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## File identification

Archive resolution of the previous information no. IP 396/2020, referring to the Consorci Mar Parc de Salut de Barcelona

## Background

1. On 18/12/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Consorci Mar Parc de Salut de Barcelona (hereafter, the CMPSB), due to an alleged breach of the regulations on the protection of personal data.

The complainant stated that he is a patient of the Hospital del Mar and that he goes there regularly to collect the outpatient hospital medication he needs, but that during the period of home confinement decreed following the pandemic (COVID-19), there were a change in the medication dispensing system and he had to pick it up at his neighborhood pharmacy.

Having said that, he stated that on 07/24/2020 he received a call from a hidden phone number. He said the caller asked him to identify himself, which he refused to do. This person knew his name, ID, the doctor he was treating with and the hospital medication he was taking. I also wanted to ask him a series of questions about his satisfaction with the hospital. Since the call was made from an "anonymous" number, the reporting person asked the caller to identify himself, but the caller only told him that he was calling from Hospital del Mar.

The complainant also complained that the person who called him had information about: the specific illness he suffers from, the medication he takes and the doctor who treats him. He suspects that the Hospital would have communicated his data without his consent to external or subcontracted companies that could be marketing with his data. In this sense, he claims that during home confinement he had to pick up the medication at a pharmacy (instead of doing it at the Hospital as he always did), and that the pharmacist was aware of his diagnosis and the medication he was taking and considers that this fact could motivate him to reveal this information to the residents of the neighborhood.

After an exchange of emails with the citizen service ((... )@(... ).cat), felt that he did not receive a clear answer on this matter and suspected that his personal data was being processed unlawfully.

The reporting person provided the e-mails exchanged with the Hospital's citizen service regarding the events reported and the response from said service.

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2. The Authority opened a preliminary information phase (no. IP 396/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 02/23/2021 the reported entity was required to:

- Confirm whether said call was made to the reporting person and, if so, indicate the purpose of the treatment which, as indicated by the reporting person, would be related to a survey/satisfaction questionnaire to evaluate a new medication collection system outpatient hospital in pharmacies, implemented following the outbreak of the pandemic (COVID 19); indicate the specific data processed and the legal basis of the processing.
- Information on whether the treatment had been entrusted to an external company/entity.
- In the event that the treatment is carried out by internal staff of the center, indicate the professional profile and the functions entrusted to the people in charge of making the calls and the information to which they had access in relation to this specific treatment.
- Indicate whether the mandatory information of articles 13 and 14 of the RGPD was provided to the patients who were called and the way to provide this information.

4. On 08/03/2021, the Data Protection Officer of the reported entity responded to the aforementioned request through a letter in which:

First, it set out the reasons why the call was made to the complainant and other patients. This issue will be dealt with in section 2.1 of the Fundamentals of Law.

With respect to the answers to the questions formulated by the Data Protection Delegate Authority, the reported entity stated:

- That the call to the reporting person had indeed taken place on 07/24/2020.
- That the purpose of the treatment was *"the evaluation, control and improvement of the quality of health services, in order to guarantee adequate care for patients admitted to the exceptional system of collection of outpatient hospital medication in pharmacy offices, according to what was indicated in the Resolution by which, on the occasion of the health crisis situation caused by COVID-19, measures are established for the dispensing of hospital medication for ambulatory dispensing in the non-face-to-face mode of the Service Health Catalan. In order to achieve this purpose, the users of the medication dispensing system were asked about their level of satisfaction, problems they might have encountered in the pharmacy office (availability of the medication, resolution of doubts, etc.), and the patient's own perception to assess whether it was preferable, as a care decision, to return to the hospital dispensing system"*.

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- That the processed data corresponded to the patient's identification data, the contact telephone number contained in the clinical history, the fact of whether the patient was admitted to the exceptional outpatient hospital medication dispensing service through the offices of pharmacy and the prescribed medication.
- The legal basis that would legitimize this data processing was the public interest mission, in relation to articles 6.1. and 9.2.h of the General Data Protection Regulation. That this mission of public interest was established in Law 15/1990, of July 9, of Ordenació Sanitària de Catalunya, which in article 8.t includes the evaluation, control and improvement of the quality of health services. Access to medical records by medical staff is legitimized in article 16.5 of Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in matters of information and clinical documentation.
- That no person, physical or legal, external to the data controller intervened in this data processing. That the professionals in charge of making the calls were healthcare professionals from the areas of Infectious Diseases and Pharmacy. The calls were made under the instruction of the area managers, (...). And professionals are subject to the ethical obligation of professional secrecy in relation to their activity as doctors. Likewise, as professionals of the Mar de Barcelona Health Park Consortium, they subscribe to a commitment of professional secrecy and confidentiality, the model of which is attached as Annex I.
- That the outpatient hospital medication dispensing system in pharmacy offices was carried out following the instructions of the Resolution by which, due to the situation of the health crisis caused by COVID-19, measures are established to to the dispensing of hospital medication for ambulatory dispensing in the non-face-to-face mode of the Catalan Health Service.
- That from the Consorci Parc de Salut Mar de Barcelona, a document of good practices in telematic care through video consultation was drawn up in anticipation of the use that could be made of these tools in the context of the COVID pandemic -19. Despite the fact that this document was not approved, the recommendations introduced in section 4.2 Identification of interlocutors were applied in order to guarantee the confidentiality of the information provided by telephone. In this sense, the patient was asked for his first and last name and an additional piece of data (in this case, the identity of the doctor in charge of his care) in order to verify the identity of the receiver and avoid providing this data to third parties alien to the healthcare relationship.
- That at the time the call was made, no information was provided to the patient, as this had already been provided previously, at the time of the start of the healthcare relationship between the patient and the person responsible for the treatment. In this sense, in the different spaces of the person in charge of the treatment, there are informative posters indicating the information relating to the treatment of the data in relation to the provision of healthcare services, as well as sheets are also made available to the patients where provides this information. Also, on the website of the person in charge of the treatment, through the (URL) you can access the information related to the treatment of this data.

The reported entity attached various documentation to the letter.

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## Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1. On the communication of data to pharmacies and the possibility of disclosure of the data.

First of all, the person making the complaint explained that during the period corresponding to home confinement, following the pandemic caused by Covid-19, he was dispensed medication at the pharmacy in his neighborhood. And he considered that this fact could contravene the data protection regulations, given that his data relating to the disease and the medication he takes were communicated to the pharmacist and he, in turn, could reveal this data to the residents of the neighborhood.

In advance, it is necessary to frame the reporting facts in the pandemic situation caused by Covid-19 and in the response to the health crisis that the Public Administrations implemented in relation to the dispensing of hospital medication. In this regard, the Catalan Health Service issued the *"Resolution by which, due to the health crisis situation caused by COVID-19, measures are established for the dispensing of hospital medication for outpatient dispensing in the non-face-to-face mode"*, which entered into force on 06/22/2020. Said Resolution was approved within the framework of what is established in the sixth additional provision of Royal Decree-Law 21/2020, of June 9, on urgent prevention, containment and coordination measures to deal with the health crisis caused by the COVID- 19 that established exceptional management measures for pharmaceutical provision. In accordance with this, the Catalan Health Service dictated specific organizational measures for the dispensing of hospital medication for ambulatory dispensing in the non-face-to-face mode.

In relation to this, the CPSMB in its letter dated 08/03/2021 states that it proceeded to enable the extraordinary circuit included in the resolution of the Catalan Health Service. Specifically, it enabled the dispensing of outpatient hospital medication in the pharmacies of choice for patients who, according to medical criteria, required it for reasons of risk, dependency or vulnerability and patients whose address was at a certain distance from the hospital center .

This decision responded to the need to take appropriate preventive measures to avoid

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that vulnerable people frequent spaces considered risky, such as hospitals.

Decree 118/2014, of August 5, on the contracting and provision of health services in charge of the Catalan Health Service, which regulates the procedure and systems for contracting health service providers through in which the services included in the portfolio of services provided by the Catalan Health Service, which include hospital medication for ambulatory dispensing, become effective, in article 11 it states that health service providers must comply the instructions that the Catalan Health Service dictates within the framework of its competences. In this sense the CPSMB

states that it established the dispensation mechanisms to comply with said Resolution. For this reason, it states that on 2/04/2020 a first call was made to the complainant from the Hospital's pharmacy service indicating that his medication would be supplied from a pharmacy office. According to the CPSMB, the reporting person gave his consent to this route of supply of the medication and indicated where he wanted to receive it. Subsequently, on 05/19/2020 the complainant contacted the Hospital and indicated that he would return to pick up the medication in person at the hospital's pharmacy service, and this did not object.

In relation to this, it is necessary to take into account Legal Basis 2 of the aforementioned Resolution that enables the hospital pharmacy service to use telematic means and the extra-hospital delivery of medication in pharmacies: *"Dispensing in non-face-to-face mode is the decision and responsibility of the hospital pharmacy service, which must use telematic means, and can be supplemented with extra-hospital delivery of medication, either in health centers authorized to dispense medication, in community pharmacies close to the patient's home or, only exceptionally, at the patient's home, if his clinical condition justifies it"*. And the 5th Legal Foundation which provides that *"the hospital pharmacy service must establish the criteria for the selection of patients and, together with those responsible for transport and delivery, a protocol that specifies the procedures and conditions in which the activity must be carried out, which describes: the unequivocal identification system of the medication, while guaranteeing the necessary protection of the confidentiality of the data; the transport and reception of the medication from the hospital pharmacy services to the authorized centers for the delivery of the medication to the patients; conservation in these centers, and the procedure for delivery to the patient"*.

In accordance with the regulations set out, the communication of data from patients who receive medication in the hospital's pharmacy service to pharmacies through the authorization of the extraordinary circuit included in the resolution of the Catalan Health Service, would be framed in the compliance with the Resolution of the Catalan Health Service, in accordance with Legal Basis 2 and 5 of said resolution.

On the other hand, it is necessary to cite Law 44/2003 of November 21 on the regulation of the health professions in article 2, it structures the health professions into groups which include the

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profession of pharmacist: *"the professions for whose exercise enable the titles of Licenciado en Medicina, en Farmacia, (...)"*. And article 4.5 of the same law establishes that: *"Professionals will guide their actions in the service to society, the interest and health of the citizen to whom the service is provided, the rigorous fulfillment of obligations deontological, determined by the respective professions in accordance with current legislation, and the criteria of norm-practice or, as the case may be, the general uses of their profession"*. In addition, article 6.2 b) of the same law establishes: *"The activities directed to the production, conservation and dispensing of medicines, as well as the collaboration in the analytical, pharmacotherapeutic and surveillance processes of public health"*.

Consequently, in this case there is no violation of data protection regulations. Because the communication of data to pharmacies is covered by the Resolution of the Catalan Health Service that was approved in the framework of what is established in the sixth additional provision of Royal Decree-Law 21/2020, of June 9, on measures urgent measures of prevention, containment and coordination to deal with the health crisis caused by the COVID-19 which established exceptional management measures for pharmaceutical provision and, therefore, it would be a lawful communication.

2.2. On the data processing consisting of the evaluation and control of the new hospital medication dispensing service in which the telephone call is framed.

In relation to this, the reporting person states that on 07/24/2020 he received a call from a hidden number. According to reports, the caller asked him to identify himself, which the reporting person did not want to do. He claims that the caller knew his name, ID, the doctor he is being treated with and the hospital medication he is taking. And he adds that he wanted to ask him a series of questions about his satisfaction in relation to the hospital. Since the call was made from an "anonymous" number, the reporting person asked the person to identify himself, but he only told him that he was calling from Hospital del Mar. He considers that the Hospital would have communicated his data without his consent to external or subcontracted companies that could be marketing with his data.

According to the information provided by the complainant, after the sending of several emails between the complainant and the hospital's citizen service, on 12/18/2020, from the same care service it is recorded that a letter was sent to the complainant in which, among other information, the following clarification was made: *"From the Infectious Diseases Service and the Pharmacy Service of the hospital regret your impressions and, in this sense, they clarify that due to the urgency in the implementation of the referral of the dispensing of outpatient medication in pharmacy offices and the innovative nature of this measure they considered it appropriate how the system was working through the your comments, suggestions to study improvement actions. The interviews are carried out by authorized personnel from both the infectious diseases service and the pharmacy with the sole aim of improving the quality of care and assessing the degree of patient satisfaction. Patient information is confidential and*



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*internal of the respective services and in the same way that he was called to offer the medication collection service in the community pharmacy, an attempt has been made to evaluate the quality of this service".*

According to the CPSMB, on 2/04/2020, the hospital's pharmacy service made a first call to the complainant indicating that his medication would be supplied from a pharmacy office, in relation to the said resolution of the Catalan Health Service. The complainant gave his consent to this method of dispensing, indicating where he wanted to collect his medication. In accordance with the CPSMB, on 05/19/2020, the claimant contacted the hospital's pharmacy service indicating that he would collect his medication in person, a fact in front of which the pharmacy service of the hospital did not put any impediment. And on 07/24/2020 the CPSMB refers that it received a complaint from the complainant indicating that he had received a call in relation to a survey referring to the collection of medication at pharmacy offices and that, by not identifying himself the caller hung up the phone.

According to the CPSMB, these calls were in response to the decision of the hospital's pharmacy and infectious disease services to assess whether there had been a problem with patients receiving medication under the new collection system in offices of pharmacy. He adds that since the system was adopted urgently due to the situation of the pandemic of COVID-19, the medical managements considered it necessary to establish contact with the patients to assess whether the system was effective while the patients did not have problems collecting this medication. The CPSMB considers that this decision was motivated by the fact that the situations of the patients who need this dispensing of medicines can mean that errors or delays in the supply and taking of the medicine and this can lead to a worsening or aggravation of the state of health of these patients. Likewise, he added that in relation to telematic services, including the telephone, which were necessary for the correct care during a pandemic, a remote care protocol was drawn up which, despite not being formally approved by the 'entity due to the urgency of its adoption, served as a guide for professionals to safely contact patients, especially to protect their privacy and intimacy. In this sense, the protocol asked the professionals to make sure of the identity of the person who hung up the phone.

Specifically, this person was asked to provide their first and last name, as well as additional information that, presumably, only the patient knew, such as the name of the doctor in charge of their care. On the other hand, the calls were made by medical staff from the areas of pharmacy and infectious diseases. These calls were made by these professionals voluntarily, dedicating time to this task as a result of the commitment and dedication of the medical staff in the face of the threat caused by COVID-19. In this sense, the contacts with the patients were limited to consulting the suitability of the collection system for outpatient hospital medication in the pharmacy offices and the comments or suggestions that the patients could make, to assess that they received the medication and, in case that it would be advisable to return to the hospital collection system if problems are detected in specific cases with this system.

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The CPSMB also stated that a consultation was raised with the entity's Data Protection Delegate, who on 07/28/2020 issued a response indicating that the processing of the data was appropriate to the regulations, whenever the processing was linked to the exceptional circumstances of the healthcare activity, as well as due to the fact that it is carried out by healthcare professionals with functions to assess the quality of healthcare services. In this sense, access to the clinical history was considered adequate in accordance with the provisions of article 8.1 of Law 15/1990, of July 9, on the health system of Catalonia, with regard to the activities of evaluation, control and improvement of the quality of health services, and article 16.5 of Law 41/2002, of November 14, basic regulatory framework for patient autonomy and rights and obligations in matters of information and clinical documentation, regarding access to the clinical history by professionals in the areas of pharmacy and infectious diseases.

The first question to be analyzed is whether the data processing consists of the control/evaluation of the dispensing of medications through the new hospital medication dispensing service in which the telephone call is framed, finds justification in one of the legal bases that legitimize the processing of personal data.

According to the information provided by the CPSMB, the information provided to the users of the health services (patients), in relation to the purposes of the treatment, is as follows: *"Performance of medical diagnosis, provision of health care and the management of health care systems and services, as well as the legitimate interests of the data controller or third parties, where applicable."*

In this particular case, it should be remembered that a new drug dispensing system was implemented. That, until then, medicines were dispensed at the hospital's pharmacy service and that, following the pandemic situation, to avoid risks to vulnerable people, a collection system was implemented in pharmacies. Obviously, with the new non-face-to-face dispensing system, control was lost over incidents that could arise in relation to the supply and taking of medication by patients. According to the CPSMB, errors or delays in the supply and taking of medication could lead to a worsening or aggravation of the health status of these patients. In this sense, it seems justified to implement a system evaluation and control mechanism aimed at detecting possible problems.

In relation to the legal basis that would justify this data processing, you must go to the article 6.1 f) of the RGPD according to which the treatment will be lawful when: *"e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment"*; and in article 9 h), of the same legal text that allows the processing of health data when: *"it is necessary for the (...) provision of health or social assistance or treatment, or management of assistance systems and services health and social, on the basis of the Law of the Union or Member States or by virtue of a contract with a health professional."*



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In short, the control of the medication that is provided to patients and the evaluation of the system implemented for its dispensing is part of the care provision, as it aims to evaluate the suitability of the new dispensing system in relation to each patient in particular to determine if it is suitable or if there is a problem with the supply and to check that the person interviewed is indeed taking the medication correctly.

The second issue to be clarified is whether access to the medical history in this particular case has been made by an authorized person.

As reported by the CPSMB, the new hospital medication dispensing system was urgently adopted due to the COVID-19 pandemic situation and therefore it was considered appropriate by the medical directorates to establish a contact with patients to assess whether the system was effective and patients had no problems collecting this medication. The reported entity indicates that the professionals in charge of making the calls were healthcare professionals from the areas of Infectious Diseases and Pharmacy, specifically doctors. That the calls were made under the instruction of the area managers, (...). And that these professionals are subject to the ethical obligation of professional secrecy in relation to their activity as doctors. In addition, as professionals of the Parc de Salut Mar de Barcelona Consortium, they have signed a commitment of professional secrecy and confidentiality (the model was attached). In this regard, the reporting person has not provided any evidence that distorts the statement of the reported entity, in the sense of showing that the person who made the call was a person not authorized to process their personal data, or , who had been responsible for making the calls to an outsourced company, since their claims are based on mere guesswork based on the

the fact that the call was made from a hidden number and that the person did not identify himself with a name and surname, but only said that he was calling from Hospital de Mar.

Article 11 of Law 21/2000 of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation provides the following: *"1. The clinical history is an instrument primarily intended to help guarantee adequate assistance to the patient. For this purpose, the care professionals of the center who are involved in the diagnosis or treatment of the patient must have access to the clinical history. 2. Each center must establish the mechanism that makes it possible that, while assistance is provided to a specific patient, the professionals attending to him can, at all times, have access to the corresponding clinical history. 6. All personnel who use their powers to access any type of data in the clinical history remain subject to the duty of confidentiality"*. Likewise, article 16 of Law 41/2002 of 14 November, basic regulatory framework for patient autonomy and rights and obligations in the field of clinical information and documentation

provides: *"5. The duly accredited health personnel who exercise functions of inspection, evaluation, accreditation and planning, have access to the clinical histories in the fulfillment of their functions of verification of the quality of the assistance, the respect of the rights of the*

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*patient or any other obligation of the center in relation to patients and users or the Health Administration itself".*

In the case under analysis, the reported entity indicates that the professionals in charge of making the calls were healthcare professionals from the areas of Infectious Diseases and Pharmacy, specifically doctors. That the calls were made under the instruction of the directions of the mentioned areas. And that these professionals are subject to the ethical obligation of professional secrecy in relation to their activity as doctors. In addition, as professionals of the Parc de Salut Mar de Barcelona Consortium, they have signed a commitment of professional secrecy and confidentiality (the model was attached). In accordance with the task assigned to these health professionals by the direction of the respective areas, these professionals would be accredited to access the patient's data, as long as the access was necessary to control the medication and to check the quality of the assistance referred to the new medication dispensing system in pharmacies. In relation to this, the reporting person believes that the person who called him could be a stranger to the hospital staff, however, he has not provided any evidence that distorts the statement of the reported entity.

Finally, it is necessary to determine whether the processed data were adequate, relevant and limited in relation to the purposes of the treatment. In other words, if the data processing consists of the control/evaluation of the dispensing of medicines through the new hospital medication dispensing service in which the telephone call is framed, it respected the principle of minimization collected in article 5.1.c) of the RGPD. It is not a disputed fact that the following personal data of the reporting person were processed: first and last name, name of the doctor with whom he is being treated, the medication prescribed, the contact telephone number, and whether he was admitted to the exceptional dispensing service of outpatient hospital medication in pharmacy offices.

The CPSMB states that the professionals who made the calls followed the "Good practices in telematic care through video consultation" document, a document drawn up in anticipation of the use that could be made of these tools in the framework of the COVID-19 pandemic (said document is attached). Although they assure that the document was not approved, the professionals in charge of making the calls used it as a guide and applied the recommendations introduced in section 4.2 referring to the identification of interlocutors. As he explains, in application of the aforementioned recommendations, the patient was asked for his first and last name and an additional piece of data (in this case, the identity of the doctor in charge of his care) in order to verify the identity of the recipient and avoid facilitating this data to third parties outside the healthcare relationship.

The CPSMB states that the contacts with patients were limited to consulting the suitability of the collection system for outpatient hospital medication in the pharmacy offices and collected the comments or suggestions that the patients could make, to assess that they received the medication and, in if it is advisable, return to the hospital collection system in the event that problems are detected in specific cases with this system.

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With regard to the identification and contact details of the complainant, they are obviously necessary to prove the identity of the interlocutor. As for the name of the doctor with whom the visit is made, it would correspond to a control question, since only the patient would have this data, thus avoiding the disclosure of data to a person other than the patient. With respect to the complainant's telephone number, this is necessary information in order to establish contact with the patient. Finally, with respect to the medication taken by the patient, the treatment of this data would also be justified in this case, given that the evaluation/control of the dispensing of the medication requires it. Accordingly, there is no indication that the minimization principle has been breached.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, the commission of any of the infractions provided for in the legislation on data protection, its archive should be agreed.

Therefore, I resolve:

1. File the actions of prior information number IP 396/2020, relating to the Consorci Mar Parc de Salut de Barcelona.
2. Notify this resolution to the Consorci Mar Parc de Salut de Barcelona and to the reporting person.
3. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://apdcat.gencat.cat)), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,