

□ File No.: EXP202102451

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party), on September 9,  
2021, filed a claim with the Spanish Data Protection Agency. The  
claim is directed against the CLUB NAUTICO EL ESTACIO, with NIF G73044893  
(hereinafter, the claimed party). The grounds on which the claim is based are  
following:

The complainant represents that the complained party has republished on his page  
web, open to any user and without access restrictions, the Minutes of the General Meeting  
Directive held on May 26, 2021, of the Club Náutico el Estacio, in which  
expose your personal data, such as your name, surnames and the circumstance of  
that "(...)," which is a recurrence, since the aforementioned Club was reported before  
the Agency for the same facts, on that occasion for the publication of an Act of  
date August 22, 2020.

Together with the notification, it provides the Minutes of the Board of Directors held on May 26,  
2021, of the Nautical Club "El Estacio".

It has been verified that the document is accessible on the website of the  
claimed entity.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, Protection of Personal Data and Guarantee of Digital Rights  
(hereinafter LOPDGDD), 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 set forth 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 (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of making available, understanding rejected in accordance with the provisions of art. 43.2 of the LPACAP, dated October 16, 2021, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of informative, a copy was sent by mail that was reliably notified in dated October 29, 2021. In said notification, he was reminded of his obligation to [www.aepd.es](http://www.aepd.es)

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communicate electronically with the Administration, and was informed of the means of access to said notifications, reiterating that, in the future, you would be notified exclusively by electronic means.

No response has been received to this transfer letter.

THIRD: On December 9, 2021, in accordance with article 65 of the LOPDGDD, it is communicated that the claim presented by the claiming party.

FOURTH: On June 13, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of articles 5.1.f) and 32 of the RGD, typified in the articles 83.5 and 83.4 of the RGD, respectively.

The initiation agreement was sent, in accordance with the regulations established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), by electronic notification, not being collected by the person in charge, within the period of availability, understood to be rejected in accordance with the provisions of art. 43.2 of the LPACAP, in dated June 25, 2022, as stated in the certificate in the file.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

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

In this proceeding, the following are considered proven facts:

## PROVEN FACTS

FIRST: It is stated that on September 9, 2021, the complaining party filed a claim with the Spanish Agency for Data Protection, against the CLUB NÁUTICO EL ESTACIO, having published on its website, open to any user and without access restrictions, the Minutes of the Board of Directors held on May 26, 2021, of the Club Náutico el Estacio, in which your data is exposed

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personal, in addition to the circumstance of having been involved in a file informative, and in its disciplinary case.

SECOND: It has been verified that the document is accessible on the web Of the entity.

## FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

## II

### Previous issues

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists the processing of personal data, since the CLUB NAUTICO

EL ESTACIO, for the development of its social activities, performs treatment of personal data of its partners.

It carries out this activity in its capacity as data controller, since it is

who determines the purposes and means of such activity, by virtue of article 4.7 of the RGPD:

“responsible for the treatment” or “responsible”: the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the purposes and

means of treatment; if the law of the Union or of the Member States determines

determines the purposes and means of the treatment, the person responsible for the treatment or the criteria specific for their appointment may be established by the Law of the Union or of the

Member states.

Article 4 section 12 of the RGPD defines, in a broad way, the "violations of se-

curity of personal data” (hereinafter security breach) as “all

those violations of security that cause the destruction, loss or alteration

accidental or unlawful transfer of personal data transmitted, stored or processed in

otherwise, or unauthorized communication or access to such data.”

In the present case, there is a security breach of personal data in the

circumstances indicated above, categorized as a breach of confidentiality,

since, when publishing the minutes of the Club's Board of Directors on the website, it has been

disclosed information and personal data to third parties, such as your name

surnames and the circumstance that "(...)".

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According to GT29, a "Breach of confidentiality" occurs when there is unauthorized or accidental disclosure of personal data, or access to themselves.

It should be noted that the identification of a security breach does not imply the imposition sanction directly by this Agency, since it is necessary to analyze the diligence of those responsible and in charge and the security measures applied.

Within the principles of treatment provided for in article 5 of the RGD, the integrity and confidentiality of personal data is guaranteed in section 1.f) of article 5 of the RGD. For its part, the security of personal data comes regulated in articles 32, 33 and 34 of the RGD, which regulate the security of the treatment, notification of a violation of the security of personal data to the control authority, as well as the communication to the interested party, respectively.

III

Article 5.1.f) of the RGD

Article 5.1.f) of the RGD establishes the following:

“Article 5 Principles relating to processing:

1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational structures (“integrity and confidentiality”).”

In relation to this principle, Recital 39 of the aforementioned GDPR states that:

“[...]Personal data must be processed in a way that guarantees security and appropriate confidentiality of personal data, including to prevent access or unauthorized use of said data and of the equipment used in the treatment”.

The documentation in the file offers clear indications that the claimed violated article 5.1 f) of the RGPD, principles related to treatment.

The AEPD verifies that, at least up to the present date, it is possible to access the content of the Minutes by typing the Club's email address in the browser, so that the publication on the web page of the personal data of the claimant, such as his name, surnames and the circumstance that "(...)," allowing unauthorized access to said data by third parties.

Consequently, it is considered that the proven facts are constitutive of infringement, attributable to the claimed party, for violation of article 5.1.f) of the GDPR.

Classification of the infringement of article 5.1.f) of the RGPD

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The aforementioned infringement of article 5.1.f) of the RGPD supposes the commission of the infringements typified in article 83.5 of the RGPD that under the heading “General conditions for the imposition of administrative fines” provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

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:

the basic principles for the treatment, including the conditions for the

a)

consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 72 "Infringements considered very serious" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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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Article 32 of the GDPR

Article 32 of the RGPD, security of treatment, establishes the following:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and



appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

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2. When evaluating the adequacy of the security level, particular account shall be taken of

takes into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a

certification mechanism approved under article 42 may serve as an element

to demonstrate compliance with the requirements established in section 1 of the

present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

any person acting under the authority of the person in charge or the person in charge and

has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States.

The facts revealed imply the lack of technical measures and organizational by enabling the display of personal data of the claimant with the consequent lack of diligence by the person in charge, allowing access not authorized by third parties.

It should be noted that the RGPD in the aforementioned precept does not establish a list of the security measures that are applicable according to the data that are subject of treatment, but establishes that the person in charge and the person in charge of the treatment apply technical and organizational measures that are appropriate to the risk involved the treatment, taking into account the state of the art, the application costs, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and proportionate to the detected risk, pointing out that the determination of technical measures and organizational must be carried out taking into account: pseudonymization and encryption, capacity to guarantee confidentiality, integrity, availability and resilience, the ability to restore availability and access to data after an incident, process verification (not audit), evaluation and assessment of the effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security, particularly taking into account the risks presented by the processing of data, such as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data and that could cause damages

physical, material or immaterial.

In this same sense, recital 83 of the RGD states that:

“(83) In order to maintain security and prevent the treatment from violating the provided in this Regulation, the person in charge or the person in charge must evaluate the risks inherent to the treatment and apply measures to mitigate them, such as

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encryption. These measures must guarantee an adequate level of security, including confidentiality, taking into account the state of the art and the cost of its application regarding the risks and the nature of the personal data that must be protect yourself. When assessing the risk in relation to data security, take into account the risks arising from the processing of personal data, such as the accidental or unlawful destruction, loss or alteration of personal data transmitted, stored or otherwise processed, or the communication or access is not authorized to said data, susceptible in particular to cause damages physical, material or immaterial.

The responsibility of the claimed party is determined by the lack of preventive measures. security, since it is responsible for making decisions aimed at implementing effectively the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk to ensure the confidentiality of the data, restoring their availability and preventing access to them in the event of an incident physical or technical.

Therefore, the proven facts constitute an infraction, attributable to the

claimed party, for violation of article 32 RGPD.

In addition, this AEPD contains the similar reference precedent Procedure No.:

PS/00044/2021, resolved by the director of the AEPD, on July 15, 2021, in

the following terms:

“IMPOSE CLUB NAUTICO EL ESTACIO, with NIF G73044893, for an infraction

of article 32 of the RGPD, and article 5.1.f) of the RGPD, typified in article 83.5 of the

GDPR, a fine of €3,000 (three thousand euros).”

However, the security breach has been repeated for similar reasons.

Classification of the infringement of article 32 of the RGPD

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The aforementioned infringement of article 32 of the RGPD supposes the commission of the infringements

typified in article 83.4 of the RGPD that under the heading "General conditions

for the imposition of administrative fines” provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a)

the obligations of the person in charge and the person in charge in accordance with articles 8,

11, 25 to 39, 42 and 43; (...)”

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

“The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

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For the purposes of the limitation period, article 73 “Infringements considered serious” of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

f) The lack of adoption of those technical and organizational measures that are appropriate to guarantee an adequate level of security when risk of treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679.”

7th

Sanction

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the processing operation in question, as well as the number number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to pa-allocate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- 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, to what extent. gives; i) when the measures indicated in article 58, section 2, have been ordered given previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under Article 40 or to certification mechanisms approvals 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.

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mind, through infraction.”

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD

has:

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

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 treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after 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 delegate for the protection of
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

data.

Penalty for violations of articles 5.1.f) and 32 of the RGPD.

In accordance with the precepts transcribed, in order to set the amount of the penalty for

infringement of article 5.1 f) and 32 of the RGD, it is appropriate to graduate the fine taking into account

bill:

As an aggravating circumstance:

Article 83.2.e) RGD: any previous infraction committed by the person in charge or the in charge of the treatment: when the events occurred in which the current infringement of article 5.1 f) of the RGD, the claimed party knew perfectly the unlawfulness of their conduct when publishing on their website, data of a character without the consent of the holders of these. On the other hand, it also confirms that, despite being aware of this point and, in some cases, despite the time elapsed, has not adopted the necessary measures to be able to comply with GDPR. Reason why the history of infractions of the claimed party affects in the culpability and unlawfulness of their conduct.

Article 76.2 b) LOPDGDD: "The link between the activity of the offender and the tion of personal data processing". The activity of the claimed entity requires continuous processing of personal data. Likewise, the entity claims da carries out for the development of its activity, a high volume of damage treatment personal cough.

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Considering the exposed factors, the valuation that reaches the amount of the fine is €4,000 for violation of article 5.1 f) of the RGD, regarding the violation of the principle of confidentiality and €2,000 for infraction of article 32 of the aforementioned RGD, regarding the security of the processing of personal data.



## Responsibility

Establishes Law 40/2015, of October 1, on the Legal Regime of the Public Sector, in

Chapter III on the "Principles of the power to impose penalties", in article 28

under the heading "Responsibility", the following:

"1. They may only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes their capacity to

to act, the affected groups, the unions and entities without legal personality and the

independent or autonomous estates, which are responsible for them

title of fraud or guilt."

Lack of diligence in implementing appropriate security measures

with the consequence of breaching the principle of confidentiality constitutes the

element of guilt.

## IX

### Measures

Likewise, it is appropriate to impose the corrective measure described in article 58.2.d) of the

RGPD and order the claimed party to, within a month, establish the measures

adequate security measures so that the treatments are adapted to the demands

contemplated in articles 5.1 f) and 32 of the RGPD, preventing the occurrence of si-

similar situations in the future.

The text of the resolution establishes the infractions committed and

the facts that have given rise to the violation of the regulations for the protection of

data, from which it is clearly inferred what measures to adopt, without prejudice

that the type of specific procedures, mechanisms or instruments for

implement them corresponds to the sanctioned party, since it is responsible for the

treatment who fully knows your organization and has to decide, based on the

proactive responsibility and risk approach, how to comply with the RGPD and the LOPDGDD.

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

FIRST: IMPOSE CLUB NAUTICO EL ESTACIO, with NIF G73044893, for a infringement of article 5.1.f) of the RGPD, typified in accordance with the provisions of article 83.5 of the RGPD, qualified as very serious for prescription purposes in the article 72.1 a) of the LOPDGDD, a fine of €4,000.

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SECOND: IMPOSE CLUB NAUTICO EL ESTACIO, with NIF G73044893, for an infringement of article 32 of the RGPD, typified in accordance with the provisions of the article 83.4 of the RGPD, qualified as serious for the purposes of prescription in article 73 f) of the LOPDGDD, a fine of €2,000.

THIRD: TO REQUEST the CLUB NAUTICO EL ESTACIO to implement, within a period of one month, the necessary corrective measures to adapt their actions to the regulations of protection of personal data, which prevent the repetition of events in the future similar, as well as to inform this Agency within the same period about the measures adopted.

FOURTH: NOTIFY this resolution to CLUB NAUTICO EL ESTACIO.

FIFTH: 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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

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 on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in 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

voluntary 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

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

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

contentious-administrative appeal 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.

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

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

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through [www.aepd.es](http://www.aepd.es)

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Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of 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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