

□ Procedure No.: PS/00299/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: FIRST: Mrs. A.A.A., Mr. B.B.B., Mr. C.C.C., Mrs. D.D.D., Mrs. E.E.E.

(hereinafter, claimants) dated 10/08/2019, 11/21/2019, 11/21/2019,

12/03/2019 and 01/13/2020, respectively, filed claims with the Agency

Spanish Data Protection. The writings are directed against ING BANK N.V.,

BRANCH IN SPAIN, with NIF W0037986G (hereinafter, the claimed).

The reasons on which they base their claims are basically that when trying to install

the ING BANK app on their mobile devices, it is mandatory to request the

access to device data, which means that the entity may have access to

data of third parties and not only their own.

SECOND: After receiving the claims, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 11/27/2019, the claim submitted was transferred to the defendant for analysis

and he was required so that within a month he sent to the determined Agency

information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent incidents from occurring

Similar.

- Any other that you consider relevant.

On the same date, the respondent replied that the data of the claimant, said information being necessary to proceed with the analysis of the complaint and proceed to its resolution.

The request was reiterated on 01/21/2020, the respondent indicated that when downloading the application asks the client for permission to access their location; this permission does not it is mandatory so if the download is not granted you can continue; only in those cases in which the client wants to make use of a service that requires knowing your location (location of an ATM) permission will be required; as soon as to the access to the storage of the client's device it is pointed out that the wording of this has not been done by ING but by the device's own operating system mobile; access is required unintentionally to everything the user stores on your device but exclusively to the password that is necessarily stored in the device and that allows verifying the identity of the user.

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THIRD: On November 23, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5.1.c) of the RGPD, article 13 of the RGPD, typified in the article 83.5 of the RGPD.

FOURTH: On May 8, 2021, a resolution proposal was formulated, proposing the following:

That the Director of the Spanish Data Protection Agency sanction

ING BANK N.V., SUCURSAL EN ESPAÑA, with NIF W0037986G, for an infringement of article 5.1.c) of the RGD, typified in article 83.5 a) of the RGD, a fine of €50,000 (fifty thousand euros).

That the Director of the Spanish Data Protection Agency sanction

ING BANK N.V., SUCURSAL EN ESPAÑA, with NIF W0037986G, for an infringement of article 13 of the RGD, typified in article 83.5 b) of the RGD a fine of €50,000 (fifty thousand euros).

FIFTH: On May 31, 2021, arguments are presented to said proposal

resolution by the respondent stating that:

“The requested permissions are associated with functionalities offered in the application for which they are necessary, that third-party data is not processed without the user thus decides totally freely and unconditionally and that the information provided to users was transparent, it was available to them prior to downloading the application and complied with all the requirements demanded by the protection regulations of data”.

(...)

“Access to files is to facilitate user management and improve the application experience.”

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The application of the claimed entity compulsorily requests the access to the data of the mobile devices where it is installed, which means that the entity may have access to third party data and does not provide the required information in terms of data protection - article 13 RGD - when downloading the

app.

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SECOND: The entity claimed alleges that the application does not access any information contained in the mobile devices of its clients, unless the user so required, either for carrying out an activity that leads to their identification through passwords or because you carry out some management for which you want to put disposition of the requested entity any information or document housed in its terminal.

THIRD: On May 31, 2021, arguments are presented to the proposal of resolution proving that the requested permits are associated with functionalities offered in the application, not processing data from third parties without the user so decides completely freely and unconditionally.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD 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 to resolve this procedure.

II

Article 5, Principles relating to processing, states that:

"1. The personal data will be:

(...)

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

(...)

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality").

(...)"

III

Second, article 13 of the RGPD determines the information that must be be provided to the interested party at the time of collecting their data, establishing the

Next:

"Article 13. Information that must be provided when personal data is obtain from the interested party.

1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

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a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis

of the 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 the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating 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 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 in

any time, 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 necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information

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about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing

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 on that other purpose and any additional information relevant under paragraph 2.

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

IV

In the present case, after studying the arguments presented, it is considered that the conduct of the claimed party does not violate article 5 of the RGPD, which regulates the principles related to the treatment, materialized in that the personal data that are required to put the application into operation, after proving that it is not necessary for the installation of the application access to personal data stored by users on the device.

In relation to article 13 of the RGPD, through the allegations of May 31, 2021, it has been verified that the respondent duly informs the claimant about the accesses, who are well informed about the conditions of use of the application, explaining the need for access and its purpose.

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Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to the claimant and claimed.

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 to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

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

Contentious-Administrative, within two months from the day after

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

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