property on the votes necessary for the approval of said agreement (favorable vote of three-fifths of the total owners who, in turn, re-present three-fifths of the participation quotas).

With this type of device it is possible to control the access of the property ble, controlling entrances/exits of neighbors, who are affected in their privacy

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personal / family to be subject to permanent control with them, aspects that may be subject to reproach in other branches of law for affecting the right to privacy (art. 18 EC).

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant (a) has a system of maras, installed without the authorization of the board of owners, obtaining images of common area without just cause.

The images provided allow verifying the presence of various cameras

video-surveillance systems installed in the common areas of the building, with the clear purpose of access control, affecting the data of third parties that are observed permanently for the same.

The known facts constitute an infraction, attributable to the claimant.

made, for violation of the content of article 5.1 c) RGPD.

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:

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

When motivating the sanction to be imposed, the following is taken into account:

a)  
a)  
the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages that they have suffered;  
the intentionality or negligence in the infringement; when affecting transit area of the group of neighbors of the community of owners without just cause each.

All this means imposing a sanction encrypted in the amount of €2,000 (Two Thousand Euros), sanction located on the lower scale for this type of offending behavior.

The denounced party must prove that they have the consent of the Board of

owners for the installation in a common area of this type of system, contribute in its case screen print of what is observed with the camera in question, as well as claim what it deems appropriate, proceeding to the immediate regularization of the following situation described.

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Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity SALBEGAP, S.L., for an infraction of article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine encrypted in the amount of €2,000 (Two Thousand Euros).

SECOND: TO REQUEST the reported entity SALBEGAP S.L to regularize the situation, granting for this purpose a period of ONE MONTH to be counted from the next day following the notification of this resolution.

THIRD: NOTIFY this resolution to the denounced entity SALBEGAP, SL and REPORT the result of the proceedings to the denouncing party

COMMUNITY OF OWNERS OF STREET \*\*\*ADDRESS.1.

FOURTH: 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 Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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 in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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 LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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