

936-031219

□ Procedure No.: PS/00134/2020

RESOLUTION R/00300/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00134/2020, instructed by the Agency

Spanish Data Protection Agency to REAL SPORTING DE GIJÓN, S.A.D., in view of the

Complaint filed by the MINISTRY OF FINANCE - D. G. DE ORDINATION

OF THE GAME, and based on the following,

BACKGROUND

FIRST: On June 16, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against REAL SPORTING DE

GIJÓN, S.A.D. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: E/00134/2020

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before

the entity, Club Deportivo REAL SPORTING DE GIJÓN, S.A.D. with CIF.: A33608233,

(hereinafter, "the entity claimed"), by virtue of a complaint filed by the

MINISTRY OF FINANCE, (D.G. OF GAMBLING ORDINATION), and having

based on the following:

FACTS

FIRST: On 10/01/19, this Agency receives a letter from the MINISTRY OF

TREASURY, (D. G. OF GAMBLING REGULATION), communicating a possible

infringement of the RGPD, committed by the REAL SPORTING DE GIJÓN Sports Club,

S.A.D. Said letter indicates, among others, the following:

“Dated 09/13/18, the General Director of Gambling Regulation receives a letter of the Director General of the Interior of the Government of the Principality of Asturias in relation with certain advertising of EUROAPUESTAS ONLINE, SAU and requesting information about the terms of the authorizations granted to the aforementioned operator “to carry out advertising and promotional activities in the territory of the [www.aepd.es](http://www.aepd.es)

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2/18

Principality and whether these would cover the installation of fixed physical media in said territory or the realization of a mailing with a gift of money”.

The publicity referred to by the aforementioned Director General consists of the appearance of Paston.es, as official sponsor of the kit and on the field of Real Sporting of Gijón and in sending emails to members offering 10 euros free and providing a promotional code for it.

In response to a previous communication from the Directorate General for Gaming (DGOJ), the Real Sporting de Gijón submitted the sponsorship contract entered into with that operator, the invoices related to said sponsorship, the report of the campaign carried out, the e-mail user registration model in the club and the list of recipients to which the emails with the bonus and the promotional code were sent.

The DGOJ examined the legal regime applicable to advertising activities, sponsorship and promotion of state-licensed gaming operators (articles 7.1 and I 10.3 of Law 13/2011, of May 27, on gambling regulation (LRJ), provision first transitory of Royal Decree 1614/2011, of November 14, which is issued in

development of the LRJ in relation to gaming licences, authorizations and registrations,

Resolution of June 2, 2015 by which a general license is granted for the

development and operation of the EUROAPUESTAS betting game modality

ONLINE, SAU).

In light of the regulations cited above and the undoubted connection that this

regulations maintains with the competence titles attributed to the State in the rules

6th, 13th and 14th of article 149 of the Spanish Constitution, it was considered that the Law of the

Principality of Asturias 6/2014 of Games and Bets, whose scope of application is

refers to the territorial game of Asturias, it is not applicable and that the

legal regime applicable to any type of advertising carried out by an operator of

gaming in connection with its statewide license is governed by state rules

cited. Consequently, it was agreed to file the file with reference

CO/2018/025/1065.

Notwithstanding the foregoing, the following has been taken into account:

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3/18

1. Law 34/2002, of July 11, on services of the information society and

electronic commerce establishes in its article 21:

“Article 21. Prohibition of commercial communications made through

email or equivalent electronic means of communication.

1. Sending advertising or promotional communications is prohibited.

by email or other equivalent means of electronic communication

that had not previously been requested or expressly authorized by

their recipients.

2. The provisions of the preceding section shall not apply when there is a prior contractual relationship, provided that the provider had obtained lawful contact details of the recipient and will use them to send commercial communications regarding products or services of your own company that are similar to those that were initially subject to contracting with the client.

2. Art. 38.3 c) of Law 34/2002 considers a serious infringement the massive sending of commercial communications by email or other means of communication equivalent electronic mail, or its persistent or systematic sending to the same addressee of the service when the requirements of art 21 are not met in said shipments.

3. For its part, section 4 of the same article qualifies as a minor infraction "d) Sending commercial communications by email or other means of communication electronic equivalent when said shipments do not meet the requirements established in article 21 and does not constitute a serious infraction.

4. Finally, article 43.1 of the aforementioned Law 34/2002, relating to competition penalty for non-compliance with its provisions, establishes that "the imposition of sanctions for non-compliance with the resolutions issued by the competent depending on the matter or entity in question referred to in the paragraphs a) and b) of article 38.2 of this Law shall correspond to the body that issued the unfulfilled resolution. Likewise, it will correspond to the Data Protection Agency the imposition of sanctions for the commission of the infractions typified in the articles 38.3 c), d) and i) and 38.4 d), g) and h) of this Law".

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In accordance with the foregoing, it has been considered appropriate to refer it to the Agency

Spanish Data Protection of the documentation related to this matter:

1. Letter from the Director General of the Interior of the Principality of Asturias to General Director of Gambling Regulation stating his doubts jurisdiction over advertising activities related to the sponsorship of Real Sporting de Gijón by the gaming operator with state license Euroapuestas Online, SAU.
2. Illustrative documentation of the cited writing.
3. Request for information from the Directorate General for the Planning of Game (DGOJ) against Real Sporting de Gijón.
4. Response from Real Sporting de Gijón providing requested documentation.
5. List of email advertising referrals.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 11/27/19, an informative request is addressed to the claimed entity and EUROAPUESTAS ONLINE SAU.

### THIRD

Agency written informing, among others, of the following:

: On 12/17/19, EUROAPUESTAS ONLINE SAU, refers to this “On August 14, 2018 EUROAPUESTAS ONLINE, SAU (PASTÓN) adopted an agreement advertising sponsorship with REAL SPORTING DE GIJÓN, SAD, by signing of a contract. The collaborative relationship between the CLUB and PASTÓN had as

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5/18

object of the advertising promotion and use of the image of PASTÓN, in the terms agreed in it. (Document 1)

Of the actions and initiatives contained in the advertising sponsorship contract agreed between the two parties, we must highlight the point "3.3.7 Digital Community", specifically the agreement referring to the "sending of 4 emails to your database of users" since it is the subject of this complaint.

Regarding the sending of these 4 emails to the CLUB members, transfer what

Next;

1. PASTON, has never had access to the database owned by REAL SPORTING DE GIJÓN, SAD, that is why the email addresses are unknown email of the members of the CLUB, and consequently said ignorance, makes it impossible to carry out any processing operation of the personal data of the affected.

2. Derived from the foregoing, PASTÓN has not carried out advertising communications or promotional emails to members of REAL SPORTING DE GIJÓN.

3. REAL SPORTING DE GIJÓN, SAD is the sole owner and responsible for the treatment of the database, where the personal information of the users works partners or users impacted at the advertising level.

4. REAL SPORTING DE GIJÓN, SAD is the one who makes the decision by itself relative to the final recipients to whom to send commercial communications agreed.

5. REAL SPORTING DE GIJÓN, SAD was the one who carried out the referral of said commercial or promotional communications, which, despite having agreed four shipments, finally only two shipments were sent.

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6/18

6. PASTON only decides on the model of the advertising content, relative to creativity and text, so that, as we have explained, it does not make a decision any on who are the final recipients of commercial communications.

In short, according to everything that has been indicated, PASTÓN is not the one who entrusts or is responsible for the processing of personal data, thus, it does not define the segmentation of the recipients that appear in the database owned by the REAL SPORTING DE GIJÓN, SAD and does not decide to whom the advertising is directed. So, PASTÓN does not decide on the purpose, content and use of data processing, as it only decides on the model of the advertising content, regarding creativity and text.

FOURTH: On 12/27/19, the claimed entity sends to this Agency, a letter of response to the request where, among others, it indicates that:

“When the consent of the partners is collected, it is passed to our database, where depending on whether you have given your consent or not in the field of our ERP —MAIL—, is marked as likely to receive advertising (using Y and N).

It is also filtered by age, not sending advertising to minors or people older than 65 years. We attach ERP capture (document 1.3) that Hopefully it serves as a sample on this explanation.

When we learned of the entry into force of the RGPD we began to take

the pertinent measures so that our treatments were in accordance with the law. In

May 2019 we contracted with an external company the adaptation to the Regulation of Data Protection that analyzed our treatments, carried out an Evaluation of Impact on Data Protection and provided us with a plan with the actions to take to comply with GDPR.

The information that was provided both to partners and to other users of our services and a Record of Treatment activities was prepared.

In order to prove what was stated above, the following are attached:

Documents: 1: Evidence of the collection of consent from partners and relationship with the mailing list where the advertising is sent. Age segmentation tests.

Root list personal data. 1.2. Shipment record list. 1.3. ERP screenshot.

Document; 2: External data protection policy; 3: High model document as a partner. 3.1. Conditions of purchase subscribers. 3.2. Shipping consent commercial.

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7/18

The document that is made available to partners to give consent to the processing of personal data for commercial or promotional purposes, are indicated the options for which consent can be given or not:

"NAME AND SURNAME\_\_\_\_\_

Check the following boxes if you do not want Real Sporting de Gijón S.A.D to carry out indicated treatments:

☐ I do not want my data to be processed for sending newsletters and information about



club activities and services.

☐ I do not want my data to be processed for the organization of raffles, contests and other promotional events.

☐ I do not want my data to be processed to carry out satisfaction surveys clients or potential clients.

☐ I do not want my data to be processed for the personalization of commercial offers and promotional.

☐ I do not want my data to be processed for sending commercial offers and promotional”.

FIFTH: In view of the facts denounced, in accordance with the evidence of that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers the above, does not comply with current regulations, therefore that the opening of this sanctioning procedure proceeds.

#### FOUNDATIONS OF LAW

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The Director of the Spanish Data Protection Agency is competent to resolve these actions, by virtue of the powers that article 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the [www.aepd.es](http://www.aepd.es)

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8/18

Protection of Natural Persons with regard to Data Processing

Personal and the Free Circulation of these Data (RGPD) recognizes each Authority of Control and, as established in arts. 47, 64.2 and 68.1 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD).

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case".

## II

In the present case, the document that is made available to the partners asking them to consent to the processing of your personal data for commercial purposes or promotional, does not consist of affirmative actions, but of an inaction that does not ensures that the interested party unequivocally grants consent. So, taking as an example the first question: "Check the following boxes if you do not want El Real Sporting de Gijón S.A.D carries out the indicated treatments: 1.- ☐ I do not want treat my data to send newsletters and information about activities and services of the club (...)", we see how consent is requested through an act of inaction, in which if the member wishes to be sent newsletters about club activities, he must leave the box unchecked. But this act of "not checking the box" gives rise to ask yourself if the interested party really wants to be sent the newsletters or by the On the contrary, he did not check the box due to an oversight or any other reason and really what wanted is NOT to receive the newsletters, leading to a situation doubtful This same example can be used for the other four questions in the questionnaire.

In this sense, articles 6 and 7 of the same RGPD refer, respectively, to the

“Legality of treatment” and the “Conditions for consent”:

Article 6 of the RGPD, indicates that the treatment will only be lawful if it complies with at least one of the following conditions:

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9/18

“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 part of or for the application at the request of the latter of pre-contractual measures;

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

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

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

public or in the exercise of public powers vested in the data controller;

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

by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when it is

child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with regard to the treatment in compliance with section 1, letters c) and e), setting more specifies specific treatment requirements and other measures that guarantee a lawful and equitable treatment, including other specific situations of treatment under Chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

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10/18

a) Union law, or b) the law of the Member States that applies to the responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in what regarding the treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of powers data conferred on the data controller. Said legal basis may contain specific provisions to adapt the application of rules of this

Regulation, among others: the general conditions that govern the legality of the treatment by the controller; the types of data object of treatment; the interested affected; the entities to which personal data can be communicated and the purposes of such communication; purpose limitation; the retention periods of the data, as well as the operations and procedures of the treatment, including the measures to ensure lawful and fair treatment, such as those relating to other specific treatment situations under chapter IX. Union Law

or of the Member States will fulfill a public interest objective and will be proportional to the legitimate end pursued.

4. When the treatment for another purpose other than that for which the data was collected personal data is not based on the consent of the interested party or on the Law of the Union or of the Member States which constitutes a necessary and proportionate in a democratic society to safeguard the stated objectives in article 23, paragraph 1, the data controller, in order to determine if processing for another purpose is compatible with the purpose for which they were collected initially the personal data, will take into account, among other things:

- a) any relationship between the purposes for which the data was collected data and the purposes of the intended further processing;
- b) the context in which the personal data have been collected, in particular by what regarding the relationship between the interested parties and the data controller;
- c) the nature of the personal data, specifically when categories are processed special personal data, in accordance with article 9, or personal data relating to criminal convictions and offences, in accordance with article 10;

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11/18

- d) the possible consequences for data subjects of the envisaged further processing;
- e) the existence of adequate safeguards, which may include encryption or pseudonymization”.

For its part, article 7 of the RGPD indicates:

"1. When the treatment is based on the consent of the interested party, the person in charge

You must be able to demonstrate that you consented to the processing of your data personal.

2. If the data subject's consent is given in the context of a written statement that also refers to other matters, the request for consent will be presented in in such a way that it is clearly distinguishable from other matters, in an intelligible and easy access and using clear and simple language. No part will be binding of the statement that constitutes an infringement of this Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The Withdrawal of consent will not affect the legality of the treatment based on the consent prior to withdrawal. Before giving their consent, the interested party will be informed of it. It will be as easy to withdraw consent as it is to give it.

4. When assessing whether the consent has been freely given, it will be taken into account in the greatest extent possible whether, among other things, the performance of a contract, including the provision of a service, is subject to consent to the processing of personal data that is not necessary for the execution of said contract”.

It takes into account what is expressed in recital 32 of the RGPD in relation to what established in articles 6 and 7 mentioned above:

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12/18

“(32) Consent must be given by a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the interested party's accept the treatment of personal data that concerns you... Therefore, the silence, pre-ticked boxes, or inaction should not constitute consent. The

Consent must be given for all processing activities carried out with the same or the same ends. When the treatment has several purposes, the consent for all of them...”

It is also necessary to take into account the provisions of article 6 of the LOPDGDD on the treatment based on the consent of the affected party:

"1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, consent of the affected party is understood as any manifestation of free will, specific, informed and unequivocal by which it accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

2. When it is intended to base the processing of the data on the consent of the affected for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship”.

In accordance with what has been expressed, data processing requires the existence of a legal basis that legitimizes it, such as the consent of the interested party validly. In the present case, the respondent entity limits the options of the interested party to the marking of a box by means of which he leaves a record of his Opposition to the aforementioned data processing. The data collection form and provision of consent reads as follows:

“NAME AND SURNAME\_\_\_\_\_ Check the following boxes if you do not want El Real Sporting de Gijón S.A.D carry out the indicated treatments:

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28001 – Madrid

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13/18

☐ I do not want my data to be processed for sending newsletters and information about club activities and services.

☐ I do not want my data to be processed for the organization of raffles, contests and other promotional events.

☐ I do not want my data to be processed to carry out satisfaction surveys clients or potential clients.

☐ I do not want my data to be processed for the personalization of commercial offers and promotional.

☐ I do not want my data to be processed for sending commercial offers and promotional".

With this mechanism, there is no option for the client to give their consent to the treatments in question, but that the consent is intended to obtain through the inaction of the interested party, ("do not check the boxes in which it is indicated" DO NOT I want..."), contrary to what is established in the RGPD. In this case, it is not a affirmative action, but of a pure inaction that does not ensure that the interested party grants consent unequivocally (it is considered that when you mark something it is because you want it, not because you don't want it); since you may not have understood the double denial; or you may not have paid due attention when reading the directions on question. It is, in short, a consent that is intended to be deduced from the inaction and, therefore, contrary to the RGPD, the requirement according to which "the Consent must be given by a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the interested party's accept the treatment of personal data that concerns you",



understanding that "inaction should not constitute consent" (Considering 32 of the GDPR).

III

Thus, the known facts could constitute an infraction, attributable to the claimed, for violation of article 7 of the aforementioned RGPD, to the carry out the collection of consent through a non-affirmative action, a inaction that does not ensure that the interested party unequivocally grants consent. For its part, article 72.1.c) of the LOPDGDD considers it very serious, for the purposes of prescription, "Breach of the requirements of article 7 of the RGPD"

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14/18

This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The category of personal data affected by the breach. The data processed in this case, are of a markedly personal nature and therefore

person identifiers, (section g).

The way in which the supervisory authority became aware of the infringement. The way in which this AEPD has been aware has been through communication of the infraction by the Ministry of Finance, (section h).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 13, it allows set a penalty of 5,000 euros, (five thousand euros).

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

HE REMEMBERS:

START: SANCTIONING PROCEDURE against the entity, Club Deportivo REAL SPORTING DE GIJÓN, S.A.D. with CIF.: A33608233, for the violation of article 7 of the RGPD, punishable in accordance with the provisions of art. 83 of the aforementioned standard.

APPOINT: Mr. R.R.R. as Instructor, and Secretary, if applicable, Ms. S.S.S., indicating that any of them may be challenged, as the case may be, in accordance with [www.aepd.es](http://www.aepd.es)

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15/18

established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigations, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be a fine of 5,000 euros, (five thousand euros), without prejudice to what results from the instruction.

NOTIFY: this agreement to initiate sanctioning proceedings to the entity, Club Deportivo REAL SPORTING DE GIJÓN, S.A.D., granting it a term of hearing of ten business days to formulate the allegations and present the tests you deem appropriate.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 1,000 euros. with the application of this reduction, the sanction would be established at 4,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 1,000 euros. With the application of this reduction, the sanction would be established in 4,000 euros and its payment will imply the termination of the procedure.

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16/18

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,000 euros (three thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of Data in Banco CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement. Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

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Director of the Spanish Agency for Data Protection.

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17/18

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: On July 3, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3000 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the 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 resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time 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 infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of

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28001 – Madrid

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased  
regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00134/2020, of

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

SECOND: NOTIFY this resolution to REAL SPORTING DE GIJÓN,

S.A.D.

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

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