

□ File No.: PS/00384/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 05/14/2021, it had entry in this Spanish Agency of

Data Protection a document presented by A.A.A. (hereinafter the part

claimant), through which he makes a claim against IMAGINA FRAN SPORT,

SL with CIF B56033210 (hereinafter, the claimed party), due to lack of website

\*\*\*URL.1 of a Privacy Policy appropriate to Regulation (EU) 2016/679 of the

European Parliament and of the Council, of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (hereinafter, RGPD).

The claim indicates the following, in relation to the matter of protection of

data:

“This company has not updated the data protection regulations in the section

“Privacy Policy” on your website, the one from 1999 still appears. As your client

registered I don't know what implications it has for me. I have tried to contact them at

twice, April 23 and 28, and I have not received a response.”

Attach the following documentation:

- A copy of the Privacy Policy of the website \*\*\*URL.1 in which

The following is indicated: “When we need to obtain information from you,

we will always ask you to voluntarily provide it to us on a

express. The data collected through the data collection forms

of the website or other means will be incorporated into a data file of a character

personnel duly registered in the General Registry of Data Protection of the Spanish Data Protection Agency, for which it is responsible Imagine Sports. This entity will treat the data confidentially and exclusively for the purpose of offering the requested services, with all the legal and security guarantees imposed by Organic Law 15/1999, of December 13, Protection of Personal Data, the Royal Decree 1720/2007, of December 21 and Law 34/2002, of July 11, on Services of the Information Society and Electronic Commerce.

Imagina Sport undertakes not to assign, sell, or share the data with third parties without your express approval.

Likewise, Imagina Sport will cancel or rectify the data when they are inaccurate, incomplete or no longer necessary or relevant to your

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purpose, in accordance with the provisions of Organic Law 15/1999, of 13 December, Protection of Personal Data.

The user may revoke the consent given and exercise the rights of access, rectification, cancellation and opposition by addressing for this purpose the registered office of Imagina Sport, duly identifying themselves and indicating visible form the concrete right that is exercised.

Imagina Sport adopts the corresponding security levels required by the aforementioned Organic Law 15/1999 and other applicable regulations. However, do not assumes no responsibility for damages arising from

alterations that third parties may cause in computer systems,

electronic documents or user files”.

SECOND: In view of the facts denounced, the General Subdirectorate of

Data Inspection verified that the website \*\*\*URL.1 as of 06/08/2021

continued without adapting its Privacy Policy to the provisions of the RGD.

On the other hand, it is verified that in the last paragraph of the “Legal Notice” section,

mentions the respondent as responsible for receiving written communications

whose purpose is the exercise of the rights of opposition, access and information,

rectification or cancellation of your data by web users. In this

sense, the Mercantile Registry is accessed to know the general data of the

claimed.

Prior to admitting this claim for processing, the Agency gave

transfer of it to the claimed one on 06/10/2021, in accordance with article

65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD). Occurred

a first notification attempt through the Electronic Notification Service,

being rejected on 06/21/2021 once the period of ten days has elapsed

established. Subsequently, the transfer was reiterated by postal mail,

resulting in "Returned to origin due to surplus (not withdrawn at the office)", as stated in the

Notice of impossibility of delivery issued by Correos dated 07/16/2021.

THIRD: The Director of the Spanish Data Protection Agency agreed

admit for processing the claim filed by the claimant on 07/20/2021.

FOURTH: On 10/04/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

alleged infringement of article 13 of the RGD, typified in article 83.5 of the RGD.

FIFTH: In compliance with the provision of article 14.2 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP) the agreement to open the procedure was notified to the claimed electronically.

The certificate issued by the Electronic Notification Service Support service and Authorized Electronic address of the National Currency and Stamp Factory (in forward, FNMT), which is in the file, proves that the AEPD put the notification

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available to the recipient on 10/05/2021 and that on 10/16/2021

produced the automatic rejection of the notification.

Article 43.2, second paragraph, of the LPACAP establishes that “When the notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when ten days have elapsed natural since the notification is made available without accessing its contents”.

In turn, article 41.5 of the LPACAP specifies that "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure”.

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made 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 to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to initiate the procedure agreed in the third point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirectorate General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

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

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: A claim is filed for non-compliance with the regulations of data protection on the website \*\*\*URL.1. The Spanish Agency for the Protection of Data has verified that the information included on the processing of personal data personal does not comply with the provisions of article 13 of the RGPD.

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SECOND: The Spanish Data Protection Agency has notified the respondent the agreement to initiate this sanctioning procedure, but this has not presented allegations or evidence that contradicts the facts denounced.

#### 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 arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection 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, when they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

Article 4, under the heading "Definitions", provides that:

- 1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with the above definitions, data collection through forms included in a web page constitutes a data processing, in respect of which the data controller must give compliance with the provisions of article 13 of the RGD.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

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III

Article 13 of the RGD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, indicates that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

tant;

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

c) the purposes of the treatment to which the personal data is destined 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 the categories of recipients of the 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 to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these 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 facilitate the interested party, at the moment in which the data is obtained personal, 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 period;

b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to 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 in any time, without affecting the legality of the treatment based on the



consent prior to its withdrawal;

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

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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 provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on 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 in the to the extent that the interested party already has the information.”

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other

medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the

Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of

profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of

automated individual decisions that produce legal effects on him or her

significantly affect in a similar way, when this right concurs in accordance

with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of

corrective powers in the event of an infraction of the precepts of the

GDPR.

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Article 58.2 of the RGPD provides the following:

"two. Each supervisory authority will have all of the following corrective powers

listed below:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of treatment that the operations of processing comply with the provisions of this Regulation;

(...)

i) 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 particular".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 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:

b) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"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:

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 the Regulation (EU) 2016/679 and 12 of this organic law."

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced in the term for it.

This Agency has verified that the conduct of the respondent is not in accordance with the data protection regulations, since its website \*\*\*URL.1 does not contain all the

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information required in article 13 of the RGPD, indicated in the legal basis

III.

Thus, the exposed facts constitute, on the part of the claimed, a infringement of the provisions of article 13 of the RGPD.

SAW

In order to determine the administrative fine to be imposed, the provisions of article 83, sections 1 and 2 of the RGPD, a provision that states:

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

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

have suffered;

b) intentionality or negligence in the infringement;

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 person in charge or of the person in charge of the treatment,

taking into account the technical or organizational measures that they have applied under

of 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, in what

measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

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j) adherence to codes of conduct under article 40 or 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 the infringement.”

Regarding section k) of article 83.2 of the RGD, the LOPDGD, article 76,

“Sanctions and corrective measures”, provides:

“two. 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 treatment of personal information.
- 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 subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the precepts indicated, in order to set the amount of the penalty to impose in the present case, it is appropriate to grade it according to the following criteria aggravating factors established in article 83.2 of the RGD:

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The nature, seriousness and duration of the infraction. The claimed, not

Providing the information required by article 13 of the RGPD prevents affected address the data controller to exercise their rights and know the purposes of the treatment, among other damages.

The negligence in the infringement. The action of the defendant supposes a gross negligence since the Privacy Policy examined cites the day of today Law 15/1999, on the Protection of Personal Data (LOPD), resulting in application since 2018 the RGPD, for which it has had three years to adapt it to the new regulations.

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The way in which the supervisory authority became aware of the infringement. The

The way in which the AEPD has been informed has been through the interposition of the complaint by the claimant.

- The degree of cooperation with the AEPD in order to remedy the infringement. After the claim has been notified and, subsequently, the opening agreement, in order to be able to answer and, where appropriate, take measures to prevent the infringement, the AEPD has not received any response.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13 of the RGPD, it allows setting as a valuation initial fine of €2,000 (two thousand euros).

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution requires the claimed party, as data controller, to

incorporate a Privacy Policy adjusted to the provisions of the \*\*\*URL.1 website

in article 13 of the RGPD, as well as the provision of supporting evidence

compliance with what is required

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE IMAGINA FRAN SPORT, S.L., with CIF B56033210, for a

violation of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a fine

of 2,000 euros (two thousand euros).

SECOND: REQUEST IMAGINA FRAN SPORT, S.L., with CIF B56033210, to

under the provisions of article 58.2 d) of the RGPD, so that within ten

working days from this act of notification proves before this body the adoption

of measures to provide information to the people whose personal data it collects,

in accordance with the provisions of article 13 of the RGPD.

THIRD: NOTIFY this resolution to IMAGINA FRAN SPORT, S.L..

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, 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

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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 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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