

□ Procedure No.: PS/00156/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated April 30, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are that the website foro Naranja.es is a blog in which the name and surnames of the claimant and their condition have been published of "(...)" on William Hill, including a screenshot of his Linkedin profile.

The events occurred on October 26, 2019 and the link to the publication claimed is [https://foro Naranja.es/\(...\)-williamhill/](https://foro Naranja.es/(...)-williamhill/).

SECOND: On June 26, 2020, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the claimant.

THIRD: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the

responsible for the treatment is the claimed.

In addition, the following extremes are noted:

Request made to the Public Business Entity RED.ES, responsible for the management of the first level Internet domain “.es”, on the ownership of the domain “foro Naranja.es”, dated July 20, 2020, a written response to the requirement informing that the owner of the referred domain is the claimed one.

#### FOURTH

Or: On May 21, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the C/ Jorge Juan, 6  
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alleged infringement of articles 6 and 13 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,

SEX

This resolution is issued taking into account the following:

FACTS

FIRST: On the foro Naranja.es website, the name and surname of the claimant and his status as "(...)" at William Hill, including a printout of screen of your profile on LinkedIn.

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

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGDPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this process.

II

Article 6.1 of the RGDPD establishes that for the treatment to be lawful, it will be required that the interested party of his consent for the processing of his personal data for one or various specific purposes.

Article 4 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 and the free circulation of these data (Regulation General Data Protection, hereinafter RGDPD), under the heading "Definitions", provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

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2) “processing”: any operation or set of operations performed on data

personal information or sets of personal data, whether by automated procedures or

no, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of authorization of access, collation or interconnection, limitation, suppression

or destruction;”

Therefore, in accordance with these definitions, the collection of personal data

personal through forms included in a web page constitutes a treatment of

data, with respect to which the data controller must comply with the

provided for in article 13 of the RGPD.

In relation to this matter, it is noted that the Spanish Data Protection Agency

has at the disposal of citizens, the Guide for the fulfillment of the duty to inform

(<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of

carry out low-risk data processing, the free tool Facilitates

(<https://www.aepd.es/herramientas/facilita.html>).

In this sense, article 4.11 of the RGPD defines the "consent of the interested party" as

Any manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you.

For its part, article 7.1 of the RGPD establishes that “when the treatment is based on the consent of the interested party, the person in charge must be able to demonstrate that the consented to the processing of your personal data.

In this line, article 6 of the LOPDGDD establishes that in accordance with the provisions in article 4.11 of Regulation (EU) 2016/679, consent of the affected any manifestation of free, specific, informed and unequivocal will by the that he accepts, either through a declaration or a clear affirmative action, the processing of personal data concerning you.

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

"1. When personal data relating to him is obtained from an interested party, the person in charge of the treatment, at the moment in which these are obtained, will provide you with all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of his representative;
  - b) the contact details of the data protection delegate, if any;
  - c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment.
- treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
  - e) the recipients or categories of recipients of the personal data, if any;
  - f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision on the adequacy of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or the article 49, paragraph 1, second paragraph, reference to adequate guarantees or

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appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to ensure fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- b) the existence of the right to request access to the data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any moment, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which refers to article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and the foreseen consequences of said

treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent in which the interested party already has the information”.

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

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

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

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for profiling, the basic information will also include this circumstance. In this case, the affected must be informed of their right to oppose the adoption of individual decisions

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automated that produce legal effects on him or significantly affect him in any way similarly, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

### III

In the present case, the claim focuses on the fact that on the website [https://foro Naranja.es/\(...\)-williamhill/](https://foro Naranja.es/(...)-williamhill/) the name and surname of the claimant and his status as "(...)" at William Hill without his consent, or any other cause of legitimacy for the treatment of those established in article 6 of the GDPR.

It is also stated that the website [https://foro Naranja.es/\(...\)-williamhill/](https://foro Naranja.es/(...)-williamhill/) does not have a privacy policy in accordance with data protection regulations, which prevents the claimant to know the address where to exercise the rights recognized in the RGPD.

The defendant has not presented any allegation within the period given for it after the agreement of initiation of this sanctioning procedure, for which the facts are considered known constituents of two infractions attributable to the defendant.

A first infringement for an alleged violation of article 6 of the RGPD, for the processing of the claimant's personal data without their consent, or any other cause of legitimacy for the treatment of those established in article 6 of the GDPR.

And another second infraction for the alleged violation of article 13 of the RGPD, for lack the website of an adequate privacy policy, lacking the requirements required for the claimant to be able to exercise their rights.

### IV

Article 72.1 b) and h) of the LOPDGDD states that “according to what is established in the article 83.5 of the RGPD, are considered very serious and will prescribe after three years the



infractions that suppose a substantial violation of the articles mentioned in

that and, in particular, the following:

b) 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.

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this organic law.”

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Each infraction can be sanctioned with a fine of €20,000,000 maximum or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate each sanction to be imposed in accordance with the

following criteria established by article 83.2 of the RGPD:

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As aggravating the following:

In the present case we are dealing with unintentional, but significant, negligent action.

☐

you identified (article 83.2 b)

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Basic personal identifiers are affected -image- (art 83.2 g)

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 B.B.B. with NIF \*\*\*NIF.1, for an infraction of article 6 of the RGD, typified in article 83.5 of the RGD, a fine of 5,000 euros (five thousand euros).

SECOND: IMPOSE B.B.B. with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGD, typified in article 83.5 of the RGD, a fine of 4,000 euros (four thousand euros).

THIRD: NOTIFY this resolution to B.B.B. with NIF \*\*\*NIF.1

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

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

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

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

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

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

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

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

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

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

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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

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

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

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

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

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

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

aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the

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

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

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

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

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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