 File No.: PS/00241/2022

RESOLUTION OF SANCTIONING 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 claiming party) dated March 9, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against IBERCAJA BANCO, S.A. with CIF A99319030 (in

below, the claimed party). The reasons on which the claim is based are the following:

following:

Due to the processing of a family inheritance, the claimed entity provided the

details of the claimant and her minor children to the lawyer for the rest of the

joint heirs, who drew up a private document of property partition from which the

claimant was unaware of its existence and in which the data of it and its

children. Therefore, to know the origin of the data contained in said document,

requested IBERCAJA access to his data and that of his children, on February 17,

2021, receiving a partial response from the entity, on March 8, 2021.

Likewise, it files a claim against the entity claimed for the opening of a

account, for the disposition of inheritance funds, in the name of his minor son

age, without the knowledge or consent of the claimant (legal representative).

It also indicates the transfer of your personal data, those of your children, and those of your husband

deceased, including ID, family book, death certificate of her husband, and

bank account of the claimant to the family representative of the rest of the heirs

who in turn delivered these to ***COMPANY.1, with which the deceased person

had taken out life insurance, without the prior knowledge or consent of the

claimant for this assignment and treatment.

Along with the claim, the following is provided:

- Private document of acceptance and partition, signed by all of them and where

they reflect the specific adjudications to be made and their conformity to the aforementioned distribution. This

document is made with the personal data of all co-heirs and

signed by all except the claimant on behalf of her two children

minors.

- Documentation accrediting the exercise of the right of access before IBERCAJA.

- Partial response provided by the representative of IBERCAJA.

- Documentation accrediting the exercise of the right of access before ***COMPANY.1

dated February 22, 2021.

- Payments of the liquidation of the death insurance in the current accounts of the

minors with dates of January 25, 2021.

- Response from IBERCAJA to the claim presented by the claimant indicating

that your entity does not transfer data to third parties outside the legal services

existing.

- Email sent to the claimant by the family lawyer stating that

the data was provided by IBERCAJA and that with them the sheet of

application for distribution of assets.

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

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

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established 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 01/28/2022 as stated in the

acknowledgment of receipt in the file.

On May 17, 2021, this Agency received a written response

indicating that the shares of the investment fund awarded to each heir

as a consequence of the inheritance they had to be transferred to each one of them with the

net asset value that they had on the date of death, to avoid

originate tax capital gains, and, subsequently, each heir to dispose of them

under a separate securities account you decide when you want to redeem them. For

This required the opening of an administration and custody account

(securities account) in the name of each heir. Also, the claimed entity

argues that it is necessary, for operational reasons, that said securities account

has linked a savings account with identical ownership as support of

debits and credits. In the accounts of the children of the claimant, the claimant appears as

disponent, since he is his legal representative. Finally, they report that

Currently, the private document of acceptance and partition of the

deceased person's estate signed by all heirs except for the

claimant, on behalf of his two minor children. This is the reason

whereby, to date, even though the necessary accounts for the distribution of

of the adjudications of the aforementioned inheritance, have not been able to materialize.

THIRD: On August 6, 2021, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

The claimed party states that the claimant, through her lawyer, on the date

September 30, 2020, requests to process the testamentary of the deceased person

for the disposition of his assets by his heirs and sends for this the

documentation that has been presented in the General deputation of Aragon. Although

It is not specified in this writing what types of documents, it follows that they have been

the identification documents of the claimant and her minor children.

However, the lawyer for the claimant states, in a brief presented in this

Agency dated April 24, 2022 that provided IBERCAJA with the data

of the claimant and her minor children in order to obtain the

certificates of bank balances of the deceased person and to be able to manage the

acceptance of the inheritance.

It is inferred, therefore, that the claimant transferred her data and that of her children to the entity

IBERCAJA. However, the controversy arises about the purpose for which

yielded, their treatment, and the possible recipients.

Regarding the right of access before the claimed

According to the documentation provided by the claimant, she exercised the right of access

before IBERCAJA on February 17, 2021 requesting:

(i) Copy of the personal data that is the object of treatment,

(ii) The purposes of the treatment and the categories of personal data that are processed, and

(iii) The recipients or categories of recipients to whom your

data including, where appropriate, recipients in third parties or organizations

international.

On March 8, 2021, this entity sent the claimant the data

identification, contact, financial, and current positions held with that

entity. However, not all of the information requested by the

claimant and collected in article 15 of the GDPR.

Regarding the treatment of the data of the defendant and her minor children

It is verified that the data of the minors were processed by the entity IBERCAJA

to open bank accounts in your name.

A copy of the document reflecting the consent was requested from the IBERCAJA entity

granted by the claimant for the treatment of the data of her minor children, with

on February 16, 2022, this Agency received a written statement of allegations

stating that the authorization or consent of the claimant is not available,

in the name and representation of their children, for the opening of the aforementioned accounts, and

reiterate, that the opening of the securities accounts and associated checking accounts were

necessary, and are part of the procedures to be carried out for the distribution and adjudication of estate of the deceased person.

They add that the claimant, through her lawyer, on September 30, 2020, requests the processing of the testamentary of the deceased person for the disposition of their assets by their heirs and sends for this the documentation that has been submitted to the Aragon Provincial Council to settle the percentage of participation in the estate of the deceased person in favor of the children of the claimant.

The claimed party attaches to its statement of allegations a copy of the resolution of the National Stock Market Commission to the claim made by the claimant for the same facts.

This document, among other statements, states:

"that an essential document for the processing of the testamentary is the document of acceptance and partition of the inheritance. So financial institutions They will not be able to proceed with the adjudication of the assets they have in deposit if they do not receive the distribution document, public or private, but, in any case, accepted by all heirs. In the case that concerns us, it has been recognized by both parties that the estate of the deceased is blocked in the phase prior to the distribution of the hereditary flow due to lack of supply of the corresponding document of acceptance and partition of the inheritance accepted for all heirs."

Regarding the securities accounts and checking accounts created prior to the consent of acceptance and distribution of the inheritance, in this resolution, the CNMV notes:

“[…] prior to carrying out the change of ownership of the

financial instruments acquired mortis causa, it is necessary that the

beneficiaries have open securities accounts in their name, with the same

holders who are awarded the assets subject to the inheritance -of

Shared ownership in the event that the inheritance is maintained pro indiviso or

individualized ownership in the event that it proceeds to the distribution of the same- for

that the adjudicated values be deposited in them, accounts that will be well

in the same entity or in a different one. That is, nothing prevents the actions

foreclosed are deposited in a securities account opened in another entity

other than the one that makes the adjudication, proceeding to carry out the

adjudication and transfer of securities in the same act […] However, in the

in the event that what was acquired by title mortis causa were shares of investment funds

investment as occurs in this case, to be able to adjudicate and transfer the

shares acquired from another entity (change of dealer) must

verify that the other entity sells those same shares, which

It doesn't always happen."

And they conclude in this regard that according to the statements of IBERCAJA "[...] said

accounts were not active but in a preliminary state, pending acceptance

by the headlines. Based on what has been said, you state that you found the

accounts in the "unfinished business" section on your web profile".

Regarding the claimant's request for cancellation of the disputed accounts

On behalf of his children, the CNMV states in this resolution:

"It has been proven that on August 6, 2021 you expressly requested in

his letter before the SAC the cancellation of the three pre-prepared accounts for being

dissatisfied with them. However, the entity has proven that it did not cancel

the accounts until October 6, 2021, so we consider that there was a

unjustified delay of approximately two months in attending to your

petition."

In addition, in the expansion of the claim dated July 28,

2021 corresponding to the request for allegations sent by the BANK OF

SPAIN (hereinafter, BdE) to IBERCAJA due to a claim filed by

the claimant before the regulator, IBERCAJA states in its SECOND allegation "In

Consequently, we have no record in this entity that he has given an order that

the balances corresponding to your children are transferred to accounts opened in your name

in other entities, or if your preference will be to open new accounts for minors in

Ibercaja."

In this sense, according to the criteria of the BdE expressed in the chapter "Criteria of the

Department of Market Conduct and Claims" of its annual report of

2018 published in 2019, in point 9.2.7 "How to dispose of the funds"

(regarding the processing of an inheritance), states in the first paragraph:

" […] the heirs must instruct the entity regarding the way in which

they want the funds to be delivered to them, logically based on their

needs and interests —cash, transfer or transfer, bank check, etc.,

without it being possible in any case for the entity to impose the means of disposal."

and later

"In the same way, in the cases in which the claimants have argued that,

In order to dispose of the inheritance funds, the entity required them to open

of a current account in the entity, this DCMR has stated that, since for

The opening of a current account must have the express consent of

both parties (entity and client), such imposition is not adjusted to the good

practices, also recalling that, once the testamentary file has been resolved,

It is your obligation to make available to the heirs the funds deposited in the

entity, in the manner in which they determine and in accordance with the awards

established.”

Attached to the file, as an associated object, is the chapter "Criteria for the

Department of Market Conduct and Claims" of the annual report of

2018 of the BdE.

Notwithstanding the foregoing, it is verified as stated in the document

previously mentioned, that these accounts were opened by IBERCAJA without

consent or knowledge of the claimant.

From the actions carried out and the information obtained, the inspection concludes the following:

following:

- Regarding the possible transfer of data: Given the contradictions of all the

interested parties and the lack of documents evidencing the facts, it has not been possible

determine with certainty which party provided the data. However, the entity

***COMPANY.1 did not inform the claimant of the origin of the data at any time

that he dealt with for the liquidation of the death insurance of the deceased.

- Regarding the right of access: It is verified that the claimed party did not

responded to the exercise of the claimant's right of access in the terms

contemplated in article 15 of the GDPR, despite the fact that the claimant requested it expressly in those terms. Especially important could be the breach of point c of this article since your data could have been transferred to third parties.

- Regarding the treatment of the data of the defendant and her minor children: as regards Regarding IBERCAJA, it is verified that for the distribution and adjudication of assets of the estate of the deceased person, it is necessary to open accounts in the name of the heirs Nevertheless:

1. Based on the resolution of the CNMV, the opening of these accounts would not have necessarily to be carried out in the same entity as the deceased holder, but rather It could be done in any other financial entity at the choice of the heirs for current accounts and, for the adjudication of the securities that appear in the inheritance of the deceased person, in another financial entity that commercialized this values. It is also necessary to point out a greater loss for the claimant, which these accounts were opened at the IBERCAJA branch in ***LOCATION.1 (TERUEL) while the claimant and her children have their residence in SARAGOSSA.

2. Given that the document of acceptance and adjudication of the inheritance is not signed by all the heirs, or their legal representatives, and, therefore, this adjudication is blocked, no justification is found for the opening of the controversial accounts and the processing of personal data of minors who this has entailed

3. It has also been verified that these accounts were opened, even in a state preliminary, without informing the mother of the minors or obtaining her consent signed, contrary to the criteria expressed by the BdE and what is established in the article 7 point 2 of the LOPDGDD. It must be emphasized that, although these

accounts were not active, as indicated in the pleadings of

IBERCAJA and in the resolution of the CNMV, the treatment without the consent of the

personal data of minors and their inclusion in the information systems of

IBERCAJA was also produced, being the state of the accounts a mere

operational question.

For all the above, possible violations of the regulations of

data protection in the treatment of the data of the minor children of the company

claimant since the latter, as legal guardian of the minors, was not informed of the

processing of these data nor was your consent obtained. For more abundance,

the treatment was totally unnecessary as inheritance was blocked and it was not possible to

execute the sharing agreement.

FIFTH: On June 6, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

pursuant to the provisions of articles 63 and 64 of the LPACAP, for the alleged

violation of article 15 of the GDPR and article 6.1 of the GDPR, typified in article

83.5 of the GDPR

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

the LPACAP, the claimed party submitted a pleading in which, in summary,

stated the following:

1.- In its first allegation, the defendant argues that the infringement of Article 15

would be prescribed since more than a year has elapsed from the moment

in which the infringement occurred (03/08/2021) until the moment in which it is notified
the agreement to start the disciplinary procedure (06/07/2022).

2.- Next, the claimed party practically reproduces in its entirety the
arguments given during the transfer process, understanding that the violation of the
Article 6 is not such since the opening of the accounts in the name of the son of the
claimant is necessary for the processing of the inheritance and that it was requested
by the claimant's attorney on September 30, 2020. Insists that the
opening of bank accounts was necessary for the processing of the inheritance and
that, even if he later wanted to transfer it to another bank, it was
an essential prior step since the affected investment fund is only
marketed by the claimed party. He goes on to explain that the
distribution of the inheritance because the defendant has not signed the document of
acceptance of the same but yes, specify, the request for processing in the entity
banking and it is for this last reason that the accounts were opened with the
in order to expedite the procedures as much as possible. It also informs that, in the
Currently, said accounts are canceled at the request of the claimant,
but, he clarifies, they must be opened again when the parties reach an agreement
for the distribution of the inheritance.

For all of the foregoing, the claimed party concludes that there has been no infringement
of article 6.1 of the GDPR since the claimant requested through her lawyer the
probate processing for disposition of funds.

SEVENTH: On August 2, 2022, a resolution proposal was formulated, in the
that a response was given to the allegations presented and the imposition of a
sanction for the violation of article 6 of the GDPR, granting a new term for the
presentation of allegations and filing of the violation of article 15.

In response to the allegations presented by the respondent entity against the

initiation agreement, the following was indicated in the proposal:

1.- In relation to the first of the allegations regarding the prescription of the

infringement of article 15 of the GDPR, we proceed to estimate it.

2.- In relation to the second of your allegations, as the party has already indicated

claimed reproduces practically in its entirety the arguments given during the

transfer process, without these being understood as justifications for the actions

made by the bank since it does not meet the requirements established in

Article 6 of the GDPR. And this because, as stated in the initiation agreement,

even when the remission of documentation by the

representative of the claimant for the request of the bank balances, has not been

provided in no case an express request for the processing of the testamentary or

proof of communication of accurate information on the necessary procedures

for this or request for informed consent for the processing of data by

part of the bank to the now claimant.

EIGHTH: On August 11, 2022, a writing of

allegations of the defendant against the proposed resolution in which, in summary,

adduces the following:

The defendant begins her writing by reiterating her disagreement with the infringement charged

insisting that the data processing obeys the request for processing of the

probate issued by the claimant's attorney and, therefore, was

legitimized to carry it out when it is necessary to open the accounts. Insist on the

need to open said accounts to be able to award the shares

corresponding to the inheritance to the children of the claimant, not having completed

said adjudication process due to the lack of signature of the complainant of one of the

documents necessary to carry out the distribution, due to discrepancies with the rest of the

heirs as to the amounts to be distributed.

Next, it alludes to the criteria of the National Securities Market Commission

(CNMV) that the shares of an investment fund must be awarded

initially to the heirs in the entity of origin, not being able to proceed to the

transfer of the same to another entity without the prior adjudication in the aforementioned

source entity.

He continues his letter stating that the criteria of the Bank of Spain to which he makes

reference to the claimant are not applicable in this case since they refer to

other aspects of the probate, and must be addressed only with respect to the

investment funds as stated by the CNMV

Likewise, it shows that the data of the claimant's children has already been

were in the Ibercaja systems prior to the opening of the accounts

now controversial.

All of the above leads you to conclude that there has not been a violation of the article

6 of the GDPR since the claimant had requested the processing of the

probate for the disposition of funds being irrelevant, from his point of view

view, the fact that the distribution of assets is blocked due to the lack of

consent of the claimant.

Finally, it requests that, in the event that the infringement is considered to have been committed,

take into account as mitigating the lack of intentionality of the claimed, the

absence of benefits and the fact that the accounts were canceled at the request of

the claimant.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The IBERCAJA entity has opened bank accounts,

even in a preliminary state, without informing the mother of the minors or seeking her

specific and unequivocal consent.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, 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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

In relation to the allegations presented in response to the proposed resolution,

make the following considerations:

II

1.- In relation to the repeated affirmation that the opening of the accounts responds

to the request for probate processing, it is insisted that it does not imply

per se that the entity can use all the data in its possession to

any purpose but it is necessary to have the informed consent for the

treatment of the same in the specific purposes for which they were provided.

Likewise, it is reiterated that there is no evidence in the file that the

by the entity to accurately communicate the data claimant

that were going to be treated to carry out the necessary procedures to proceed

manage a testamentary that, in any case, as has been shown, was not

possible to carry out because they did not have the necessary permits for this purpose

since all the heirs have not reached an agreement nor act, therefore, this one, in power

of the bank.

Subsequent references to the criteria of the CNMV or the Bank of Spain

relating to the need to allocate the shares of an investment fund to the

heirs in the entity of origin are, thus, irrelevant since in the present

file it has been revealed that the necessary requirements are not met

in order to understand that legitimate processing has occurred. And this because not

informed consent has been produced by the claimant for the

treatment of your data and those of your minor children nor do the rest of the

the assumptions of article 6.1 of the GDPR that would allow this to occur.

II

In relation to the alleged infringement of article 15 of the GDPR, as it was established
manifest in the initiation agreement, in the present case it has been considered that the
It would fall within the assumption contained in article 74.c) of the LOPDGDD,
since the claimed party responded to the party's request for access
claimant, even if it was incomplete, and there has not been a
absolute disregard of the right of access (lack of response) which would constitute the
infringing type included for the purposes of prescription in article 72.1.k) of the LOPDGDD
and this because, as the AN stated in its Judgment of June 18, 2009, the lack of
response to access requests configures the full obstruction of the
right of access, which has not occurred in this case.

IV.

Article 6.1 of the GDPR establishes the assumptions that allow the use of
processing of personal data.

“a) the interested party gave his consent for the processing of his 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 processing is necessary for compliance with a legal obligation applicable to the
responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of 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 conferred on 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 outweigh the interests or fundamental rights and freedoms of the

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 apply to the treatment

carried out by public authorities in the exercise of their functions."

In turn, article 6.1 of the LOPDGDD, indicates, on the treatment of data

based on the consent of the affected party that: "1. In accordance with

provided in article 4.11 of Regulation (EU) 2016/679, it is understood by

consent of the affected any manifestation of free, specific,

informed and unequivocal by which he accepts, either by means of a declaration or a

clear affirmative action, the processing of personal data concerning him (…)".

Thus, the fact that the now claimant had provided her personal data to the

entity claimed to obtain bank balances, does not allow said

entity its treatment for other purposes, such as the creation of how much

bank in the name of one of his minor children.

Likewise, article 6.2 of the LOPDGDD indicates, regarding the treatment based on the

consent, that:

"2. When it is intended to base the processing of data on the consent of the

affected for a plurality of purposes, it will be necessary to clearly state

specific and unequivocal that such consent is granted for all of them."

Known facts about the processing of personal data are constitutive

of an infraction, attributable to the claimed party, for violation of article 6 of the

GDPR mentioned, since there is no free and informed consent for the treatment of

personal data for the purposes for which they were processed, nor does any

another legitimizing base of those contemplated in said article.

The infringement for which the claimed party is held responsible in the present

procedure is typified in article 83 of the GDPR which, under the rubric

“General conditions for the imposition of administrative fines”, states:

"5. Violations of the following provisions will be penalized, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

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

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

amount:

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

consent in accordance with articles 5,6,7 and 9.”

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1.

very serious infringement, in this case the limitation period is three years, "b)

The processing of personal data without the fulfillment of any of the conditions of

legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

V

In accordance with the available evidence, it is considered that the

facts exposed suppose a violation of the provisions of article 6.1 of the

GDPR, since it processed the personal data of the complaining party and their children

minors without their express consent to do so.

SAW

In order to establish the administrative fine that should be imposed, the following

provisions contained in article 83 of the GDPR, which states:

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

administrative proceedings under this article for violations of this

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

effective,

deterrents

provided

and

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

individual case, in addition to or in lieu of 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 shall 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

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 and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

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 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

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to 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."

Regarding this last section k) of article 83.2 of the GDPR, the LOPDGDD, article

76, "Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of 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 data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party."

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of

fine to be imposed on the entity claimed as responsible for a violation of the

provided in article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR,

The following factors are considered concurrent in this case:

As aggravating factors:

- The intentionality or negligence of the infringement (article 83.2.b, GDPR), given that the

The claimed party processed the personal data of the claiming party and their children both

previously and after confirming the will of the claimant for the

cessation of their treatment.

In this regard, it is necessary to cite the Judgment of the National Court of October 17,

2007 (rec. 63/2006), which indicates, in relation to entities whose activity carries out

coupled with continuous processing of customer data, that: "(...) the Supreme Court

has understood that imprudence exists whenever a legal duty is neglected

of care, that is, when the offender does not behave with the required diligence. AND

In assessing the degree of diligence, special consideration must be given to the

professionalism or not of the subject, and there is no doubt that, in the case now examined,

when the activity of the appellant is constant and abundant handling of data from

personal character must be insisted on the rigor and exquisite care to adjust to the

legal provisions in this regard.

- The evident link between the business activity of the defendant and the

treatment of personal data of clients or third parties (article 83.2.k, of the GDPR

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

- The affectation of the rights of minors (article 83.2.k, of the GDPR in relation to

with article 76.2.f, of the LOPDGDD).

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 100,000

€ for the violation of article 6 of the GDPR typified in article 83.5 a) GDPR and

72.1b) of the LOPDGDD.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited, the Director of the

Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE IBERCAJA BANCO, S.A., with NIF A99319030, for a

violation of article 6.1 of the GDPR, typified in article 72.1.b) of the LOPDGDD and

in article 83.5 of the GDPR, a fine of €100,000 (ONE HUNDRED THOUSAND EUROS) and

ARCHIVE the violation of article 15 of the GDPR, typified in article 74.c) of the

LOPDGDD.

SECOND: NOTIFY this resolution to IBERCAJA BANCO, S.A..

THIRD: Warn the penalized person that they must make the imposed sanction effective

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

art. 98.1.b) of the LPACAP, within the voluntary payment period established in art. 68 of the

General Collection Regulations, approved by Royal Decree 939/2005, of 29

July, in relation to art. 62 of Law 58/2003, of December 17, through its

income, indicating the NIF of the sanctioned and the number of the procedure that appears in

the heading of this document, in the restricted account no. ES00 0000 0000

0000 0000 0000, opened in the name of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

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

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from
count 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
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 for in article 46.1 of the
referred Law.

Finally, it is noted 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 through
writing addressed to the Spanish Data Protection Agency, presenting it through
of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-
web/], or through any of the other registries 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 proceedings within a period of two months from the day following the
Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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