

□ Procedure No.: PS/00231/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 01/27/2021, it had entry in this Spanish Agency of
Data Protection (hereinafter, AEPD) a document presented by A.A.A. (in
hereinafter, the claimant party), through which he makes a claim against
ACONCAGUA GAMES S.A. with NIF A73972010 (hereinafter, the claimed party).

The reasons on which they base their claim are that their right to
deletion within the legally established period and that a Delegate has not been appointed
of Data Protection (hereinafter, DPD) to which to direct the claims.

SECOND

: In view of the reported facts, on 03/02/2021 the Subdirectorate
General Data Inspection verified that in the list of Protection Delegates
of Data of the AEPD does not appear registered the one of the claimed one, despite the fact that in the
Privacy Policy of its website (www.aconcaguapoker.es) reference is made
to the Data Protection Delegate.

Prior to admitting this claim for processing, the Agency gave
transfer of it to the claimed one on 03/15/2021, 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 03/26/2021 once the ten-day period has elapsed
settled down. Subsequently, the transfer dated 03/26/2021 was forwarded to

the one claimed, but it was “Returned to origin due to surplus (Not withdrawn in the office)” on 04/21/2021, as stated in the Post Notice.

THIRD: On 07/28/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 37 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons in relation to regarding the processing of personal data and the free circulation of these data (hereinafter, RGPD), typified in article 83.4 of the RGPD.

FOURTH: 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 C/ Jorge Juan, 6

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forward, FNMT), which is in the file, proves that the AEPD put the notification available to the recipient on 07/29/2021 and that on 08/09/2021 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

content".

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".

FIFTH: The respondent did not make any objections to the agreement to initiate the procedure.

Article 64.2.f) of the LPACAP -provision of which the one claimed was reported in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, it may be considered a motion for a resolution.

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 respondent has not made allegations to the agreement to initiate the file and in attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

SIXTH: 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 against the defendant for the lack of attention of the

right to delete your personal data exercised by the claimant and by not

have appointed a Data Protection Delegate.

In relation to the first question, the claimant does not present together with the claim

a copy of the email through which he claims to have exercised the aforementioned

right. Consequently, by not having proven the existence of said document, the

failure to act by the party complained against cannot be understood as a violation

of the personal data protection regulations.

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For its part, consulted the list of DPOs communicated to the AEPD, there is no

release.

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

I

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

Article 37 of the GDPR establishes the following:

II

1. The person in charge and the person in charge of the treatment will designate a delegate of data protection provided that:

b) the principal activities of the controller or processor consist of processing operations that, due to their nature, scope and/or purposes, require regular and systematic observation of data subjects on a large scale, or

In this sense, the LOPDGDD determines in its article 34.1 and 3: "Appointment of a data protection officer"

1. "Those responsible and in charge of the treatment must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation

(EU) 2016/679 and, in any case, in the case of the following entities:

n) The operators that carry out gambling activity through channels electronic, computerized, telematic and interactive, in accordance with the regulations of play.

regulation

of

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, appointments, appointments and dismissals of

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the data protection delegates both in the cases in which they are obliged to their designation as in the case in which it is voluntary”.

III

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 the lack of designation of DPD, when dedicating to online games, as indicated on its website (www.aconcaguapoker.es), gives result in the violation of article 37.1 b) of the RGPD in relation to article 34.1 n) of the LOPDGDD.

IV

Article 83.7 of the RGPD establishes that: "Without prejudice to the corrective powers of the supervisory authorities under article 58, paragraph 2, each State member may establish rules on whether and to what extent fines can be imposed administrative authorities and public bodies established in that State member".

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

to)

(...)

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

c)

(...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, when proceed, in a certain way and within a specified period;

(...)

i) impose an administrative fine under article 83, in addition to or instead of of the measures mentioned in this section, depending on the circumstances of each individual case”.

v

The infringement is contemplated as such in article 83.4 of the RGPD that states: "The Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the

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

a) The obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43;”

For the mere purposes of prescription, article 73 of the LOPDGDD qualifies as serious “Breach of the obligation to appoint a data protection delegate when his appointment is required in accordance with article 37 of the Regulation

(UE) 2016/679 and article 34 of this organic law”. The statute of limitations for serious infractions foreseen in the LOPDGDD is two years.

In this case, based on the facts set forth, it is considered that the sanction that should be imposed is an administrative fine. For its determination, to observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that point out:

“Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“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:

- to)
- 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 stakeholders affected and the level of damage and damages they have suffered;
 - b) the 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 in under articles 25 and 32;

and)

any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;

g)

the categories of personal data affected by the breach;

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g)

the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, what extent;

i)

i)

when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures; adherence to codes of conduct under article 40 or mechanisms certificates 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 realized or losses avoided, directly or indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, 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) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

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 RGPD:

-

The nature, seriousness and duration of the infraction. The claim continues without notify the AEPD of the designation of DPD.

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The intentionality or negligence in the infringement. In the present case not we can affirm that the defendant has acted maliciously, although her conduct reveals a serious lack of diligence.

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 number of interested parties affected, that the complainant performs a treatment of personal data on a large scale by the number of people who can access your products.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 37.1 b) of the RGPD in relation to article 34 of the LOPDGDD, allows a penalty of 10,000 euros (ten thousand euros) to be set.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution requires the respondent to designate a Protection Delegate of Data, as well as the provision of supporting evidence of 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 ACONCAGUA JUEGOS S.A., with NIF A73972010, for a infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD, a fine

€10,000 (ten thousand euros).

SECOND: TO REQUEST ACONCAGUA JUEGOS S.A., with NIF A73972010, to protection of the provisions of article 58.2 d) of the RGPD, so that, within a period of month from the notification of this Resolution, inform this Agency about the appointment of the Data Protection Delegate.

THIRD: NOTIFY this resolution to ACONCAGUA JUEGOS S.A.

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.

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Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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

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

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

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

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

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

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