

□ File No.: PS/00313/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated 04/09/2021 filed

So claim before the Spanish Agency for Data Protection. The claim is

directed against FLY FUT, S.L. with CIF B87949400 (hereinafter, the claimed party). The

The reasons on which the claim is based are the following: that his daughter, a minor, plays in a municipal team linked to the City Council of ***LOCALIDAD.1 and federated in the Madrid Football Federation; states that without your consent

Previously, his daughter has been recorded in matches played by an entity that has a agreement with the Madrid Football Federation carrying out data processing without mediate consent or informing the guardians of those affected.

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 LOPDGDD), on 05/06/2021 said claim was transferred to the party called, so that it proceeded to its analysis and inform this Agency within the term of one month, of the actions carried out to adapt to the requirements set forth in data protection regulations.

On 06/06/2021, this Agency received a written response from the claimant noting that in an email dated April 6 they tried to explain to the claimant that his activity life was perfectly in accordance with the data protection regulations in all its points; who had been contracted for the development of a recording service by most of the parents of the team and who treated the data based, among others, on the

legitimacy in the performance of a contract, not on the basis of obtaining consent

parental.

A copy of the Informative Recording Notice agreed with the Federation is provided:

“FLY FUT S.L. WITH ADDRESS FOR THESE PURPOSES IN MADRID, CALLE INFANTA MARIA TERESA 19, 28016 AND THE RFFM INFORM YOU THAT IN THIS VENUE CAN BE CARRIED OUT THE CAPTURE, FIXATION OR RECORDING OF IMAGES (PHOTOGRAPHY, AUDIOVISUAL OR SIMILAR) BY ANY TECHNICAL MEANS NICO, WITH THE PURPOSE OF STORE THE ENCOUNTERS IN AN APP WITH RESTRICTED ACCESS FOR PARENTS, FAMILY MEMBERS OF THE PLAYERS AND CLUB STAFF WHO REQUIRE IT. ALTHOUGH THE PURPOSE OF THIS RECORDING IS THE FILMING OF THE MEETING IN THE ARRIVAL CONDITIONS BA DESCRIBED, WITH YOUR ACCESS TO THE ENCLOSURE VD. HE IS AWARE OF IT AND AUTHORIZES THE RECORDING OF YOUR IMAGE TO THE ROYAL FOOTBALL FEDERATION FROM MADRID AND TO FLY-FUT. WE INFORM YOU THAT SUCH PERSONAL DATA THEY WILL BE PROCESSED BY THE FEDERATION WITH THE PURPOSES DESCRIBED ABOVE. COUGH. YOU MAY EXERCISE YOUR ACTION RIGHTS AT ANY TIME

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CEASE, RECTIFICATION, DELETION, LIMITATION OF TREATMENT, OPPOSITION
ATION AND PORTABILITY OF THE DATA ADDRESSING THE FEDERATION TO
THROUGH EMAIL ***EMAIL.1. ALSO, WE INFORM YOU
THAT, AT ANY TIME, YOU MAY SUBMIT A CLAIM TO
THE SPANISH DATA PROTECTION AGENCY AND/OR REVOKE THE CON-

BORROWED FEELING.”

They also accompany the informative Notice that is placed at the entrances of the fields football, which indicates:

“IN COMPLIANCE WITH REGULATION (EU) 2016/679 (RGPD) AND WITH THE ORGANICA 3/2018, INDICATE THAT WE PROCESS PERSONAL DATA OBTAINING RECORDING PROPERTIES WITH ALL THE LEGAL AND TECHNICAL GUARANTEES INDICATED IN THE APPLICABLE REGULATION.

RESPONSIBLE: COMPANY NAME: FLY-FUT, S.L. (THE ENTITY)

YOU CAN EXERCISE YOUR DATA PROTECTION RIGHTS BEFORE: BEFORE

THE RESPONSIBLE: (I) BY MAIL AT C/ INFANTA MARÍA TERESA 19, 28016

MADRID OR (II) VIA EMAIL TO ***EMAIL.1 WITH THE APPLICATION YOU WILL PROVE YOUR IDENTITY AND THE RIGHT TO EXERCISE THEM RECOGNIZED IN THE REGULATION. (ACCEUSE, RECTIFICATION, SUPPRESSION, LIMITATION, OPPOSITION AND PORTABILITY DAD.)

MORE INFORMATION ABOUT THE PROCESSING OF YOUR PERSONAL DATA:

PURPOSE: SERVE OUR CUSTOMERS IN THE ENGRAVING SERVICE-

CONTRACTED TION. IT IS REPORTED THAT IN THIS CAMPUS YOU CAN TAKE

I CARRY OUT THE CAPTURE, FIXATION OR RECORDING OF IMAGES (PHOTOGRAPHY, AUDIOVISUAL OR SIMILAR) BY ANY TECHNICAL MEANS, WITH THE FINALITY

OF STORING MEETINGS IN AN APP WITH RESPONSIBLE ACCESS

TRINGIDO FOR PARENTS, FAMILY MEMBERS OF THE PLAYERS AND STAFF OF THE CLUB THAT REQUESTS IT. LEGITIMATION: CONSENT OF THE INTERESTED PARTY:

GDPR: 6.1. A) TO BE RECORDED THROUGH USER REGISTRATION IN THE

APP. EXECUTION OF A CONTRACT: RGPD: 6.1.B) FOR COMPLIANCE

OF THE SERVICE CONTRACTED TO THE RECORDING ENTITY OF THE MATCH. Y

THE LEGITIMATE INTEREST OF THE ENTITY. GDPR: 6.1. F) IN POWER DEVELOP-

CALL A THIRD PARTY SERVICE. THE IMAGES, OBJECT OF THE TREATMENT, THEY ARE OBTAINED DIRECTLY FROM THE RECORDING. THEREFORE ONLY THE IMAGE IS CAPTURED. IT IS NOT SUBJECTED TO ANY MODIFICATION PROCESS. SUBSEQUENT FICATION. THE APPLIED SECURITY MEASURES ENSURE THE CONFIDENTIALITY, AVAILABILITY AND INTEGRITY OF THE SAME. ITS-PRESSURE: THE DURATION OF THE TREATMENT WILL BE EXTENDED TO THE DURATION OF THE CONTRACTED SERVICES AND THE DEADLINES ESTABLISHED BY THE APPLICABLE STANDARD. THE DPO IS AUDAT SERIVCES S.L. CONTACT INFORMATION (ADDRESS AND MAIL) INDICATED ABOVE FOR ANY CONSULTATION OR REQUEST CITY. RECIPIENTS: ONLY THE DATA WILL BE TRANSFERRED FOR THE COMPLIANCE OF THE CONTRACTED PURPOSE AND WHEN A STANDARD PROVIDES IT-GA. AS WELL AS TECHNOLOGY SUPPLIERS. ALSO, WE INFORM YOU THAT, AT ANY TIME, YOU MAY PRE-FILING A CLAIM BEFORE THE SPANISH AGENCY FOR THE PROTECTION OF DATA AND/OR EXERCISE ANY OF THE ABOVE RIGHTS. EVEN MORE INFORMATION IN OUR PRIVACY POLICY OF OUR WEB. ***URL.1.”

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THIRD: On 06/08/2021 the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 09/01/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infraction.

tion of article 6.1 of the RGPD, sanctioned in accordance with the provisions of article 83.5.a) of the aforementioned RGPD.

FIFTH: Once the aforementioned initiation agreement has been notified, the person claimed by means of a 09/08/2021 I request to be received at the Agency's headquarters by the instructor of the process.

On 09/17/2021, the respondent filed a written statement reiterating the arguments already exposed in previous writings, once again providing extensive documentation, and incorporating more than 30 annexes of supporting documentation.

SIXTH: On 01/14/2022, the instructor of the procedure agreed to open a period of practical tests, agreeing on the following:

- Consider reproduced for evidentiary purposes the claims filed by the re-claimant and its documentation, the documents obtained and generated by the Services Inspection documents that are part of the file.
 - Consider reproduced for evidentiary purposes, the allegations to the pre-initiation agreement sat by the claimed and accompanying documentation.
 - Request the claimed, a copy of the contract signed with the parents of the players for the recording of the matches or, the consent of the parents of the games.
- doras for the recording of the matches.

The legal authorization so that the recorded images of the football matches soccer, under the form of a drone, are disseminated and can be exploited economically. you through the company's computer application.

The claimant's consent to the recording of his daughter's image for the purpose of to be disseminated through the application of the entity.

The authorization, agreement, agreement, etc. with the City Councils of ***LOCALIDAD.2 and ***LOCATION.1 to carry out both in the Municipal Sports Center ***POLIDE-

PORTIVO.1 as in the Municipal Sports Center ***SPORTS CENTER.2, places where

the parties are celebrated, the recordings of the same ones.

The agreement or arrangement adopted with the Madrid Federation for internal transparency training in relation to the recording of match images.

Weighting carried out by the respondent to combine the interest of the entity respect to the interests, freedoms and fundamental rights of minors who have been recorded.

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- Request the following information from the City Councils of ***LOCALIDAD.2 and ***LOCALIDAD.1

training: If the facilities where the football matches of the league of the

Madrid Football Federation, women's league, in its various categories, are holders

municipal authority? If they have authorized the company FLY-FUT, S.L. recording with

drones the matches of the teams that play in the fields where the games are held

football matches of the Madrid Football Federation league, women's league, me-

are you old? If the City Councils and the company FLY-FUT, S.L. have signed any

type of agreement, agreement, etc., for the recording of football matches, especially

soccer games in the women's league, minors? If the municipalities

have received from the Madrid Football Federation an explanatory email or any other

communication in which the service designed by the company Fly Fut, S.L.

for the recording of matches?

- Apply to the Royal Madrid Football Federation: Yes, within the federative umbrella

are the women's 7-a-side football competitions in whose competition-league they participate

bread and the teams of the municipalities of ***LOCALIDAD.2 and ***LOCALIDAD.1;

explanatory email or any other communication addressed to the clubs of ***LOCALIDAD.2 and ***LOCALIDAD.1, or to the respective City Councils, in which present and publicize the service designed by the company Fly Fut, S.L.; legal basis of in accordance with article 6.1 of the RGPD by which the Federation supports the treatment processing of the data of the minors who participate in federated competitions by recording with drones in order to obtain compensation in return or the consent of the parents or guardians of the minors who participate in federated competitions in order that their images be recorded in the football matches in which they participate, by means of or under the modality of drone and in order for the Federation to obtain financial compensation.

On dates 01/31/2022, 02/09/2022, 02/23/2022, both the claimed, the City Councils of ***LOCALIDAD.2 and ***LOCALIDAD.1 as the Real Federación de Fútbol de Madrid responded to the tests carried out, the content of which is in the file.

SEVENTH: On 03/14/2022, a Resolution Proposal was issued in the sense that by the Director of the AEPD, the person claimed for infraction of article 6.1 will be sanctioned. of the RGPD, typified in article 83.5.a) of the RGPD, with a fine of €3,000 (three thousand euros).

Once the period indicated has elapsed, the defendant did not present any written allegation.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST. On 04/09/2021 there is an entry in the AEPD written by the claimant; claims her-petition is directed against the defendant and the reasons on which it is based are that his daughter, a minor, plays in a municipal team linked to the City Council of ***LOCALIDAD.1 and federated in the Madrid Football Federation; that without mediating his con-feling or authorization has been recorded to his daughter in games played by the company

FLY FUT club that claims to have an agreement with the Madrid Football Federation

club carrying out data processing without consent or informing the tu-

tors of those affected.

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SECOND. The claimant has provided a copy of his ID.

THIRD. The claimant has provided a copy of the registration document for Courses

Schools and Sports Areas of the Soccer Club ***LOCATION.1, City Hall of

***LOCATION.1 as well as the minor's registration document, federative record,

in the Real Federation of Soccer of Madrid.

At the end of this last document, a Legal Notice is included, which indicates the following-

text:

"In accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament,

people and of the Council, of April 27, 2016, regarding the protection of natural persons

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

these data, Organic Law 3/2018, of December 5, on the Protection of Personal Data

rights and guarantee of digital rights and other current Spanish regulations, and respec-

your data as a federated you are informed that they are treated to carry out en-

requested charge, based on article 6.1.b RGPD (contractual relationship). In case

of minors under 14 years of age, the undersigned, in this act, declares to have sufficient capacity

to consent to this data processing, as provided in article 7.2 of the LO-

PDGDD. We will treat your image and/or voice based on the legitimate interest of the Federation.

ration, as provided in article 36.b) of Law 15/1994, of December 28 of the De-

portion of the Community of Madrid. Your data will be transferred whenever there is a legal obligation, as established in article 6.1.e) RGPD (legal obligation)..."

FOURTH. The respondent in writing dated 07/06/2020 has stated that: "The entity develops professional match recording services through technology

DRONE. We are a very recently created company that offers its clients the recording service of football matches, for viewing, in a private space do, only for registered users, through an App owned by the Entity".

FIFTH. Law 15/1994, of December 28, on Sport in the Community of Madrid drid, in its article 36 b) states that "The Sports Federations of the Community of Madrid, under the coordination and supervision of the competent body of the Administration Sports of the Community of Madrid, will exercise the following functions:

a) Qualify and organize, where appropriate, official sports activities and competitions.

them

of the Community of Madrid.

b) Promote, in general, its sports modality or modalities throughout the territory of the Community of Madrid.

(...)

SIXTH. There is evidence of a contract signed by the respondent with the Royal Federation of Futbol de Madrid, dated 11/26/2020, constituting its object "the authorization by part of the Federation that the claimed party can contact the clubs and/or associations sports associations attached to the Federation that participate in the official competitions held by the Federation for the sale of its services.

Fly Fut will offer clubs and/or sports associations attached to the Federation a

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drone match recording service These matches will be delivered to subscribers

through our mobile application in two formats:

-Video summary: ...

-Full match...".

The Second Stipulation: Obligations of the respondent (Production of automated recordings)

diovisuals with drones)

(...)

2.5 The claimed party agrees to make the payments detailed in Clause

Quarter".

The Third Stipulation. Commitments of the Federation, establishes that:

1. The Federation undertakes to validate an express authorization for the taking of

images in the federative headquarters.

2. The Federation undertakes to authorize the recording of matches organized by

itself (selections, league finals, RFFM Cups) and will allow access to the

after the federation when the activities of the FEDERATION are carried out that

are the subject of this Agreement and which may be recorded by FLY

FUT.

3. The FEDERATION undertakes to present the FLY FUT service to the clubs

those who are going to offer the service through an explanatory email, designed by the pro-

seer, as long as both parties agree with its content.

In the Fourth Stipulation. Economic Compensation, it is established that:

4.1 As compensation for the collaboration established in this Contract, FLY FUT

will pay the FEDERATION in accordance with this Contract, a combination of amounts

fixed and variable..."

And in the Eighth. Data Protection, it is established that:

"8.2 It is hereby stated that, given the nature of the contract, neither party

will be considered as data processor for the other party, since

Each of the parties will be responsible for their own data processing and the

compliance that derives from such consideration".

SEVENTH. Document provided AGREEMENT ADOPTED FOR THE TAKING OF

IMAGES IN FEDERAL HEADQUARTERS, adopted by representatives of the claimed and

the RFMF in which it is indicated:

"After an agreement between the RFMF and the claimed party and in order to be able to give a better

service to soccer leagues and players participating in federative leagues

organized by the RFMF, the respondent will make an audiovisual recording of the matches of

football, taking pictures (photo and video) through drom technology. In case of

record someone who has not previously assigned their rights, the claimed

undertakes to pixelate or cut said recording and is responsible before

any claim of any individual in this area.

The RFMF states that it has been informed and is satisfied that the company

claimed with registered office in ...carry out the aforementioned actions.

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For which the claimed party declares release from all responsibility to the installation and

their internal charges for any fact or circumstance that arises during the

development of said activity and that has to do directly with the development of the

activity itself and may compromise the physical integrity of those present, the

civil and/or patrimonial responsibility of the facilities”.

EIGHTH. There is no evidence provided by the claimed contractual document signed with the parents of the players for the recording of the matches, nor the consent of

the parents of the players for the purpose of recording the matches, nor

There is evidence of the claimant's consent for the recording of the image of his daughter with in order to be disseminated through the application of the entity.

NINETH. The City Council of ***LOCALIDAD.1 in writing of 01/31/2022 has

informed that he has not authorized any recording with drones on the soccer field and

that it has not signed any agreement or arrangement with the person claimed for the recording

of football matches, although, "the RFFM has informed the council at the time

of sports of the agreement with the claimed for the taking of images in the venues

federations of children's category. In the agreement document between the respondent and the

RFFM releases responsibility to the sports facility and specifies that

"In case of recording someone who has not previously transferred their images, the

claimed agrees to pixelate or cut said recording and is responsible

before any claim of any individual in this area”.

TENTH. The City Council of ***LOCALIDAD.2 in writing of 02/08/2022 has informed

that at no time has recording of any kind been authorized, nor has

signed any agreement, agreement, etc., with the claimed and less for the recording

of football matches, especially women's league football matches,

minors, and that he is not aware that the RFFM has sent an explanatory email or

any other communication in which the service designed by the

claimed for the recording of matches.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of 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 guarantees Digital Rights Agency (hereinafter, LOPDGDD), the Director of the Spanish Agency Spanish Data Protection Authority is competent to initiate and resolve this procedure.

unto

Article 63.2 of the LOPDGDD determines that: «The procedures processed two 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 regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.».

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It should be noted that the physical image of a person, pursuant to article 4.1 of the RGPD, it is a personal data and its protection, therefore, is the object of said Regulation. Article 4.2 of the RGPD defines the concept of "treatment" of data personal.

It is, therefore, pertinent to analyze whether the processing of personal data (image of natural persons) carried out through the video recording denounced

It is in accordance with the provisions of the RGPD.

Article 5, Principles related to treatment, of the RGPD establishes in its section 1 that:

"1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed further.

riorly in a manner incompatible with said purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in-

public interest, scientific and historical research purposes or statistical purposes are not considered

will be incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization");

d) accurate and, if necessary, updated; All reasonable steps will be taken

ble to delete or rectify without delay the personal data that are ine-

accurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the interest

sado ("retention period limitation");

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

For its part, article 6, Legality of the treatment, of the RGPD establishes that:

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

nes:

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

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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 data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

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

sado be a child.

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

by public authorities in the exercise of their functions.

(...)"

Also article 7 of the RGPD, Conditions for consent, establishes

that:

"1. When the treatment is based on the consent of the interested party, the responsible must be able to demonstrate that he consented to the treatment of his data. personal cough.

2. If the data subject's consent is given in the context of a declaration written that also refers to other matters, the request for consent is pre-will be laid out in such a way that it is clearly distinguished from other matters, in an intelligent way. legible and easily accessible and using clear and simple language. It will not be binding any part of the declaration that constitutes an infringement of these Regulations.

(...)

And article 4 of the RGPD, Definitions, in sections 2 and 11, states that:

"2) «processing»: any operation or set of operations carried out about personal data or sets of personal data, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction".

"11) «consent of the interested party»: any manifestation of free will, is-specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern".

III

1. The agreement to initiate the sanctioning procedure attributed the claimed an alleged infringement of article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD and qualified by the LOPDGDD in its article 72.1.a), for the purposes of prescription, very serious offence.

The allegedly infringing conduct attributed to the defendant is specified in the treatment without legitimation of minors, federated players belonging to to the children's category of soccer 7, among which is the daughter of the claimant, me- by recording through drone technology and subsequent viewing by the registered users through the application property of the claimed images

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without having the consent for their treatment or any other authorization that legitimize it.

The documentation in the file shows that the defendant violates article 6.1 of the RGPD, since I treat personal data without the concurrence None of the conditions provided for in the rule essential for the treatment lying is lawful.

It should be noted that in accordance with the provisions of article 6.1 of the RGPD, data processing requires the existence of a legal basis that legitimizes it, in particular, when the affected party gave his explicit consent for one or more of the specified purposes, when necessary for the performance of a contract in which the affected party is a party or for the application, at his request, of pre-contractual measures them, or when necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that said interests the interests or the fundamental rights and freedoms of the affected party do not prevail. do that require the protection of such data. The treatment is also considered lawful. when it is necessary for the fulfillment of a legal obligation applicable to the rest.

responsible for the treatment, to protect the vital interests of the affected party or of another person.

physical nature or for the fulfillment of a mission carried out in the public interest or in the exercise cycle of public powers conferred on the data controller.

2. The association of a soccer player, in this case a female player, with a club is done by formalizing a commitment known as an instrument.

encryption. The federative file is the official document issued by the Federation and that enables a soccer player to practice this sport as a federated player and also for his reglamentary line-up in both official and unofficial matches and tournaments.

The minor's federal license document was provided by the claimant.

and, in it, the authorization of her parent is recorded, including at the bottom of it,

data protection clause: "In accordance with the provisions of Regulation (EU)

2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the

protection of natural persons with regard to the processing of personal data

them and the free circulation of these data, Organic Law 3/2018, of December 5, of

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current Spanish, and regarding your data as a federated you are informed that they will be treated

two to carry out the requested task, based on article 6.1.b RGPD

(contractual relationship). In the case of minors under 14 years of age, the undersigned, in this act, de-

clearly have sufficient capacity to consent to this data processing, such as

Article 7.2 of the LOPDGDD provides. We will process your image and/or voice based on

in the legitimate interest of the Federation, as provided in article 36.b) of the Law

15/1994, of December 28 of the Sport of the Community of Madrid. Your data will be

assigned whenever there is a legal obligation, as established in article

6.1.e) RGPD (legal obligation)...".

In addition, in article 1.3 of Book I of the R.G. of the RFFM provides that "To the

effects provided for in Regulation (EU) 2016/679 of the European Parliament and of the Con-

Council of April 27, 2016, regarding the protection of natural persons in what
regarding the processing of personal data and the free circulation of these data and
repealing Directive 95/45/CE (General Data Protection Regulation)

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cough) and by Organic Law 3/2018, on the Protection of Personal Data and guarantee of

digital rights, the Real Madrid Football Federation regarding the data

of all the people who, as directors, belong to entities

sports associations that are integrated into the Royal Madrid Football Federation,

who, due to their sports activity, are issued a federative license by this or any other

Any other person who, for whatever reason, is collected and for the treatment of

cough must comply with the provisions of article 6 RGPD "Legality of the treatment".

In the first place, in accordance with the clause included in the federal record

legitimizing bases for the treatment of the data of the minor would be the ar-

Article 6.1.b) which establishes that the treatment is necessary for the execution of a

contract in which the interested party is a party or for the application at the request of the latter of me-

pre-contractual measures; that is, the data of the minor as federated should be

treaties to carry out the task requested in the federative record.

In this way, in the same sheet it is stated that: "By virtue of what is established

in article 43.1 of the General Regulations of the RFMF, and knowing my current situation

freedom, I sign together with the aforementioned club, my Regulatory Commitment-

Registration form, for the seasons indicated."

Article 43.1 of Book III of the General Regulations of the RFMF establishes that:

"1. In the same way and under the conditions set forth in article 33 of the present Book, each club will be able to register and line up up to 4 or 8 footballers from the categories rias: "DB"/"FDB", "PB"/"FPB", "B"/"FB", "AL"/"FAL", "I"/"FI" and "C"/"FC", depending if the modality is soccer seven or soccer eleven respectively, in competitions for the age immediately above, even if they do not have a team competing in those categories, provided that said players are in the last year of their license. For the teams of the seven-a-side football modality (male), may register in the minutes and feed near four (4) footballers in each match".

Secondly, the data could also be processed under the provisions of the established in article 6.1.f) which states that The treatment is necessary for the satisfaction tion of legitimate interests pursued by the data controller or by a third party, provided that said interests do not prevail the interests or rights rights and fundamental freedoms of the interested party that require data protection personal, in particular when the interested party is a child, referring to the citation gives clause to the treatment of the image and/or voice based on the legitimate interest of the Federation, by virtue of what is stated in article 36.b) of the Sports Law of the CAM thus fulfilling the functions entrusted to it, among them the one of organization of sport competitions and to promote the modality or modal-sports activities in its territory, in this case soccer.

Finally, the data could be transferred when there is a legal obligation to in accordance with article 6.1.e) RGPD that establishes that "the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller".

However, regardless of what is stated in the federative record, the base legitimacy of the RFMF for the treatment of the data is determined in the article Article 6.1.e) which establishes that "the treatment is necessary for the fulfillment of

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a mission carried out in the public interest or in the exercise of public powers conferred two to the data controller”.

And in this same sense, reference must be made to the LOPDGDD in its article 8, Data processing due to legal obligation, public interest or exercise of powers public, which states:

"1. The processing of personal data can only be considered based on the compliance with a legal obligation required of the person in charge, in the terms provided in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a standard of European Union Law or a rule with the force of law, which may determine the general conditions of the treatment and the types of data object of the same as well as well as the transfers that proceed as a result of compliance with the obligation legal tion. Said rule may also impose special conditions on the treatment such as the adoption of additional security measures or other establishments given in Chapter IV of Regulation (EU) 2016/679.

2. The processing of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of powers data conferred on the controller, under the terms provided in article 6.1 e) of the Regulation (EU) 2016/679, when derived from a competence attributed by a regulation ma with the rank of law”.

And the law 15/1994, of December 28, of the Sport of the Community of Madrid, it establishes in its article 36, Functions, in its section b) the following:

“The Sports Federations of the Community of Madrid, under the coordination

tion and guardianship of the competent body of the Sports Administration of the Community of Madrid, will exercise the following functions:

(...)

b) Promote, in general, its sports modality or modalities in the entire territory of the Community of Madrid.

(...)"

Therefore, it must be guaranteed that the treatment must have its legitimate basis-ra and purpose in the law of the EU or that of the Member States.

And in this sense, Recital 45 states:

“(45) When it is carried out in compliance with a legal obligation applicable to the responsible for the treatment, or if it is necessary for the fulfillment of a real mission carried out in the public interest or in the exercise of public powers, the treatment must have a basis in the law of the Union or of the Member States. The present Re-

The regulation does not require that each individual treatment be governed by a specific rule.

One standard may be sufficient as the basis for several data processing operations.

data based on a legal obligation applicable to the controller, or if the

Treatment is necessary for the fulfillment of a mission carried out in the public interest.

public or in the exercise of public powers. The purpose of the processing must also

determined under the law of the Union or of the Member States. Also,

such rule could specify the general conditions of this Regulation

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by which the legality of the processing of personal data is governed, establish specifications

tions for determining the data controller, the type of personal data

data subject to treatment, the interested parties affected, the entities to which

communicate the personal data, the limitations of the purpose, the term of con-

preservation of the data and other measures to guarantee lawful and fair treatment.

It must also be determined under the law of the Union or of the Member States.

bro's if the person in charge of the treatment that carries out a mission in the public interest or in the

exercise of public powers must be a public authority or other natural or legal person.

of public law, or, when it is done in the public interest, including health purposes.

such as public health, social protection and the management of health services,

of private law, as a professional association".

3. However, the RFMF and the respondent signed an Agreement on 11/26/2020

of Audiovisual Collaboration by which it authorized the respondent to contact

with sports clubs and associations attached to the Federation and that participated in

their competitions for the sale of their services, among which is that of gra-

bation of matches using the drone technique.

The Federation undertook to validate express authorization for the taking of

images in the federative headquarters, authorize the recording of matches organized by

her through official competitions, allow access to the federative fields

when matches organized by her were developed and present the service developed

lled by the claimant transferring to the clubs and associations explanatory e-mail designed

paid by the claimed.

In exchange, the defendant undertook to make the payments agreed by the city.

authorization, a kind of combination of fixed and variable amounts.

It is true that the City Council of ***LOCALIDAD.2 at the request of the

The Agency has indicated that it is not aware that the RFFM had sent an explanatory email

or any other communication in which the claimed service is presented for the

match recording; although it is also the case that the City Council of ***LOCALIDAD.1

pointed out the opposite, that the RFFM informed the sports department at the time of the agreement reached for the taking of images in the federative headquarters of the category children's health and that in the agreement reached the installation was relieved of responsibility. sports relationship and that if someone who had not given their images was recorded, the claim made promised to pixelate or cut said recording.

According to the defendant at the entrance to the fields where they are going to ce-

When preparing the matches of the competition, the ex-document is placed in a visible way.

plicative of the agreement adopted and in which it is indicated:

“After an agreement between the RFMF and the claimed party and in order to be able to give a better service to the soccer leagues and to the players participating in the federative leagues. organized by the RFMF, the requested party will make an audiovisual recording of the matches soccer, taking pictures (photo and video) through drom technology. In case of record someone who has not previously assigned their rights, the claimed party commits promises to pixelate or cut from said recording and is responsible for any re-claim of any individual in this area.

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The RFMF states that it has been informed and is satisfied that the company the respondent with registered office in ...carry out the actions mentioned above-you give.

For which the claimed party declares that it releases the installation from all liability.

tion and their internal charges for any fact or circumstance that arises during

during the development of said activity and that has to do directly with the development of the activity itself and may compromise the physical integrity of those present there. the civil and/or patrimonial responsibility of the facilities”.

In light of what is stated in the aforementioned document, it seems evident that the claim he had not assigned his rights since he had not granted any authorization.

not for her daughter to be recorded or her image photographed or videotaped.

4. The claimed as the RFMF hold according to the eighth clause contained in the contract the condition of data controller.

Therefore, in this case, the respondent is responsible for processing the data.

data carried out, since it is who has decided on the processing of data

of the players, among which is the claimant's daughter, who

is responsible for determining the purposes and means for the treatment, as well as establishing

Take the technical and organizational measures that guarantee the security of the data.

In addition, you must be able to demonstrate compliance with the RGPD and the LO-

PDGDD, make sure to keep the evidence that justifies the treatment of the

data for the established purposes, being responsible for proving consent,

where appropriate, or the documents that prove the purposes and legality of the treatment; Yes

want to enlist the help of a treatment manager or if you decide to carry out the treatment

data processing itself, etc.

Transferring these considerations to the case at hand, it should be noted that

the treatment carried out by the claimed party has no legal basis in any of

the legal bases alleged or contained in article 6.1 of the RGPD.

The respondent, both in his response to the request for information prior to the

agreement to initiate the procedure, as in the allegations to said agreement and the

training provided in the probationary period, has stated that the treatment of

data of minors does not have to be based solely on the existence of the con-

sentiment, but can be made on the basis of contract or legitimate interest.

In the first place, the respondent has not accredited the consent of the parents.

guardians for the treatment of the data of the minor, nor of any of the minors who were recorded and their images disseminated through viewing through the application developed by the entity through the payment of a price by registered customers. brought.

It should be noted that the consent given must be a consent specific lie; that is to say, a consent that is given with character would not be valid. general ter without determining the specific purpose for which the data will be processed. data to be collected.

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Article 6.1.a) of the RGPD indicates it when it grants consent the character ter of legitimizing basis of the treatment if it has been granted for one or more specific purposes. specific and connecting it with article 7 of the RGPD, it is established that the person in charge must be able to demonstrate that the interested party consented to the processing of their data and that, for consent to be valid and specific, it must be intelligent. so that it is clearly determined which data is going to be processed. what will be the treatment operation to be carried out and what is the purpose for which it is intended to perform that operation with that data, etc.

Secondly, the respondent has argued that: our activity is perfect fully in accordance with the data protection regulations, in all its points. As we have been contracted for the development of a recording service by the majority

of the team's parents. And that we treat the data based on the legitimacy of the fulfillment of a contract. Not based on obtaining the consent of all parents.

However, such a statement cannot be accepted; as stated in the facts proven the claimed, for the purpose of accrediting consent for the grabation of the matches in which the minor players participate has not provided any evidence to prove it.

And it is that one thing is the authorization or consent for the recording of matches and taking photos and video in which the images of the minors and other very different is the access to the application of the entity, carried out by the parents of the players by paying a price for viewing in a private space as registered users, of the matches recorded through DRON technology, services that are professionally developed by the claimant. application or platform in which the player's own mother registered, accepted the terms us and conditions and privacy policy and that later I request the withdrawal for not being in agree with it.

Finally, the respondent also invokes in his allegations as a legal basis of the treatment of the data of minors the legitimate interest regulated in the article 6.1.f) and the prevalence against the fundamental rights and freedoms of minors.

So that the treatment of the personal data of the claimant carried out by the defendant could be based on the legal basis contemplated in article 6.1.f) GDPR should comply with the assumptions that make up that provision.

The first of them, that the treatment was necessary to satisfy an interest rés legitimate persecuted by the person in charge of the treatment; which I transfer to the assumption that concerns us implies that the processing of personal data carried out by the claimed through the recording of the image of the minor pursued to satisfy a

material benefit. Second, that "the interests pursued do not prevail-

can on the interests or the fundamental rights and freedoms of the interested party that require the protection of personal data.

Determine if the treatment that the claimed person made of the claimant's data through the recording carried out is or is not adjusted to Law requires making a judgment

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weighting of the interests and rights at stake to derive from it if should or should not prevail over the right to obtain an economic benefit, a gain economic finance, the claimant's right to privacy.

Recital 47 of the RGPD says, regarding the legitimate interest as a basis legal treatment of personal data of third parties:

"The legitimate interest of a data controller, including that of a data controller, entity to which personal data may be communicated, or of a third party, may constitute a legal basis for the treatment, provided that the interests or interests do not prevail. rights and freedoms of the data subject, taking into account reasonable expectations of the interested parties based on their relationship with the person in charge. Such legitimate interest could occur, for example, when there is a relevant and appropriate relationship between the in-interested party and the person in charge, such as in situations in which the interested party is a client or is at the service of the person in charge. In any case, the existence of a legitimate interest would require careful evaluation, even if a stakeholder can reasonably anticipate reasonable, at the time and in the context of the collection of personal data, which processing may occur for that purpose. In particular, the interests and rights

interests of the interested party could prevail over the interests of the person in charge of the treatment when the personal data is processed in circumstances instances in which the interested party does not reasonably expect a treatment to be carried out. subsequent lie. Since it is up to the legislator to establish by law the legal basis for the processing of personal data by public authorities, this legal basis should not apply to processing carried out by public authorities in the exercise of their functions. The processing of personal data strictly mind necessary for the prevention of fraud also constitutes a legitimate interest of the data controller in question. The processing of personal data for direct marketing purposes can be considered carried out for legitimate interest.”

The weighing judgment also requires examining the necessity and suitability or relevance of the data that were processed by the claimed party with respect to the purpose pursued, obtaining an economic interest.

In this context, it seems contrary to the principle of necessity and proportionality. ity the treatment carried out by the claimed party of the data of the claimant's daughter.

In addition, it cannot be ignored that the claimant has no relationship with the cried out; that the recipients of the recording are clients who, in exchange for a price privately view the images obtained, regardless of whether they are private or not. dres of the players; reasons why the treatment should not have occurred do.

Therefore, it can be concluded that the processing of data concerning the claimant made by the defendant on the occasion of the recording of the competitive matches in which the claimant's daughter participates lacks legitimacy for it and that attended the circumstances that concur in the owner of the data and the context in which that the recording takes place, it is considered prevailing, your right to privacy against to the legitimate interests of the respondent.

Regardless of the foregoing, it must be remembered that regardless

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of the legitimating bases adduced by the defendant, in the posters that located the entry of the fields, it was indicated that “In case of recording someone who has not ce- previously granted their rights, the claimed party agrees to pixelate or cut di- this recording and is responsible for any claim of any parti- in this area.”, which contradicts the presumed basis relative to the interest you are legitimate”

Consequently, the conduct of the defendant supposes the violation of article 6.1 of the RGPD, when processing personal data without any legitimate basis that enabled the aforementioned treatment.

IV

The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of “the basic principles for treatment, including the conditions for consent under the ar- Articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article. Article 83 of the aforementioned Regulation, “with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum amount of the global total annual turnover of the previous financial year, opting- I know for the highest amount”.

The LOPDGDD in its article 71, Violations, states that: “They constitute violations tions the acts and behaviors referred to in sections 4, 5 and 6 of article 83

of Regulation (EU) 2016/679, as well as those that are contrary to this law

organic”.

And in its article 72, it considers for prescription purposes, which are: "Infringements

considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

entail a substantial violation of the articles mentioned therein and, in particular,

ticular, the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions

legality of the treatment established in article 6 of the Regulation (EU)

2016/679.

(...)

v

In order to establish the administrative fine to be imposed, they must observe

The provisions contained in articles 83.1 and 83.2 of the RGPD, which indicate:

"1. Each control authority will guarantee that the imposition of the fines

in accordance with this article for infringements of these Regulations.

indicated in sections 4, 5 and 6 are in each individual case effective, proportionate

tioned and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

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of each individual case, in addition to or as a substitute for the measures contemplated

in 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

they 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 data controller or data processor.

taking into account the technical or organizational measures that they have applied in vir-

tude 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

gave 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, paragraph 2, have been ordered

nothing previously against the person in charge or the person in charge in question in relation

with the same matter, compliance with said measures;

j) 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 obtained or losses avoided, direct or indirect.

straight, through the infraction”.

I lie;

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its ar-

Article 76, “Sanctions and corrective measures”, establishes that:

“two. In accordance with the provisions of article 83.2.k) of the 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 treatments

of personal data.

commission of the offence.

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

e) The existence of a merger by absorption process after 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 delegate.

h) The submission by the person in charge or person in charge, voluntarily

beneficiary, to alternative conflict resolution mechanisms, in those cases in which

which there are controversies between them and any interested party.”

cough.

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In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of a fine to im-
put in the present case for the infringement typified in article 83.5 of the RGPD of the
that the defendant is responsible, in an initial assessment, they are estimated concurrent
the following factors:

Aggravating circumstances are:

- The nature, seriousness and duration of the infraction, taking into account the na-
nature, scope or purpose of the treatment operation in question as well as
the number of interested parties affected and the level of damages suffered
fried; It must not be forgotten that the infringement of the principle of legality is one of the most serious
contemplated by the legislation on data protection; In addition, you have to
take into account the number of treatments and people affected by the misconduct

Fracturer, because although there is only one claimant, the number of people affected by
the recording of your image is numerous (article 83.2, a) of the RGPD).

- The intention or negligence in the infringement; because even if you don't have
evidence that he had acted with intent the action reveals a serious lack of diligence
cia (article 83.2, b) of the RGPD).

- The categories of personal data affected by the infringement,
since we are dealing with the processing of personal data of minors
age (article 83.2, g) of the RGPD).

- Linking the activity of the offender with the performance of treatments
of personal data. The development of the activity carried out by the defendant requires
re a processing of personal data of both people who are the object of grievances
bation as of the clients (article 76.2.b) of the LOPDGDD in relation to the article
83.2.k).

- The profits obtained as a result of committing the offence,

since the recording of the images is the reason that causes access to the application.

tion of the entity, made by registered customers for viewing through

the payment of a price (article 76.2.c) of the LOPDGDD in relation to the article

83.2.k)..

Based on these factors, it is considered appropriate to propose a sanction of

3,000 euros.

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 FLY FUT, S.L., with CIF B87949400, for an infraction of the

article 6.1. of the RGPD, typified in article 83.5.a) of the RGPD, a fine of 3,000

euros (€3,000).

SECOND: NOTIFY this resolution to FLY FUT, S.L.

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THIRD: 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, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

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 in the name of the Spanish Agency
Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of
Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is
is between the 1st and 15th of each month, both inclusive, the term to carry out the
voluntary payment will be until the 20th day of the following month or immediately after, and if
is between the 16th and last day of each month, both inclusive, the term of the
payment will be until the 5th of the second following month or immediately after.

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

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

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

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended 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 city
tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation
documentation that proves the effective filing of the contentious-administrative appeal
vo. If the Agency was not aware of the filing of the contentious appeal-
within a period of two months from the day following the notification of the
This resolution would terminate the precautionary suspension.

Sea Spain Marti

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