

□ Procedure No.: PS/00167/2020

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00167/2020, instructed by the Spanish Agency for Data Protection, to the entity, "CENTRO ESCUELA DE BUCEO FRIENDS OF THE AZUL", with CIF.: B30928600, (hereinafter, "the claimed entity"), by virtue of de-complaint filed by Ms. A.A.A., (hereinafter, "the claimant") and based on the following:

### BACKGROUND

FIRST: On 10/20/19, you entered this Agency, a brief presented by the claimant where they stated, among others, the following:

"The aforementioned diving center has not adapted its website <https://amigosdelazul.com> to the regulations: -their forms do not contain an acceptance box -total absence of the privacy policy and legal texts, (documents 1 to 3). To offer your services of diving collect user data, such as complete data and DNI, qualifications of diving, copy of the insurance policy and medical certificates. All these data for be collected, require the signature by the interested party of a document of consent, which is not completed or presented for signature. In the case of medical certificates the nature of these is specially protected data and are collected by this center without any kind of protocol".

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 12/10/19, an informative request is addressed to

the claimed entity.

THIRD: On 02/20/20, the respondent entity submits in writing in this

Agency, in which, among other things, it indicates that:

“What interests the right of this party to record that it has not been until the reception

tion of the present, when we have been aware of the incidents suffered in

this matter and that, in order to remedy the same, as will be explained later,

have contracted the services of a company dedicated to the implementation of

operation in accordance with current data protection regulations, so that

Proceed to detect and correct any type of incident in this regard.

However, and prior to the beginning of the aforementioned works, in order to safeguard the rights

rights of those possibly affected, and paralyze the perceived incidence, as soon as

received this request, the website has been closed and it has not been returned.

will see to activate again until all the appropriate measures are not carried out

to adapt said website to current data protection regulations.

In relation to the treatment of the data of the clients of the Center, this party wants

state that within the scope of implementation provided for in the Regulation, the Center

tro has established the obligation for all customers to sign a form in the

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2/7

that expressly authorize the processing of their personal data, which is accompanied

Attached hereto as Attachment No. 1.

We have noticed that this form has not been duly completed by

old clients. This is an issue that, likewise, will be duly corrected. By

Lastly, highlight the absolutely spurious purposes of the complainant, which

It does not seek, much less, to obtain the correct treatment of your data. The truth is that the complainant has practiced recreational diving with this Center on many occasions long time ago, voluntarily leaving in deposit all the documentation required by law to be able to practice the aforementioned activity. under cover of established in Art 6 of LO 3/2018, it must be understood that the complainant has consented to the processing of your personal data through a clear action affirmative of free, specific, informed and unequivocal will.

And this is how the relationship between the parties has been developing, with absolute normality and cordiality, until this party issued an invoice for the rental of equipment during during a diving trip to the Maldives. Said invoice is attached as a document Annex No. 2. This party considers that this evident bad faith of the complainant must be taken into account, together with the rapid correction by this part of the incidents corrected and the non-existence of any damage neither for the complainant nor for any center client.

2.- IN THE EVENT OF EXERCISE OF THE RIGHTS REGULATED IN THE ARTICLES 15 TO 22 OF THE RGPD, ACCREDITATION OF THE FACILITATED RESPONSE TO THE CLAIMANT.

It is not the case. As stated, the complainant has not carried out any type of request or requirement prior to this part, in order to correct the deficiencies warned, but has used this procedure with malicious intent per-following exclusively cause damage to this part.

3.- REPORT ON THE CAUSES THAT HAVE MOTIVATED THE INCIDENCE THAT HAS ORIGINATED THE CLAIM.

That the complaint filed refers to two incidents. As for the defects noted on the Center's website, these are due to the lack of use

tion of said page that has not been duly updated since the date of creation.

tion, neither in content nor, unfortunately, to adapt it to the regulations on  
of data protection. And it has not been until now, that this defect has been  
warned. In relation to the treatment of the data, this part gives to all the new  
You clients a file in which they expressly authorize the processing of their data,  
however, he had not updated his files requesting the aforementioned authorization to  
customers who had already been using the Center's services before. Incidence  
which, we insist, has been completely corrected.

4.- REPORT ON THE MEASURES ADOPTED TO PREVENT THE PRO-  
DUE SIMILAR INCIDENTS, DATES OF IMPLEMENTATION AND CONTROLS  
CARRIED OUT TO CHECK ITS EFFECTIVENESS.

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3/7

That, in order to solve the existing incidents, and adopt all the correct measures,  
measures aimed at putting an end to possible non-compliance with the protection legislation  
of data, this party has proceeded to hire the services of a company dedicated to  
the management and treatment of the data in order to proceed to carry out all the tasks  
directed to the aforementioned end. For the appropriate evidentiary purposes, it is attached as  
Annex document No. 3 the contract with the company Prevensystem, which is responsible,  
from February 5, 2020, to coordinate the adaptation project to the norm  
data protection requirement and periodically control the proper functioning of the  
same. As a consequence of the foregoing, it is hereby accredited that this party has already  
taken all necessary measures to prevent similar incidents from occurring.

lares. We remain at the disposal of the AEPD for the verifications that it considers relevant in order to determine the adequacy of the measures taken by this party and the implementation and control project carried out by the contracted company.

By virtue of the provisions of Article 10 of the Data Protection Regulation,

This part is legitimated to process the data requested from the users.

center clients. Not only because of the fact that customers give their consent expressly for this, as in the case at hand, in which the complainant has made ted express acts that entail the clear consent for it, but also

the legitimacy for the aforementioned treatment is determined by the applicable legislation

to underwater activities, which in the case of the Region of Murcia, is the Decree 69/2001, which is attached to this letter as annex document No. 4. In

Article 5.2 of the aforementioned Decree, within the framework of the organization of activities, is

establishes the obligation to “verify that divers have the training and license

adequate treatment for the hyperbaric exposure to which they are going to be subjected,

accident and civil liability insurance is in force, which have exceeded the

established medical knowledge and that do not present obvious signs of poor condition

physical and psychic. “In Article 9 of the same, in relation to the organization of courses,

the obligation to request exactly the same documentation is established. Y,

lastly, said documentation is equally obligatory for the issuance of

the corresponding titles, in accordance with the provisions of Article 13 of the Ci-

ted Decree.

The data that the complainant affirms that the Center asks for (detailed in her He-

cho Segundo), that is, complete data, DNI, diving qualifications, copy of the policy

of insurance and medical certificates, are neither more nor less than those that the legislation itself tion establishes as mandatory, without which customers could not carry out the activity.

diving life that they have contracted with the Center.

Regarding this mandatory documentation, it is interesting to make special mention of the Certificate of medical certificate, since it does not contain specific medical data, nor results of tests, or patient status. Simply, after testing pertinent, the doctor certifies that the person does not suffer from any disease that prevent you from practicing diving. For the appropriate supporting purposes, it is attached as annex document no. 5, an authentic medical certificate, which has been erased the data of the doctor and of the person on whom it is certified. Therefore, being a general medical certificate establishing that a person is fit to practice recreational diving, it cannot be considered to contain any data of a nature sensitive that requires special protection.

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4/7

Lastly, to stress again the fact of the legitimacy for the treatment of all

Given these data and above all, the fact that the documentation required by the Centres for diving practice, it is returned to the clients once compliance has been verified.

fulfillment of the requirements of the person to be able to carry out a dive”.

FOURTH: Together with the brief of allegations presented by the entity claimed, it is attached copy of the "RESPONSIBLE DECLARATION SHEET", in which the user,

In addition to providing your personal data, you declare that "you are in possession of the medical certificate that allows you to carry out underwater diving activities”.

At the end of the sheet there is an informative note indicating that:

“The client authorizes the use of their personal data, including the photographs taken during your stay, for commercial purposes, being able, in accordance with the provisions

do in the LOPD, exercise your right of access, modification, rectification or cancellation before the diving center by email addressed to the following address: info@amigosdelazul.com".

FIFTH: On 06/05/20, the website www.amigosdelazul.com is accessed, where of, checking that in the privacy policy, <https://amigosdelazul.com/politica-privacy/>, information about the Data Controller; how long do they keep the data; with whom they share the data; the rights over your data and how to protect gene the data

Regarding the personal data they collect, it is reported: "Only the data through the contact form in the contact section and in the reservation section (when available), and will be strictly necessary to carry out the normal activity of the service, adjusting to the principle of data minimization (Art.5.b GDPR). The data collected will in any case be over 16 years of age. (Art. 8.1 GDPR). Friends of the Blue, S.L. reserves the right to take measures opportune to verify the veracity of the age (Art. 8.2 GDPR). In any case it is- These data will be of a personal identification and non-sensitive nature, they may be: • Mail electronic; •Telephone; •Name and surname

On the legitimacy for the processing of personal data, they report that: "The basis legal for the treatment of your personal data is the explicit acceptance of the treatment. management and storage of the same according to this privacy policy. dad. Visiting this Website does not imply that the User is obliged to provide any no information about himself. In the event that the User provides any information of a personal nature, the data collected on this Website will be used with the purpose, in the form and with the limitations and rights established by the legislation regarding the protection of personal data.

SIXTH: Notified of the initiation of the file on 09/16/20, as of today, no

There is evidence that no response has been given to the initiation of the file within, of the period granted for this, for the appropriate legal purposes by the claimed entity.

Of the actions carried out in this procedure, of the information and do-  
documentation presented by the parties, the following have been accredited:

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5/7

## PROVEN FACTS

1º.- About the Privacy Policy of the denounced web page, it has been possible to com-

Prove that it provides information about: Responsible for the treatment;

how long they keep the data; with whom they share the data; rights over

your data and how they protect the data.

2º.- Regarding the personal data they collect, it is reported: “Only

the data through the contact form in the contact section and in the re-

servas (when available), and will be strictly necessary to carry out

carry out the normal activity of the service, adjusting to the principle of data minimization

(Art.5.b GDPR). The data collected will in any case be over 16 years of age.

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opportune to verify the veracity of the age (Art. 8.2 GDPR). In any case it is-

These data will be of a personal identification and non-sensitive nature, they may be: • Mail

electronic; •Telephone; •Name and surname.

3.- Regarding the legitimacy for the processing of personal data, they report that: “The

legal basis for the treatment of your personal data is the explicit acceptance of the

treatment, management and storage of the same according to this privacy policy.



emptiness Visiting this Website does not imply that the User is obliged to provide any  
some information about himself. In the event that the User provides any information  
training of a personal nature, the data collected on this Website will be used  
with the purpose, in the form and with the limitations and rights established by the legislation  
regarding the protection of personal data.

## FOUNDATIONS OF LAW

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in  
the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to  
knowledge of the AEPD a vision of the denounced action that has been reflected  
gives in the facts declared proven above related.

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Regarding the processing of personal data collected in the "Declaration  
Responsible", apart from collecting personal data from customers such as the name,  
address, telephone, DNI and email, there is a footnote  
reporting: "The client authorizes the use of their personal data, including the  
photographs taken during your stay, for commercial purposes, being able, in  
in accordance with the provisions of the LOPD, exercise their right to access, modify,  
rectification or cancellation before the diving center by email addressed  
to the following address: info@amigosdelazul.com".

In the present case, the document that is made available to clients so that they  
declare that they are in possession of the medical certificate that authorizes them to  
carry out underwater diving activities, implies that they authorize without any option, the

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processing of your personal data including photographs taken of your activities, for commercial or promotional purposes.

Well, data processing requires the existence of a legal basis that legitimate, such as the consent of the interested party. But in the case at hand, the personal data provided by the user is only to declare that it is in acceptable physical conditions to perform the underwater diving exercise. Nope. However, on the same sheet, the user is informed, without the possibility of rejection, that their personal data together with the photographs that may be obtained from your activity will be used to carry out commercial or promotional activities, offering only the subsequent option to exercise your rights of modification, rectification or cancellation of personal data or photographs taken. With this mechanism, the entity does not give the option for the client to give their consent or not to the processing of your personal data, but the consent is included as mandatory in the responsible declaration sheet.

Well, in the case, in the sheet of "responsibility declaration", that the clients fill in with your personal data, it is only indicated, the purposes of the treatment to which personal data is intended (commercial or promotional advertising and the existence of the right of access, rectification or deletion), but no further information is offered, such as: the identity and contact details of the person in charge and, where appropriate, of your representative; the contact details of the data protection officer, in his case; the recipients or categories of recipients of the personal data, or the period during which the personal data will be kept.

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

data protection law,

## RESOLVE

NOTICE: to the entity the entity, CENTER SCHOOL OF DIVING FRIENDS OF THE

AZUL, with CIF.: B30928600, for the Infringement of articles 13 and 7 of the RGPD, res-

aspect of the information that must be provided to users when they are collected

your personal data and the option of consent for your personal data to be included

including photographs taken of their activities may be used for activities

commercial and promotional des.

REQUEST the entity, AMIGOS DEL AZUL DIVING SCHOOL CENTER, to

that, within a period of one month from this act of notification, proceed to take the measures

necessary to adapt its privacy policy when collecting data

of its clients to the provisions of article 13 of the RGPD and adapt the con-

feeling of the clients so that their personal data, including the photographs all-

of its activities are in accordance with the provisions of article 7 of the RGPD, possi-

enabling the consent given by users to be given freely, specifically

fica, informed and unequivocal for each of the purposes that the entity has planned.

NOTIFY: this resolution to the entity, CENTRO ESCUELA DE BUCEO

FRIENDS OF BLUE

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

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

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Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, 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 the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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