 File No.: EXP202104456

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 August 11, 2022, the Director of the Spanish Agency for

Data Protection agreed to start a sanctioning procedure against FECAM-(FED. DEP.

FOR PEOPLE WITH INTELLECTUAL DISABILITIES OF CASTILLA LA

MANCHA) (hereinafter, the claimed party), through the transcribed Agreement:

<<

File No.: EXP202104456

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and based on

to the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) on 10/24/2021 filed

claim before the Spanish Data Protection Agency. The claim is directed

against SPORTS FEDERATION FOR PEOPLE WITH DISABILITIES

INTELLECTUAL OF CASTILLA LA MANCHA-FECAM with NIF G45351236 (hereinafter, the

claimed party). The reasons on which the claim is based are the following:

The claimant states that the claimed entity requests medical data from participants

in their competitions, linked to carrying out antigen tests to detect

Covid-19 situations, without prior consent, without informing about the deadline

of data conservation and without designating a Data Protection Delegate.

It provides a screen print of said Federation, "prevention measures in the competition" in which it is indicated that "it will be mandatory" to carry out a test of antigens prior to the participation of all those registered in any championship to perform in the 48 hours prior to the celebration. This test will be carried out in the town of origin and will be provided by FECAM. The Club will have to take care that a doctor or registered nurse carry out the test on all those enrolled and certify the result in writing, that will have to be sent to FECAM by email in a specific model. If any registered test positive in the antigen test prior to the championship, from FECAM will return the amount corresponding to your registration so that this situation does not entail no cost to him."



SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5/12, of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), said claim was transferred to the claimed party, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations for the protection of data.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP) by means of electronic notification, it was not collected by the person in charge, within the period of availability, understood as rejected as provided in the art. 43.2 of the LPACAP dated 11/28/2021 as stated in the certificate that works

on the record.

Although the notification was validly made by electronic means, assuming that

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under

informative a copy was sent by postal mail on 12/13/2021 that was returned by

absent in distribution, reiterating and being delivered on 01/12/2022.

THIRD: On 01/24/2022, in accordance with article 65 of the LOPDGDD, the

admitted for processing the claim presented by the claimant.

FOURTH: On 03/16/2022, the defendant stated:

-The claimant at all times informs and obtains the consent for the treatment of

the personal data of the athletes attached to the FECAM. This information from

file

processing of your personal data is carried out through

, which is completed and

signed by the athletes, and sent to FECAM. Provide a copy of the letter

completed when applying for registration in the Federation to be the holder of the license of the

Federation, in this case a federated from 02/12/2021, with the name of Club Deportivo.

It does not contain any extreme on the specific treatment of health data, evidence

COVID for competitions. If it contains a section that indicates:

"I authorize as the holder of the license that the Sports Federation for people with

intellectual disability of Castilla la Mancha treat my health data with the purpose of

Manage medical and psychological control to help the gymnast. The data will be understood

that will be used when the federate enters a level of tests, access and

incorporation into high competition." If so, check the box".

-Attached as document number 3, screenshots of its web page in which it is

locates a specific section related to COVID-19 on the top button of the website

19 and screenshot of said subpage, where it is accessible for viewing.

download file in PDF format of the "PROTOCOL ADOPTED AGAINST COVID-19"

by FECAM and "certificate model for competitions" that must be completed by

each Club participating in the sports competitions organized by FECAM.” In it

Protocol figure: “8. Roles and responsibilities Given the evolution of the pandemic of



Covid-19, it is recommended to carry out (48 hours before the start of the competition) a

specific Covid-19 test, whose purpose will be to know the situation of athletes and

members of the registered technical teams, and the eventual early detection of possible

positives or outbreaks. Aspects such as the type of test to be carried out, its financing, the

evaluation of its usefulness and if it should be carried out more times later, they will be

determined with sanitary criteria, within the framework of the existing mechanisms of

Coordination with the CCAAs. These will analyze the evolution of infections.

- Due to the pandemic situation caused by COVID 19, FECAM, following the guidelines

established by the "PROTOCOL OF ACTION FOR THE RETURN OF COMPETITIONS

NATIONAL AND NON-PROFESSIONAL OFFICIALS (SEASON

2020-2021)" dictated and published by the SUPERIOR SPORTS COUNCIL (CSD)

(copy in document 4) and signed according to the cover, by: "all the Communities

Autonomous, Spanish Federation of Municipalities and Provinces, Sports Federations

Spanish, Spanish Sports Association, Spanish Paralympic Committee, Committee

Olímpico Español and other interlocutors of the sport and organizers of competitions

integrated into the Task Force for the Promotion of Sport of the CSD”, is justified

the request for information to the athletes who register in the competitions.

Said Protocol establishes in its section 8, regarding “Prior medical examinations

to all competition" (page 10 of the aforementioned Protocol) the following: -"8. Acknowledgments

Pre-competition doctors. Given the evolution of the COVID 19 pandemic, the CSD

recommends that in all competitions organized by the FFDDEE (without prejudice to

transfer this recommendation to the rest of the organizers) when starting the pre-training

season or, failing that, 72 hours before the start of the competitions, a

specific COVID 19 test, whose purpose will be to know the situation of athletes and

members of the registered technical teams, and the eventual early detection of possible

positives or outbreaks

Aspects such as the type of test to be carried out, its financing, the evaluation of its usefulness and whether

must be performed more times at a later time (including through a feedback mechanism).

unannounced random tests) will be determined with sanitary criteria, within the framework

of the existing coordination mechanisms with the CCAAs. These will analyze the

evolution of infections in these sports competitions on a regular basis ”.

- The defendant states that "In accordance with state regulations issued by the Ministry of

Health and by the Autonomous Communities themselves on prevention measures and

controls necessary to deal with the health crisis caused by COVID-19, the

FECAM must have a Sanitary Protocol that identifies the actions

prevention measures and potential contagion situations, following the guidelines

recognized by the health authorities, and in which the measures of

contagion risk treatment adapted to each particular situation.

In accordance with the rules and recommendations issued by the competent authorities, the

FECAM, by means of a responsible declaration, is obliged to comply with the protocol

health and prevention against COVID-19 in their competitions and training sessions”. HE

attached as document 5 the "COVID-19 PREVENTION PROTOCOL FOR

TRAINING AND COMPETITIONS FOR THE YEAR 2021" which establishes that for participation in the Championship, it is mandatory that the participants register officially on the FECAM website, www.fecamclm.es, the signing of "a document of acceptance of conditions of participation, obligation of information and consent informed to participate in the activities.

…

8. It will be mandatory to carry out an antigen test prior to the participation of all those registered in any championship, to be carried out in the 48 hours prior to the celebration. This test will be carried out in the town of origin and will be facilitated by FECAM. The Club will You will have to have a doctor or registered nurse perform the test on all registered and certify the result in writing, which will have to be sent to FECAM by email on a specific model.

He states that: "That is why all the clubs and athletes attached to them who have registered to the Competitions and Championships organized by FECAM have carried out said procedures, have been informed and have given their informed consent, through of the acceptance of the sanitary norms and protocols adopted, both by the FECAM as well as by the competent authorities in public health matters .”

“This informed consent has been obtained by accepting the Protocol and through the voluntary completion of the registered Athletes and Clubs of acceptance of the rules of participation and the remission of the following documents to FECAM:

- Personnel Location Form

- Club Manager Certificate.

- Individual responsible statement.

- Covid-19 Antigen Test Test Certificate”

“The Club will have to ensure that a registered doctor or nurse performs the test

to all those registered and certify the result in writing, which will have to be sent to

FECAM by email in a specific model. In this way, the information received

by FECAM regarding antigen test tests prior to competition has been

done:

First.- For the medical services of the clubs, who once again have informed

all athletes affiliated to the aforementioned clubs of the need to carry out

said tests, according not only to the Protocol adopted by FECAM but also according to its

own health protocols adopted and the rules and recommendations set by the

competent health authorities in the matter and, very specifically, the

recommendations adopted by the Higher Sports Council, the Ministry of

Health and the Ministry of Health of the Junta de Comunidades de Castilla La Mancha.

Second.- They have obtained the consent of the athlete attached to their Club and that

register in the championships organized by FECAM in accordance with the FECAM Protocol,

the health regulations and protocols adopted by the Clubs themselves, Law 41/2002, of

11/14, basic regulation of patient autonomy and rights and obligations in

information and clinical documentation and in accordance with current regulations on



protection of personal data, established both by Regulation EU 2016/679, of

27/04l, General Data Protection as by Organic Law 3/2018, of 5/12, of

Protection of Personal Data and Guarantee of Digital Rights."

-Regarding the claim for the collection and processing of data without specifying the term

of conservation of the data, indicates that the data collected with the DNI, name and

surnames and negative/positive in the tests carried out by the Club, of the athletes who

are going to participate in the competitions, they are referred by the doctor to FECAM through

email to an address that indicates, following the following guidelines:

"1º.- Reception of emails from the clubs.

2º.- Validation of the information: verification that the certificate is signed by the

issuing club.

3º.- Incorporation to the final list of registered athletes of the club those who

present a negative result, provided by the club of origin.

4º.- Secure deletion of the email received from the folder of received items and

from the FECAM mail server."

- "The FECAM had designated D. ..., internally, to develop the

functions of the Data Protection Officer in accordance with the powers and functions

established in article 39 of Regulation (EU) 2016/679 (General Regulation

of Data Protection, hereinafter GDPR). FECAM had not proceeded

to notify the Competent Authority of said appointment when FECAM is not found

within the list of entities that must proceed to the appointment of a Delegate

of Data Protection in accordance with the provisions of article 34.1 of the Organic Law

3/2018, nor when carrying out a large-scale data processing of data especially

protected included in article 9 of the GDPR. As a corrective measure, we have proceeded

to the notification to the Spanish Data Protection Agency of the appointment of the

FECAM Data Protection Officer and the incorporation of contact details

of the Data Protection Officer in the privacy policy located in the url

https://www.fecamclm.es/politica-de-privacidad. Likewise, it is proceeding

FECAM to the incorporation of said contact details of the Data Protection Delegate

Data in all character data collection information clauses and legends

personnel used in the different data processing carried out by FECAM." contributes

copy of the consultation document on the page of the AEPD of the DPD, on 03/14/2022,

including the claimed, and its data as an entity, as well as "contact data of the DPD",

an e-mail, without nomination of person or entity that performs the functions. On his website, from

that provides screen printing, only appears: "contact details of the Delegate

", without the

of Data Protection

Full description, "

", and the email.

- "Measures that FECAM has adopted in relation to the requests for information received

of athletes from clubs in relation to not carrying out the necessary antigen tests

for participation in championships. "The defendant has received a request for

opposition to the need for antigen testing by a

federated coach throughout the year 2021, and has proceeded to fully respond to



the same according to the procedures implemented by FECAM to attend such

requests." Attached as DOCUMENT no. 6 to the present writing the request

received, dated 11/9/2021, anonymizing the applicant's data and list of the

answers given to the applicant. An answer was given to the same through a

initial email and a direct call from the President of FECAM to the trainer

to inform you of the need to perform said antigen test, as had been

carried out by all the athletes affiliated to clubs participating in the

championship organized by FECAM, it being understood by said coach that this

performance of an antigen test was not intended to create a risk to the

coach, but for the protection of the health of all athletes, indicating

Likewise, if said test is not carried out voluntarily, the only

consequence that would be adopted by FECAM is the non-registration of the coach

to said competition.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the RGPD grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law

3/2018, of December 5, Protection of Personal Data and guarantee of 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 Data Protection Agency will be governed by the provisions of the

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."

Article 4 of the GDPR defines:

II

“For the purposes of this Regulation, the following shall be understood as:

1) personal data: any information about an identified natural person or

identifiable (“the data subject”); An identifiable natural person shall be considered any person

whose identity can be determined, directly or indirectly, in particular by means of a

identifier, such as a name, an identification number, data of

location, an online identifier or one or more elements of identity

physical, physiological, genetic, mental, economic, cultural or social of said person;

2) processing: any operation or set of operations performed on data

personal data or sets of personal data, whether by automated procedures or

no, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of enabling access, comparison or interconnection, limitation, deletion



or destruction;

15) data relating to health: personal data relating to the physical or mental health of a

natural person, including the provision of health care services, revealing

information about your state of health;”

In addition, for a thorough understanding of the concept of health data, one must go to

its interpretation of international standards, as specified in article 10 of the Constitution.

Spanish tutoring. The World Health Organization in its Magna Carta defined the term

I define "health" as "the state of complete physical, mental or social well-being, and not only

mind the absence of disease or illness".

It is section 45 of the Explanatory Report of Convention 108 of the Council of Europe, the

which indicates that its concept encompasses "information concerning past health,

present and future, physical or mental, of an individual", "may be information about

about an individual in good health, sick or deceased", adding that "it must be understood

that these data also include information relating to the abuse of alcohol or

to drug use."

It is a broad concept, according to the judgment of the Court of Justice of the

European authorities, Plenary Chamber, of 11/6/2003, case C-101/2001 (Lindqvist Case), in which

It is reasoned that the indication, on an Internet web page, that a person has been

with one foot and is in a situation of partial leave constitutes personal data relating to the

health within the meaning of Article 8(1) of the Directive. That is, according to the aforementioned Tri-

council, the expression data relating to health, used by Directive 95/46 /CE, must

be interpreted broadly, including information relating to the physical aspects

cos and psychics of a person's health.

The athletes who belong to the FECAM have given their data to belong to the same

ma whose rules they accept, and comply with for such membership at the beginning of their incorporation

through the forms-tab declaring data referring to their health, at least that is the case.

follows from the first part, but the purpose of the collection and the content of this data is

distinct and of a different character from the collection that is made on the occasion of the return to the

requests in the course of COVID 19, which is a specific case applicable to each com-

request and without whose practice and previous registration you cannot participate, following,

as stated by the defendant, the CSD protocol, which recommends, does not obligate, remains

meeting the requirements of necessity and proportionality of the establishment of the treatment with-

in accordance with the legal requirements for obtaining said consent, which should be

As defined in article 4.11 of the GDPR:

"Any manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either through a declaration or a clear affirmative action, the

processing of personal data concerning you;

In the health crisis situation caused by COVID19, the defendant adopts the measures

measures aimed at preventing new infections of COVID-19, under your instructions.

Considering that the measures must be applied according to the criteria defined by the health authorities, which are the ones that define the general measures of prevention and hi-giene, it has to be analyzed if the athletes, by the fact of accepting to be Federated,



it is mandatory due to said circumstances, and to participate in the purchase request, submit to a test that treats health data by the FECAM, to the am-stoppage of consent as a means of collecting health data, understanding that if it is not undergoes said diagnostic screening test, that is, if you do not give your consent and performs the antigen test, you would not be able to participate in the competition.

Article 3 of the Organic Law 3/1986, of 14/04, on Special Measures in the field of Public Health, is a norm of coverage of sanitary measures that involve some restriction of fundamental rights, specifically, when it provides that "in order to control communicable diseases, the health authority, in addition to carrying out the actions general preventive measures, may adopt appropriate measures to control the sick, people who are or have been in contact with them and the immediate environment, as well as those considered necessary in case of risk of a transferable nature".

The processing of personal data in situations of health emergency is followed by being applicable the personal data protection regulations (RGPD and LOPDGDD), therefore, all its principles, contained in article 5 of the GDPR, and among them the treatment of personal data with legality, loyalty and transparency, of limitation

tion of the purpose, principle of limitation of the conservation period, and of course, and there is

to place special emphasis on it, the principle of data minimization.

The declaration of the state of alarm through Royal Decree 463/2020, of 03/14, by the

that the state of alarm is declared for the management of the health crisis situation caused by

caused by COVID-19 throughout the national territory, has meant the centralization of the

adoption of the measures provided for therein in a single competent authority for these purposes.

that is, in the Government of the nation and, under the superior direction of the President of the Government.

government, in the delegated competent authorities (the Minister of Defence, the Minister of

Interior, the Minister of Transport, Mobility and Urban Agenda and the Minister of Health),

in their respective areas of responsibility, as referred to in article 4 of the aforementioned Royal

Decree, and since its entry into force on 03/14/2020, in accordance with its final provision

third.

In accordance with article 6 of the aforementioned Royal Decree, each Administration will keep

the powers granted by current legislation in the ordinary management of its services.

cios to adopt the measures it deems necessary, within the framework of direct orders

of the competent authority.

Order SND/344/2020, of 04/13, which establishes exceptional measures to

the reinforcement of the National Health System and the containment of the health crisis caused

by COVID-19, agrees both to make available to the health authority of each

Autonomous Community of all those centers, services and health establishments of

clinical diagnosis of private ownership located in them, such as the submission of the

performance of diagnostic tests for the detection of COVID-19 to the guidelines,

instructions and criteria agreed for this purpose by the regional health authority,

The second foundation of the aforementioned Order determines: "Requirements for carrying out

diagnostic tests for the detection of COVID-19.": The indication for performing

diagnostic tests for the detection of COVID-19 must be prescribed by a

optional in accordance with the guidelines, instructions and criteria agreed for this purpose by

the competent health authority.

"As indicated in the preamble of that rule, it is intended to limit the

diagnostic tests for the detection of COVID-19 in those cases

in which there is a prior prescription by a physician and meet criteria

established by the competent health authority, thus submitting the regimen

of carrying out this kind of tests to the prior existence of medical criteria that

advise its realization."

II

The GDPR establishes a very broad concept of health data, and gives it a regime

specific, corresponding to the so-called "special categories of data" to which

referred to in article 9 of the normative text.

The GDPR and the LOPDGDD legitimize the processing of health data, or save the prohibition

of the treatment of the health data of those affected, in some of the aforementioned

assumptions, adding that, in addition, like any treatment, it must be adjusted to a

legitimizing legal basis established in article 6.1 of the GDPR, and comply with the principles

general provisions established in article 5 of the aforementioned GDPR.

This article 9 GDPR, after establishing in its section 1 a general prohibition for the tra-

treatment of these data, contemplates, its section 2, a series of exceptions in which the

Data processing is possible, when one of the following circumstances occurs,

(Only those related to the case are referred to).

“a) the interested party gave their explicit consent for the processing of said personal data.

for one or more of the specified purposes, except where Union Law or

of the Member States provides that the prohibition referred to in paragraph 1 does not

it can be lifted by the interested party;

[…]”

c) the processing is necessary to protect the vital interests of the data subject or of another person.

physical, in the event that the interested party is not physically or legally capable,

to give your consent;

g) the processing is necessary for reasons of essential public interest, on the basis of the

Law of the Union or of the Member States, which must be proportional to the objective per-

followed, essentially respect the right to data protection and establish measures

adequate and specific to protect the interests and fundamental rights of the interested party.

sado;

i) the processing is necessary for reasons of public interest in the field of public health;

such as protection against serious cross-border threats to health, or to

guarantee high levels of quality and safety of health care and



medicines or health products, on the basis of Union Law or of the States

member states that establish adequate and specific measures to protect the rights

rights and freedoms of the interested party, in particular professional secrecy.

For its part, the LOPDGGD dedicates its seventeenth additional provision to the treatments

health data, in the following terms: “Seventeenth additional provision.

Health data processing.

1. They are covered by letters g), h), i) and j) of article 9.2 of the Regulation (EU)

2016/679 the processing of data related to health and genetic data that is

are regulated by the following laws and their development provisions:

a) Law 14/1986, of April 25, General Health.

b) Law 31/1995, of November 8, on Occupational Risk Prevention.

c) Law 41/2002, of November 14, basic regulation of patient autonomy and

of rights and obligations regarding information and clinical documentation.

d) Law 16/2003, of May 28, on the cohesion and quality of the National Health System.

e) Law 44/2003, of November 21, on the organization of health professions.

f) Law 14/2007, of July 3, on Biomedical Research.

g) Law 33/2011, of October 4, General Public Health.

h) Law 20/2015, of July 14, on organization, supervision and solvency of entities

insurers and reinsurers.

i) The consolidated text of the Law on guarantees and rational use of medicines and products

sanitary, approved by Royal Legislative Decree 1/2015, of July 24.

j) The consolidated text of the General Law on the rights of persons with disabilities and

their social inclusion, approved by Royal Legislative Decree 1/2013 of November 29."

In the present case, the standards contained in the CSD protocols recommend and the FE-

CAM, in the rules issued for the return to competition, and in the protocol that determines it.

develops, imposes "the athlete as an imperative" the obligation to "provide" a de-

responsible declaration and obliges you to register and send the data through the Clubs, pro-

processing of health data as soon as they are collected, sent and stored

nan.

In addition to the fact that the defendant has not provided any explicit consent from any

athlete with the information on what is consented, and its guarantees, arguing that

would process the data, first, based on the file that they complete to belong to the

federation, it should be indicated that this file does not contemplate the specific purpose, nor the

possibility of withdrawing it, and cannot be classified as "free consent", when there is no

alternative, and the athlete would be left without competing. Consent can only

be valid if the data subject can choose a real option and there is no risk of deception,

intimidation, coercion, or significant negative consequences if you do not

consent. If the consequences of consent undermine the freedom of choice of the

person, consent is not free. Nor can it be proven that due to the fact that

registering in the competition, the athlete "has been informed, and has given his

informed consent, through the acceptance of health regulations and protocols

adopted",

given that in addition, the provision of consent in this case is "explicit",

requiring some type of action, a clear affirmative action, nor are the

consequences of refusing to give such consent. The decision by which one

person accepts a data processing operation must be subject to requirements



strict, taking into account that said decision may imply the waiver of a right

fundamental

Completion of the responsible declaration that you do not have the disease

as well as carrying out the detection test necessary to participate in the

competitions, appears imposed by the Federation, which does not meet the requirement that alleges

as an exception to the treatment of health data, considering that it violates article

9.2.) of the GDPR.

IV.

Article 6.1 of the GDPR establishes the assumptions that allow processing to be considered lawful.

lie of personal data.

1. Processing will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for

one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is

party or for the application at his request of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the res-

responsible for the treatment;

d) the processing is necessary to protect the vital interests of the data subject or of another person.

it sounds physical;

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest.

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the user.

responsible for the treatment or by a third party, provided that such interests are not pre-

the interests or the fundamental rights and freedoms of the interested party that re-

want the protection of personal data, in particular when the data subject is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out

by public authorities in the exercise of their functions

The membership of people to the claimed Federation, presupposes in its normal regime,

that your data may be processed for the purpose of your associative relationship, for the purpose of

promotion and extension of the ordinary sports activity, purpose that marks the

treatment of these data, being able to process the data in those cases, which are not the

that are analyzed here, that they postulate as a mandatory measure to participate in the

competitions, in each of them, to submit and provide a screening test

diagnoses as health measures COVID-19. That is, on associative membership

of the collective, the federation treats their data, estimating that this could be

a first legitimizing base of the common group to which they belong, with a legal framework



to carry out compliance with what is legally established that comes from the

lack of confinement

V

On the other hand, it follows that the defendant considered in this case a purpose

specifically related to COVID 19, has not accredited that it reports the extremes

that must contain the data collection in this case, being able to infringe article 13

of the GDPR which indicates:

"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;

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

c) the purposes of the treatment for which the personal data are intended and the legal basis of the

treatment;

d) 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;

e) the recipients or categories of recipients of personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

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

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

Articles 46 or 47 or Article 49, paragraph 1, second subparagraph, reference to the

adequate or appropriate guarantees and the means to obtain a copy of them or to the

fact that they have been borrowed.

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;

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

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

their treatment, or to oppose the treatment, as well as the right to the portability of the

data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9,

paragraph 2, letter a), the existence of the right to withdraw consent at any

moment, without affecting the legality of the treatment based on the consent

prior to its withdrawal;

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

e) 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 of not providing

such data;

f) the existence of automated decisions, including profiling, to which

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

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.

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 paragraph 2.

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

in which the interested party already has the information”

SAW

In accordance with the evidence available in this act of processing of

agreement to start disciplinary proceedings, and without prejudice to what results from the

instruction, it is considered that the facts exposed could violate the provisions of the

Articles: 9.2 a), and 13 of the GDPR, with the scope expressed in the Fundamentals of

previous rights, which, if confirmed, could imply the commission of the infractions

typified in article 83 section 5.a) and b) of the GDPR that under the heading "Conditions

rules for the imposition of administrative fines” provides that:

Violations of the following provisions 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, in an amount equivalent to a maximum of 4% of the turnover

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

a) the basic principles for the treatment, including the conditions for the consent

lien under articles 5, 6, 7 and 9;

b) the rights of the interested parties in accordance with articles 12 to 22.”

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions

the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of the

Regulation (EU) 2016/679, as well as those that are contrary to this law

organic”.

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

“Infractions considered very serious.

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

[…]



e) The processing of personal data of the categories referred to in article 9 of the

Regulation (EU) 2016/679, without any of the circumstances provided for in

said precept and in article 9 of this organic law.

[…]

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679

and 12 of this organic law. (…)”

VII

Sections d) and i) of article 58.2 of the GDPR provide the following:

"Each control authority will have all the following corrective powers indicated

next: (…)

"d) order the controller or processor that the processing operations

comply with the provisions of this Regulation, where applicable, of a

certain manner and within a specified period of time;”

“i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;"

In this case, the sanctioning procedure of an administrative fine is resorted to, given the

category of the data that is collected and the risks of the rights and freedoms that with

they are compromised. The imposition of adjustment measures in the treatment is

compatible with the sanction consisting of an administrative fine, according to the provisions of art.

83.2 of the GDPR.

VIII

The determination of the sanctions that should be imposed in the present case requires

observe the provisions of articles 83.1) and.2) of the GDPR, precepts that,

respectively, provide the following:

"1. Each control authority will guarantee that the imposition of administrative fines

pursuant to this Article for the infringements of this Regulation indicated in

sections 4, 5 and 6 are in each individual case effective, proportionate and

deterrents

2. Administrative fines will be imposed, depending on the circumstances of each case.

individually, in addition to or in lieu of the measures contemplated in article 58,

section 2, letters a) to h) and j). When deciding to impose an administrative fine 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 the number of

affected stakeholders and the level of damages they have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the

damages suffered by the interested parties;

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

account of the technical or organizational measures that they have applied by virtue of the

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 controller or processor notified the infringement and, if so, to 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, and

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

through the offence."

Within this section, the LOPDGDD contemplates in its article 76, entitled: "Sanctions and

corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of said article.

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

may be taken into account:

a) The continuing nature of the offence.

b) Linking the offender's activity with data processing

personal.

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 led to the commission of

the infraction.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The 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.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the

remaining corrective measures referred to in article 83.2 of Regulation (EU)

2016/679."

In accordance with the precepts transcribed, for the purpose of setting the amounts of the sanctions

fine to be imposed in the present case typified in article 83.5.a) of the GDPR, of the

that the defendant is held responsible, for the infringement of article 9.2 of the GDPR, it is

consider concurrent as aggravating factors the following factors that reveal a

greater unlawfulness and/or culpability in the conduct of the defendant:

-Article 83.2.a) GDPR "nature, seriousness and duration of the infringement, taking into account

account the nature, scope or purpose of the processing operation in question,

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

have suffered." The data was collected over a period, affecting all

athletes who have participated in competitions

-Article 83.2 g) "the categories of personal data affected by the

infraction" health data have been collected.

With these factors, a fine of 4,000 euros is deemed appropriate, without prejudice to the

resulting from the instruction.

For the violation of article 13 of the GDPR, they are considered concurrent as

aggravating the following factors that reveal greater unlawfulness and/or culpability in

the defendant's conduct:

-Article 83.2.a) "the nature, seriousness and duration of the infringement, taking into account the

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

number of interested parties affected and the level of damages they have suffered;”

signifying its severity determined by the absolute lack of informative reference in a

far-reaching measure that affected all partners and that took place for a while

wide, estimating that when activities that involve the processing of data are initiated

personal data, a data controller should always pause to consider which one is going to

be the legal basis for the planned treatment and guarantee the minimum required in

regarding the rights of those affected.



-Article 83.2.b) "intentionality or negligence in the infringement", concurring in this

case of negligence because another conduct other than that of absolutely omitting

any reference.

With these factors, a fine of 2,000 euros is deemed appropriate, without prejudice to the

resulting from the instruction.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency

of Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTIONING PROCEDURE against FECAM-(FED. DEP. FOR

PEOPLE WITH INTELLECTUAL DISABILITIES OF CASTILLA LA MANCHA), with

NIF G45351236, for the alleged violation of article 9.2.a) and 13 of the GDPR, of

in accordance with article 83.5.a) and 83.5.b) of the GDPR.

SECOND: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating

that any of them may be challenged, where appropriate, in accordance with the provisions of the

Articles 23 and 24 of Law 40/2015, of 1/10 on the Legal Regime of the Public Sector (LRJSP).

THIRD: 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 General Subdirectorate of Data Inspection in the actions prior to the start of this disciplinary procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1/10, of Common Administrative Procedure of Public Administrations, (LPCAP) the sanction that could correspond would be 4,000 euros and 2,000 euros, according to specified, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to FECAM-(FED. DEP. FOR PEOPLE WITH INTELLECTUAL DISABILITIES FROM CASTILLA LA MANCHA), with NIF G45351236, 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, it may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your res-responsibility within the term granted for the formulation of allegations to the present startup agreement; which will entail a reduction of 20% of the sanction that pro-cedes to impose in this proceeding. With the application of this reduction, the tion of article 9.2.a) of the GDPR would be established at 3,200 euros, and that of article 13 of the GDPR, in 1,600 euros, resolving the procedure with the imposition of this

sanction.

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 the reduction of 20% of its amount. With the application of this reduction, the sanction of the article 9.2 .a) of the GDPR would be established at 3,200 euros, and that of article 13 of the GDPR, in 1,600 euros, and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the one applicable charge for acknowledgment of responsibility, provided that this acknowledgment of responsibility responsibility is revealed within the period granted to formulate allegations.

nes to the opening of the procedure. The voluntary payment of the amount referred to in paragraph above may be done at any time prior to the resolution. In this case, if you agree to apply both reductions, the amount of the sanction of article 9.2 .a) of the GDPR would be established at 2,400 euros, and that of article 13 of the GDPR, at 1,200 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 previously indicated 3,200/2,400 euros or 1,600/1,200 euros must be made effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened in the 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 benefits.

Likewise, you must send proof of income to the Sub-directorate General of Inspection

to continue with the procedure according to the amount entered.

The procedure will have a maximum duration of nine months from the date of

initiation agreement or, where applicable, the draft initiation agreement. After that period

its expiration will occur and, consequently, the file of actions; in accordance

with the provisions of article 64 of the LOPDGDD.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, hereinafter,

the notifications that are sent to you will be made exclusively electronically by

appearance at the electronic headquarters of the General Access Point of the Administration or

through the only Authorized Electronic Address and that, if you do not access them, it will be

record its rejection in the file, considering the process completed and following the

procedure. You are informed that you can identify before this Agency an address of

email to receive the notice of making the notifications available and that

failure to comply with this notice will not prevent the notice from being considered

fully valid.

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.

C / Jorge Juan, 6

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935-110422

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sedeagpd.gob.es



Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On October 7, 2022, the claimed party has proceeded to pay

of the sanction in the amount of 3600 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.

FUNDAMENTALS OF LAW

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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 EXP202104456, in

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

SECOND: NOTIFY this resolution to FECAM-(FED. DEP. FOR

PEOPLE WITH INTELLECTUAL DISABILITIES FROM CASTILLA LA MANCHA).

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