

□ File No.: EXP202104455

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On March 31, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the FEDERATION
CASTELLANO-LEONESA DE SALVAMENTO Y SOCORRISMO (hereinafter, the
claimed party), through the Agreement that is transcribed:

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File No.: EXP202104455

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: D.A.A.A. (hereinafter, the complaining party) dated October 22,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against the CASTELLANO-LEONESA FEDERATION OF
SALVAMENTO Y SOCORRISMO with NIF G47346416 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

The claimant states that in order to practice lifeguard sport
as a federation in Castilla y León, the claimed party provides the participants with a
data processing acceptance form that establishes authorizations that are
considered abusive and that require consent to the transfer of rights without

possibility of decision on them.

Among them is the authorization for the transfer of the image without limitation of

"support, without any territorial or temporal limitation, for which the rights are

granted for use throughout the world and unlimitedly", as well as the

authorization for the sending of commercial communications and the communication of

data of the owner to third parties, for the execution of commercial actions by

these.

And, among other things, it provides the following documentation:

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The clauses of the privacy policy of the individualized form, among which

are those mentioned by the complainant:

"I expressly AUTHORIZE the management of my image obtained in the different activities related to LA FECLESS in which I participate, as well as the dissemination of the same through web pages, social networks, media, etc. either any other support, without any territorial or temporal limitation, for which the rights are granted for use worldwide and unlimited.

I CONSENT to the sending of electronic commercial communications or any other

Type; and communication of the owner's data to third parties, for the execution of actions

business by them. To carry out this treatment, the interested party

You will need to consent below.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGGD), said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on November 17, 2021 as stated in the acknowledgment of receipt in the file.

On February 16, 2022, this Agency received a written response indicating that the treatments that motivate the claim have not been carried out at any time, especially "the unlimited treatment of the image throughout the world."

They state that they have reviewed the data protection policy signed with each federated, and they will proceed to send a new improved version, to all those who those who had not been offered the possibility of accepting or denying any of the treatments.

They accompany as document no. 2, model clause that they are sending to the federated, for the purpose of updating their consents:

"I AUTHORIZE through the acceptance of this document the purposes of following treatment:

The purposes of the treatment are the following:

A) Management and organization of activities related to its corporate purpose; Management and processing of federative licenses; management of requests for information on courses; the management and organization of training courses; job board management; insurance processing; diffusion of the news related to the courses of training through web pages, email and social networks.

The previous data treatments are legitimized based on the article

6.1.a) of the RGPD when there is consent of the affected person or their

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legal representative, which is specified by accepting this document;

article 6.1.b) when based on the fulfillment of a contractual relationship; article 6.1.c)

of the RGPD when based on the fulfillment of a legal obligation; and article 6.1.f) to

There is legitimate interest on the part of LA FECLESS for the processing of the data.

Likewise, the affected party consents that, in the event that health data is provided,

these are treated, which is justified based on article 9.2.a) of the RGPD, having

granted the interested party or his legal representative his explicit consent,

manifested by signing this document.

B) Management of my image obtained in the different activities related to LA

FECLESS in which I participate, as well as the diffusion of the same through pages

web, social networks, media, etc. or any other support, without

no territorial or temporal limitation, so the rights are granted for your

use worldwide and unlimited. The treatment will be legitimized,

where appropriate, by the consent of the interested party, expressed below (MARK

WHATEVER APPROPRIATE): I CONSENT

I CONSENT []

NO

[]

C) Inclusion of my phone number in instant messaging groups or

similar applications, and to be able to send messages through them, to the effects of managing in an agile way the communications and information that may be useful. The treatment will be legitimized, where appropriate, by the consent of the interested party, expressed below (MARK WHAT PROCEED):

I CONSENT ☐

I DO NOT CONSENT ☐

D) FECLESS may market the aforementioned images, assign them or sell them to third parties, as well as manage sponsorships with their image.

In case of giving your consent to this treatment of images, LA FEDERATION will become the owner of the image rights inherent to the themselves. The treatment will be legitimized, where appropriate, by the consent of the interested party, expressed below (CHECK ALL THAT APPLY):

I CONSENT ☐

I DO NOT CONSENT ☐

E) The sending of electronic commercial communications or of any other type; Y communication of the owner's data to third parties, for the execution of actions business by them. The treatment will be legitimized, where appropriate, by the consent of the interested party, expressed below (MARK WHAT PROCEED):

I CONSENT ☐

I DO NOT CONSENT ☐

The data processed will be kept for the period strictly necessary to comply with the aforementioned purpose or purposes, as well as during the period of validity of legal obligations”.

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THIRD: On January 22, 2022, in accordance with article 65 of the LOPDGDD, the claimant is informed that his claim has been admitted to process as three months have elapsed since it entered the AEPD.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in 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."

II

The defendant is accused of committing an infraction for violation of article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which that the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met

conditions:

a) the interested party gave their consent for the processing of their 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

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

interested is a child. The provisions of letter f) of the first paragraph shall not be

application to the treatment carried out by public authorities in the exercise of their

functions”.

The infringement is typified in article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions 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:

The basic principles for the treatment, including the conditions for the

a)

consent under articles 5,6,7 and 9.”

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, 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 in it and, in particular, the following:

(...)

a)

The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

III

Article 4.11 of the RGPD defines express consent as: <<All manifestation of free, specific, informed and unequivocal will by which the The interested party accepts, either by means of a declaration or an affirmative action, the processing of personal data concerning you>>.

Well, the respondent party provided the participants with an acceptance form of data processing that established authorizations. This treatment required register to authorize treatments such as:

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the transfer of the image without limitation of “support, without any limitation territorial or temporary, so the rights are granted for their worldwide and unlimited use.

the sending of commercial communications and the communication of data of the owner to third parties, for the execution of commercial actions by these.

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Include the mobile number in instant messaging and WhatsApp.

All this included in the registration form, without giving the owner of the data to grant or deny your consent.

Recital 42 of the RGPD, indicates that: <<When the treatment is carried out

With the consent of the data subject, the data controller must be able to

to demonstrate that he has given his consent to the processing operation.

In particular in the context of a written statement made about another

matter, there must be guarantees that the interested party is aware of the fact that he gives

your consent and the extent to which you do so. According to the Directive

93/13/CEE of the Council (LCEur 1993,1071), a model of

declaration of consent previously prepared by the person in charge of the

treatment with an intelligible and easily accessible formulation that uses a language

clear and simple, and that does not contain abusive clauses. For the consent

informed, the interested party must know at least the identity of the person in charge of the treatment and the purposes of the treatment for which the data is destined personal. Consent should not be considered freely given when the The interested party does not enjoy a true or free choice or cannot deny or withdraw their consent without prejudice>>.

Well, the defendant, being aware of the facts, has proceeded to modify your form, in this sense you have proceeded to the user must say explicitly yes or no, but in either case you must perform an action. This, however, it does not prevent the infraction from having already been committed.

Bearing the foregoing in mind, it should be noted that the party claimed in its modification of the form, specifically and with respect to the treatment of the image informs of the purpose states: "I expressly authorize the management of my image obtained in the different activities related to LA FECLESS in which participate, as well as its dissemination through web pages, social networks, media etc or any other support, without any territorial limitation nor temporary, so the rights are granted for use worldwide and unlimitedly.

Hence, the violation of the RGPD does not reside only in the inexistence of granting of consent in relation to the different operations of the treatment contained in the form. But for each of those operations does not specify the purpose that is intended to give the data collected.

This prevents the consent from being valid, since to be valid it must comply with all requirements. The aforementioned Recital 42, which indicates that "For consent is informed, the interested party must know at least the identity of the person in charge of the treatment and the purposes of the treatment to which they are intended personal data." And he goes on to state that "a

model declaration of consent previously prepared by the person in charge of treatment with an intelligible and easily accessible formulation that uses a clear and simple language, and that does not contain abusive clauses”, which is not fulfilled in this case by comprising clearly disproportionate treatments.

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In this regard, remember that the consent granted implies powers as broad as the following:

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“Management of my image obtained in the different activities related to with LA FECLESS in which I participate, as well as its dissemination to through websites, social networks, media, etc. either any other support, without any territorial or temporal limitation, therefore that the rights are granted for use throughout the world and unlimitedly”

“Inclusion of my phone number in instant messaging groups or similar applications, and to be able to send messages through these, for the purpose of agilely managing communications and information that may be useful to you.

“Commercialize with the aforementioned images, transfer them or sell them to third parties, as well as manage sponsorships with their image”

The purposes for which consent is obtained are not detailed, and in addition if granted, clearly disproportionate powers are granted for the treatment of the affected data. This violates article 6.1 of the RGPD.

Article 83.7 of the RGPD indicates:

IV

“Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

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

b) direct any person responsible or in charge of the treatment with a warning when treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.

v

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that, respectively, provide the following:

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“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:

- 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;

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.” (The underlining is from the AEPD)”.

In order to specify the amount of the penalty to be imposed on the person claimed for violation

of article 83.5.a) of the RGPD, it is essential to examine and assess whether the

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circumstances described in article 83.2 of the RGPD for which the company is responsible.

claimed party, in an initial assessment, the following are considered concurrent

aggravating factors:

The obvious link between the data controller and data processing (article 83.2 K,

of the RGPD in relation to article 76.2 b, of the LOPDGDD).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and

set it at the amount of €2,000 for the infringement of article 6.1 of the RGPD.

Without prejudice to what derives from the instruction of the procedure, between the powers

corrective measures contemplated in article 58 of the RGPD, in its section 2 d) it is established

that each control authority may “order the person in charge or in charge of the

treatment that the treatment operations comply with the provisions of the

this Regulation, where appropriate, in a certain way and within a

specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In such a case, this Agency may require the person in charge to adapt the processing of personal data carried out in accordance with data protection regulations in accordance with what is indicated in the preceding Legal Basis.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST:

START SANCTION PROCEDURE to FEDERATION

CASTELLANO-LEONESA OF RESCUE AND FIRST-RESISTANCE with NIF G47346416, for the alleged infringement of article 6.1 of the RGPD typified in article 83.5.a) of the quoted GDPR.

SECOND: APPOINT D. B.B.B. as instructor. and as secretary to Ms. C.C.C., indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its attached documentation, the information requirements that the General Subdirectorate of Data Inspection sent to the entity claimed in the preliminary investigation phase and their respective acknowledgments of receipt

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-tubre, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 2,000 euros (two thousand euros), without prejudice of what results from the instruction.

FIFTH: NOTIFY this agreement to the CASTELLANO-LEONESA FEDERATION

OF RESCUE AND FIRST AID with NIF G47346416, granting a period of

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hearing of ten business days to formulate the allegations and present the tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears in the heading of this document.

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 the present procedure. With the application of this reduction, the sanction would be established at 1,600 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 its amount. With the application of this reduction, the sanction would be established at 1,600 euros and its payment will imply the termination of the

process.

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 1,200 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.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 1,600 euros or 1,200 euros, you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

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.

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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 Data Protection Agency

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SECOND: On April 21, 2022, the claimed party has proceeded to pay the sanction in the amount of 1200 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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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions in 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.”

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:

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"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the 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 with each other. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or 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 EXP202104455, of

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

SECOND: NOTIFY this resolution to the FEDERACION CASTELLANO-LEONESA OF RESCUE AND HELP.

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

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