

□ File No.: PS/00615/2021

IMI Reference: A56ID 173563- Case Register 182067

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) on December 19,
2020 filed a complaint with the German data protection authority
Brandenburg. The claim is directed against OPEN BANK, S.A., with NIF
A28021079 (hereinafter, OPENBANK). The reasons on which the claim is based are
the following:

website

The complaining party opened a bank account in the

<https://www.openbank.de>

(whose manager is OPENBANK) sending the

necessary documentation to open it by email. After this he sent

a request to exercise your right of access to your data by email. TO

this request by the complaining party, they answered in an email in which

they asked for a copy of his identity document in order to meet his request.

Then, the complaining party, arguing that postal mail provided more security,

sent a certified letter to the address of OPENBANK in Madrid with a copy of

your identity document and giving your email address as a reference

and your IBAN account number. After this, the complaining party states that it has not

received a response to your request.

The first request for access was made on November 13, 2020, and the submission of the

Certified letter with a copy of the DNI is dated November 30, 2020.

Along with the claim, it provides (in German language):

- Copy of the contract with the signing date of November 13, 2020 and with appearance

signature of the complaining party and two representatives or attorneys of OPENBANK

in which the following data related to the claimant appears: IBAN,

identity document number, name and surname, handwritten signature,

nationality, date of birth, professional activity, mailing address

email, mobile number and address.

- Copy of Declaration of Fiscal Residency that contains the residence data and the

Tax ID number of the complaining party dated November 13, 2020.

- Screenshot of an email dated November 30, 2020 and sender

datenschutz@openbank.com in which, in response to an email from the party

claimant dated November 18, 2020, a copy of the front and

back of your identity document in order to identify you in order to give you

access to your personal data.

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SECOND: Through the "Internal Market Information System" (hereinafter

IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the

Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the

cross-border administrative cooperation, mutual assistance between States

members and the exchange of information, as of January 6, 2021, had input

in this Spanish Data Protection Agency (AEPD) the aforementioned claim. He

transfer of this claim to the AEPD is carried out in accordance with the provisions in article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Physical Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (hereinafter, GDPR), taking into account its cross-border nature and that this Agency is competent to act as main control authority, given that OPENBANK has its registered office and sole establishment in Spain.

The data processing that is carried out affects interested parties in various Member states. According to the information incorporated into the IMI System, of In accordance with the provisions of article 60 of the GDPR, they act as "Concerned supervisory authority" in addition to the German data protection authority data from Brandenburg, the authorities of Luxembourg and Portugal and the authority German Berlin, all of them under article 4.22 of the GDPR, since the Data subjects residing in that Member State are affected or are likely to that are substantially affected by the treatment object of the present procedure. The authorities concerned also declared themselves German Baden-Wurttemberg, Hesse and Lower Saxony, by virtue of the fact that the Data subjects residing in those Member States are likely to be substantially affected by the treatment object of this procedure.

THIRD: On February 23, 2021, the AEPD requests, through the IMI System, the German Brandenburg Data Protection Authority additional information on the claim, at least the translation of the claim, the request for the right of access and the copy of the supposed unencrypted email received.

The Brandenburg data protection authority shared via IMI, on the day August 31, 2021, the following documentation: email copy sent by the complaining party, in response to a request for information,

in which he provides the following documentation:

- Declaration of the complaining party in which it indicates that the way to request

login does not seem appropriate since you are sending the request from your

email address, which OPENBANK already knows because it was declared when opening

your bank account, and you understand that extra identification would not be necessary.

- Screen print of the personal data of the OPENBANK account of the

complaining party (according to what the complaining party declares) in which

You can see that the email account is the same from which the party

claimant sent the request for access to their data (according to the impression of

screen of the e-mail provided by the complaining party along with their

claim).

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- Copy of the letter, with the appearance of a stamp (two-dimensional barcode) of

Deutsche Post dated November 30, 2020, addressed to “Open Bank S.A. in

Paseo de la Castellana, 24 – 28046 – Madrid (SPANISH)”, with number

***REFERENCE.1, indicating that you have chosen to send the data by email

postal for security reasons and gives your email address as a reference

email and your IBAN. Attached to this copy is a copy of the identity document of the

claimant on both sides.

FOURTH: On October 6, 2021 in accordance with article 64.3 of the

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

guarantee of digital rights (LOPDGDD), the claim was admitted for processing

submitted by the complaining party.

FIFTH: The General Sub-directorate of Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and of the powers granted in article 58.1 of the GDPR, and of in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

Response to the request for information presented on behalf of OPENBANK with entry registration O00007128e2100044804, with entry in the AEPD on November 2, 2021, which provides, among other things, the following information:

1. Statement that OPENBANK has requested a copy of the DNI or document equivalent because it considers that identification must be reinforced when request access to data by email; and justify this decision by indicating who have followed the recommendation to request a copy of the DNI or document equivalent in cases where there may be doubts about the identity of the requesting person; recommendation that appears in the form for the exercise of rights published by the AEPD and in the frequently asked questions on its website, and in the frequently asked questions on the website of the Data Protection Authority of Bavaria (Bayerisches Landesamt für Datenschutzaufsicht).
2. Statement that the claiming party signed the contract electronically through an SMS-OTP authentication code on November 13, 2020.
3. Statement that, on November 13, 2020, they receive an email in name of the complaining party, from an electronic address other than the one registered, indicating that you do not consider email to be a safe medium and requests that they enable a safe space to load the

documentation on the website of the defendant; and it is indicated that it will not accept that it be

I recorded you by phone.

4. Statement that, on December 13, 2020, they receive an email

of the complaining party in which it indicates that it has made a request for access to

your personal data by fax. And a copy of this email is provided.

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5. Statement that, on January 11, 2021, due to the fax received on behalf of

the complaining party, an email was sent to the complaining party indicating

ways to access your data. And a copy of this email is provided

email sent from incidencias@openbank.es to the email of

the claiming party with the following content in the Spanish and German languages:

Dear Mr. A.A.A.:

In relation to your claim with number ***REFERENCE.2 referring to the

documentation to qualify for access rights, we want

inform you that we inform you that you can exercise your right of access by

the following means:

- In the private part of the web, once identified with your Document of

Identity and password, accessing the "Personal Data" section of

your profile, in the option "Right of Access and Portability"

- Contacting by telephone with the telephone number +49 (0) 69 945 189 175, and

identifying yourself with your signature key.

- Sending the request by email from the email address

email that we have registered in our database to

datenschutz@openbank.com, attaching a copy of your document

identity on both sides

- Sending the application by postal mail with a handwritten signature and attaching

also a photocopy of your identity document. This letter can

send to: Open Bank S.A., Privacy Paseo de la Castellana 24, 28046, Madrid

Without another particular, we take the opportunity to greet you very attentively.

Sincerely, Incident Service

For your convenience, Openbank provides you with a translated copy of this document.

into your local language, for information purposes note that the official version of the

The response of this Claims and Customer Service Service is the

present letter, which appears in Spanish and which prevails, in case of

discrepancy, about translation into local language:

Sehr geehrter Herr A.A.A.:

In Bezug auf Ihre Beschwerde mit der Nummer ***REFERENCE.2 bezüglich

der Documentation zur Ausübung des Auskunftsrechts möchten wir Sie

darüber informieren, dass Sie ihr Auskunftsrecht auf folgende Weise ausüben

können:

- im Kundenbereich, nachdem Sie sich mit Ihrem Personalausweis und Ihrem

Password identifiziert haben, indem Sie in Ihrem Profil den Abschnitt

"Persönliche Daten" unter the Option "Recht auf Zugang und Übertragbarkeit"

aufrufen.

- Contacts Sie uns telefonisch under +49 (0) 69 945 189 175, and

identifizieren Sie sich mit Ihrem Signaturschlüssel.

- Senden Sie den Antrag per E-Mail, von der in unserer Datenbank

registrierten E-Mail Adresse an datenschutz@openbank.com und fügen Sie

eine Kopie beider Seiten Ihres Personalausweises bei.

- Senden Sie den Antrag per Post mit handschriftlicher Unterschrift und fügen

Sie zusätzlich eine Fotokopie Ihres Personalausweises bei. Dieser Brief kann

Gesendet werden an: Open Bank S.A., Privacy Paseo de la Castellana 24,

28046, Madrid (SPAIN)

Sollten Sie diesbezüglich weitere Fragen haben, stehen wir Ihnen gerne zur

Verfügung.

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Mit freundlichen Grüßen

Reklamationsdienst

6. Statement that, as a consequence of this claim, having been

the complaining party has been identified through the supervisory authority, the

made available to the complaining party their data in their private area of the site

OPENBANK website and has been notified by email. and it is contributed

copy of an email in German dated 10/29/2021 sent from

datenschutz@openbank.com to the email address of the party

claimant indicating, among other information, that he has the

information stored about you in the Personal Data section

("Persönliche Daten") from your profile in the customer area of the Openbank website.

The existence of the email dated November 13, 2020 from the party

claimant, from an electronic address other than the one registered, indicating

that he does not consider email to be a secure medium and requests that they enable

a secure space to upload documentation on the OPENBANK website and indicates that he will not accept being recorded by telephone, it could not be verified after carrying out the investigative actions as it was not provided by any of the parts.

SIXTH: On January 3, 2022, the Director of the AEPD adopted a project decision to initiate disciplinary proceedings. Following the established process in article 60 of the GDPR, that same day this draft decision and the authorities concerned were informed that they had four weeks from that time to raise pertinent objections and motivated. Within the term for this purpose, the control authorities concerned shall not presented pertinent and reasoned objections in this regard, for which reason it is considered that all authorities agree with said draft decision and are linked by it, in accordance with the provisions of section 6 of article 60 of the GDPR.

This draft decision, which was notified to OPENBANK in accordance with the rules established in Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (LPACAP), was collected on January 4 of 2022, as stated in the acknowledgment of receipt that is in the file.

SEVENTH: On June 28, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate sanction proceedings against OPENBANK in order to issue a warning, in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of Article 15 of the GDPR, typified in Article 83.5 of the GDPR, in which it is indicated that you have a period of ten days to present allegations.

This startup agreement, which was notified to OPENBANK in accordance with the rules established in Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (LPACAP), was collected on June 29

of 2022, as stated in the acknowledgment of receipt that is in the file.

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EIGHTH: On July 13, 2022, it is received at this Agency, on time and form, letter from OPENBANK in which it alleges allegations to the start-up agreement in the which, in summary, stated that:

On November 18, 2020, OPENBANK received an email from the address ***EMAIL.1 by which the complaining party expresses its disagreement with the sending by said channel of a copy of the document of subscription of contracts and requests the exercise of his right of access under the protection of the provided in article 15 of the GDPR.

On November 30, 2020, a response was given to the complaining party indicating that, to request information about your personal data, it is necessary to identify yourself previously by sending a copy of your identity document from the email address registered in the Entity's database.

On December 13, 2020, OPENBANK receives a new email from ***EMAIL.1, by which the complaining party informs that they have requested their right to access through a certified letter.

OPENBANK states that, in said communication, the complaining party does not attach evidence of sending the certified letter to which it refers, but attached copy of a fax sent dated November 30, 2020, requesting the exercise of the right of access without providing documentation proving your identity as

accordance with the request. In addition, in said communication, the complaining party indicates that you cannot make the request through the telephone channel because the call was interrupted if you do not consent to the recording of the call and shows your disagreement with being identified through your Online Banking access code through a recorded call.

On January 11, 2020, the OPENBANK incident service gives response to the complaining party informing of the different channels available to them disposition for the exercise of the right of access, whenever the identity of the complaining party remains unsubstantiated. In this sense, it is reported that the channels are as follows:

- In the private part of the web, once identified with your Identity Document and access code, accessing the "Personal Data" section of your profile, in the option "Right of Access and Portability".
- Contacting by telephone with the telephone number +49 (0) 69 945 189 175, and identifying yourself with your signature key.
- Sending the request by email from the email address that they have registered in their database at datenschutz@openbank.com, attaching a copy of your identity document on both sides.
- Sending the application by postal mail with a handwritten signature and also attaching a photocopy of your identity document. This letter can be sent to: Open Bank S.A., Att: Privacy. Paseo de la Castellana 24, 28046, Madrid.

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Attached as Annex I: Emails dated November 18, 2020, November 30, 2020, December 13, 2020 and January 11, 2021, both originals as translation into Spanish.

Subsequent to this communication, and without having received the necessary documentation in order to prove the identity of the complaining party through any channel, on the 20th of October 2021 Openbank receives a request for information from the AEPD regarding the request for the right of access of the complaining party to which the response dated October 29, 2021 where it provides, among other evidence, copy of the response sent to the complaining party where it is reported that Openbank has made your right of access available to you since the identification functions in the AEPD. Likewise, the party is informed again claimant of the channels through which the interested parties can exercise their rights in terms of data protection, taking into account that, as of the date of Openbank response has moved its main establishment to Plaza de Santa Bárbara 2, 28004 Madrid (Spain).

Attached as Annex II: Email sent by Openbank on October 29 of 2021.

As a consequence of said request, a new communication has been received dated June 29, 2022, where, among other information, it is indicated that on date August 31, 2021, this Agency has received from the data protection authority German Brandenburg, among other documentation, "a copy of the letter, with stamp appearance (two-dimensional barcode) of Deutsche Post with date of November 30, 2020, addressed to "Open Bank S.A. in Paseo de la Castellana, 24 – 28046 – Madrid (SPANIEN), in which you indicate that you have chosen to send the data by postal mail for security reasons and gives your email address as a reference

email and your IBAN. Attached to this copy is a copy of the identity document of the claimant on both sides".

In this sense, it is reported that the Openbank office has confirmed that it does not have proof of having received a letter whose sender is the complaining party.

Neither has the claimant provided an acknowledgment of receipt justifying the delivery, nor has the evidence provided by the claiming party in the claim filed and for these reasons Openbank has not responded to said letter. As proof of this, the income received from the date of the claim until the date of the beginning of this file.

Attached as Annex III: List of communications received by post whose origin is Germany.

OPENBANK highlights that, without prejudice to the fact that it deals with the exercise of rights by any channel that requests it, offers its clients the possibility of exercising the right of access in an automated way directly from the private area of customer. In this way, the user authentication will be carried out with the access key to the private area (log in) without it being necessary for the Interested Parties to provide additional documentation. This is reported in its Privacy Policy that is provided as Annex IV.

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Next, the detail of the steps to follow to request the right is shared access automatically and autonomously from the private client area.

In light of all of the foregoing, OPENBANK considers that the article has not been violated

15 of the GDPR since the right of access has been made available to the complaining party once it has been possible to sufficiently prove their identity and that Openbank offers the possibility for interested parties to exercise their right to access without the need to provide additional documentation, such as the telephone channel where the identification is done with keys as well as through the web in the area private client, as reported in the Privacy Policy that is sent to Interested Parties after accepting it in the registration process as clients of the Entity and that is published on its website. Therefore, taking into account that in At no time was it sought to hinder the exercise of the right of access of the party claimant but duly guarantee their identity to avoid any breach of confidentiality in the treatment of your data that could cause access to the personal data of the complaining party by an unidentified third party, requires this Agency that resolves the administrative procedure without imposing a sanction against Openbank since there is no record of having received the request for right of access by letter and that as soon as the party could be identified claimant, the information corresponding to his person has been delivered.

For its part, the document Annex I shows the following translation of the text of the email purportedly received by OPENBANK on November 18, 2020 at 11:27 a.m.:

"Dear Ladies and Gentlemen,

on 11.13.2020 I signed an account contract, IBAN: ***ACCOUNT.1. How shocked that I was at the end of the process when they told me: "We have sent you a copy of the contract by email." The contract with the number of my document of identity, my mobile phone number and my date of birth were sent to me without more, by email, without the possibility of rejecting it.

According to article 15 of the GDPR, I have the right to ask them for confirmation as to whether they have

stored personal data about me.

If this were the case, I have the right to information about these data.

1. Information about my data stored by you

In this case, I would like to ask you to provide me with the following information from
according to article 15 paragraph 1 GDPR:

a) What data about me is stored or processed by you

(for example last name, first name, address, date of birth, profession, the
medical diagnoses).

b) In addition, I ask you to inform me about the purposes for which my data is processed
as well as about

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c) the categories of personal data that are processed in relation to me and the basis
legal treatment;

d) the recipients or categories of recipients who have received or will receive my
data;

e) the expected duration for the storage of my data or, if this is not possible,
the criteria for determining this duration;

f) on the existence of my rights of rectification, deletion or restriction of the
processing of my data, as well as my right to oppose said processing
in accordance with article 21 of the GDPR and my right to file a
complaint to the competent control authority.

g) If the data about me is not collected, I request all the information available

about the origin of the data; and

h) inform me if there is an automated decision making, including the

profiling, in accordance with article 22 of the GDPR. In this case,

Please provide me with consistent information on the logic used and the effects

intended of said treatment for my person.

i) If my personal data has been transferred to a third country or to an organization

international, please let me know, what opportune guarantees have been taken from

according to art. 46 of the GDPR in relation to migration.

Please provide me with a copy of my personal data free of charge

stored by you. Attached you will receive my public PGP key, if you wish to use it

to protect the data.

Please note that an unencrypted transmission by email does not guarantee

an adequate level of protection.

2. Terms and legal consequences

According to article 12 paragraph 3 of the GDPR, the information must be

provided immediately, at the latest within one month. In case of not

receive information from you within this period, I will contact the

competent supervisory authority. I draw your attention to the fact that the lack or

incomplete information provided, pursuant to article 83, paragraph 5 of the GDPR

are punishable by a fine.

I have noted the date of 12.18.2020 for the resolution.

Kind regards

A.A.A.”

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The document Annex I also shows the following translation of the text of the email purportedly sent from datenschutz@openbank.com on 30

November 2020 at 3:23 p.m. to the address ***EMAIL.1, in response to your

Email sent on November 18, 2020 at 11:30 a.m.:

"Dear Mr. A.A.A.

To receive information about your personal data, you must first identify yourself.

To do this, you must send us, from the email address we have

registered in our database, a copy of the front and back of your

identification document. If you prefer to contact us from a

different email address, you must additionally send us a form

application signed manually in which the right to which it refers is exposed.

Thank you so much

We inform you that the data associated with this request has been used to

process your request. We will store the data to fulfill the obligations

laws, to which we are subject at Openbank. You can find more information

about your rights and data protection on our website

<https://www.openbank.de/datenschutzpolitik>"

Likewise, in the aforementioned Annex I there is also the following translation of the text of the

email purportedly sent from ***EMAIL.1 to OPENBANK on the 13th of

December 2020 at 3:23 p.m.:

"Dear ladies or gentlemen,

Thank you for your message.

Unfortunately, they seem to have mixed things up when answering my

ask.

I have sent you my aforementioned email, dated 11.18.2020, from my

email address registered with you in connection with my account

***EMAIL.1, see attached. Subsequently, in his email dated 11.30.2020, to

3:23 p.m., requested identity verification, see attachment.

Since your FAX was very unreliable, I sent you this justification immediately by mail.

On 11.13.2020, I sent you a request for information on the control authority

corresponding in your case from my other email address, ***EMAIL.2.

However, this is irrelevant to my request for information.

I've been waiting a month in vain for an answer.

By the way, I can't contact you by phone, because the call is interrupted

immediately if I disagree with the recording.

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When it comes to sending end-to-end unencrypted emails,

the confidentiality of sensitive personal data is not guaranteed.

If necessary, provide an encrypted document upload medium on your

online platform.

Kind regards

A.A.A.”

In the aforementioned Annex I the following text of the fax is also observed, supposedly

Attached to email dated December 13, 2020:

“***LOCATION.1, 11.30.2020

Identity accreditation for information according to GDPR - Request with date

11.18.2020 - Email: ***EMAIL.1 - IBAN ***ACCOUNT.1.

Dear ladies and gentlemen,

Thank you for your email dated 30.11.2020 in response to my request for information from 11.18.2020.

I am happy to send you a copy of my identity document. However,

I choose to send it by fax, since sending it by email does not guarantee protection of sensitive data such as the identity document. Remember that the identity verification does not extend the time to provide information.

I also want to expressly point out again that the unencrypted transmission of sensitive personal data by email does not guarantee protection of this data - you had already received my PGP key with my application on November 18, 2020. If, contrary to expectations, I receive the information by unencrypted email, I will inform the competent supervisory authority.

Yours sincerely"

Finally, in the aforementioned Annex I the following text of the email can be observed supposedly sent from incidencias@openbank.es to the address ***EMAIL.1 on January 11, 2021 at 4:27 p.m.:

"Dear Mr. A.A.A.:

In relation to your claim with number ***REFERENCE.2 referring to the documentation to qualify for access rights, we would like to inform you that

We inform you that you can exercise your right of access by the following means:

- In the private part of the web, once identified with your Identity Document and access code, accessing the "Personal Data" section of your profile, in the option "Right of Access and Portability"

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- Contacting by telephone with the telephone number +49 (0) 69 945 189 175, and

identifying yourself with your signature key.

- Sending the request by email from the email address

that we have registered in our database at datenschutz@openbank.com,

attaching in this a copy of your identity document on both sides

- Sending the application by postal mail with a handwritten signature and also attaching

a photocopy of your identity document. This letter can be sent to: Open Bank

S.A., Privacy Paseo de la Castellana 24, 28046, Madrid

Without another particular, we take the opportunity to greet you very attentively.

Sincerely

Incident Service

For your convenience, Openbank provides you with a copy of this document translated into your

local language, for information purposes note that the official version of the response from

this Claims and Customer Service Service is this letter, which appears

in Spanish and that prevails, in case of discrepancy, over the translation into

local language: (...)”

For its part, Annex II shows the following translation of the text of the email

email supposedly sent from datenschutz@openbank.com to the address

***EMAIL.1 on October 29, 2021 at 12:05 p.m.:

“Dear Mr. A.A.A.:

In relation to the claim presented by you before the Authority for the Protection of

French data, which has been brought to the attention of the Data Protection Agency

(hereinafter, "AEPD") regarding your request for access to your personal data

personnel who are subject to treatment by OPEN BANK, S.A. ("Open Bank"),

We confirm that we have analyzed it and proceed to inform you:

- Although we have received an email from you, at no time

we have received a document proving your identity and therefore, from

Openbank we consider that it was not appropriate to address the right of access since before

to provide any information we must be sure that it comes from the

appropriate information and, in this case, as it is financial information that can

be considered sensitive, we consider that if the route by which you want to exercise the right

access by mail, you should send us a copy of the identity card. In this

In the same vein, the Bavarian Data Protection Office is proclaimed, in its section

of frequently asked questions.

- However, before the accreditation of your identity before a Supervisory Body,

We proceed to inform you that you can find the information we have about you at

your website your private section of Openbank, specifically in the section "Information

staff" from your customer profile.

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- Likewise, we would like to remind you that, as we inform you in our privacy policy,

privacy, from Openbank we make available to customers different

alternatives for the exercise of data protection rights:

You can email us at datenschutz@openbank.com

You can send a written request by postal mail to: Privacy, Open Bank SA,

Plaza de Santa Bárbara 2, 28004 Madrid (Spain).

You can contact our customer service center at 069945189175 or, if

Call from abroad at +49 (0) 69945189175.

And, if you are already an Openbank customer, you can send your request through our site website by accessing the "Personal Information" section of your customer profile.

Finally, we inform you that privacy is a priority objective for Openbank of the personal data of our clients and we guarantee that we comply with all the measures established in the applicable data protection legislation.

If you need any additional clarification, do not hesitate to contact us through our privacy mailbox (datenschutz@openbank.com).

Receive a cordial greeting,

Sincerely,

Openbank Privacy Office"

For its part, in the aforementioned Annex III a list of communications is attached received at the OPENBANK post office whose origin is Germany. not in this relationship no communication is observed with sender A.A.A. no shipping number

***REFERENCE.1.

Finally, in Annex IV a copy of the privacy policy of OPENBANK, in which, in section 11, it states:

"You can exercise the aforementioned rights through the following channels:

- Web: from your customer profile in the "Personal Data" section.
- E-mail: privacy@openbank.es.
- Postal mail: «Open Bank, S.A. » Paseo de la Castellana 24, 28046, Madrid.
- Branch: Paseo de la Castellana 134, 28046, Madrid.
- Contact Center: 900 22 32 42. For calls from abroad to (+34) 91 276 21

54".

NINTH: On August 23, 2022, the investigating body of the procedure agreed to open a test practice period, taking as incorporated the claim filed by the claimant and its documentation, the documents obtained and generated during the admission process phase of the claim, and the report of previous investigation actions that are part of the

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procedure E/10583/2021, as well as the allegations to the agreement to initiate the referenced sanctioning procedure, presented by OPEN BANK, S.A., and the accompanying documentation.

In said letter, this Agency also agreed to carry out the following documentary evidence: request the complaining party to provide a copy of the acknowledgment of receipt of the letter certificate sent to OPENBANK on November 30, 2020.

TENTH: On August 22, 2022, the AEPD requests, through the IMI System, the German Data Protection Authority Brandenburg that the party is required to claimant to provide the acknowledgment of receipt of the postal letter sent to OPENBANK on November 30, 2020.

The Brandenburg data protection authority shared via IMI, on the day September 13, 2022, the following documentation:

- Text of the postal letter sent on November 30, 2020 that would have sent the complaining party to OPENBANK to which he attaches a copy of his ID.
- Copy of an email (in German) sent on December 12, 2020 at 4:59 p.m. from the address datenschutz@openbank.com to ***EMAIL.2, with the

following text (in German the original):

“Hello Mr. A.A.A.:

We are writing to inform you that unfortunately we cannot identify you.

correctly, because the email address from which you write to us does not
is registered in our database.

In order for us to process your request, you must send us an email from
the email address that is linked to your customer profile on
our systems.

We remind you that you can change the email address from the web and
the app, in the "Personal Information" section of your profile. Furthermore, this is also
possible by phone, at +49 (0)69 945 189 175.

If you change your email address, write us again from the address
you have specified to process your request.

Thank you so much

Your Openbank team”

- Copy of the alleged postal delivery made by the complaining party, with the following
information from the German postal service, which does not contain the acknowledgment of
requested receipt:

product

Datum/

uhrzeit

11.30.2020 Standard Open Bank A.A.A.

Empfänger

refrain

Ifd

No.

4

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price

yes

0.80

Portokasse

auftragsnummer

***EMAIL.2

***REFERENCE

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19:57:16

brief

5

30.11.2020

20:02:14

standard

brief

Intern

S.A.

Ride of

the

Castilian,

24

28046-

Madrid

SPANISH

open bank

S.A.

Ride of

the

Castilian,

24

28046 –

Madrid

SPANISH

***LOCATION

AD.1

€

A.3

A.A.A.

***LOCATION

AD.1

1.10

€

***EMAIL.2

***REFERENCE

A.4

ELEVENTH: This Agency has verified that in the relation of

communications received by OPENBANK from Germany, provided as Annex III

of its allegations to the agreement to start this disciplinary procedure, not
there is no shipment with the number ***REFERENCE.3 or ***REFERENCE.4.

TWELFTH: On November 7, 2022, the Director of the AEPD
adopted a draft decision to archive proceedings. following the process
established in article 60 of the GDPR, on November 8, 2022 it was transmitted to
through the IMI system this draft decision and the authorities were informed
interested parties that they had four weeks from that time to raise objections
relevant and motivated. Within the period for this purpose, the control authorities
interested parties did not present pertinent and reasoned objections in this regard, therefore
it is considered that all the authorities are in agreement with said project of
decision and are bound by it, in accordance with the provisions of paragraph 6
of article 60 of the GDPR

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 claiming party signed a contract with OPENBANK on November 13
of 2020, in which the following data related to your person appear: IBAN,
identity document number, name and surname, handwritten signature,
nationality, date of birth, professional activity, mailing address
email (***EMAIL.1), mobile number and address.

SECOND: On November 18, 2020 at 11:27 a.m. an email was sent
(in German the original) from the address ***EMAIL.1 to datenschutz@openbank.com,
with the following message:

"Dear ladies and gentlemen,

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on 11.13.2020 I signed an account contract, IBAN: ***ACCOUNT.1. How shocked that

I was at the end of the process when they told me: "We have sent you a copy of the

contract by email." The contract with the number of my document of

identity, my mobile phone number and my date of birth were sent to me

without more, by email, without the possibility of rejecting it.

According to article 15 of the GDPR, I have the right to ask them for confirmation as to whether they have

stored personal data about me.

If this were the case, I have the right to information about these data.

1. Information about my data stored by you

In this case, I would like to ask you to provide me with the following information from

according to article 15 paragraph 1 GDPR:

a) What data about me is stored or processed by you

(for example last name, first name, address, date of birth, profession, the

medical diagnoses).

b) In addition, I ask you to inform me about the purposes for which my data is processed

as well as about

c) the categories of personal data that are processed in relation to me and the basis

legal treatment;

d) the recipients or categories of recipients who have received or will receive my

data;

e) the expected duration for the storage of my data or, if this is not possible,

the criteria for determining this duration;

f) on the existence of my rights of rectification, deletion or restriction of the

processing of my data, as well as my right to oppose said processing

in accordance with article 21 of the GDPR and my right to file a

complaint to the competent control authority.

g) If the data about me is not collected, I request all the information available

about the origin of the data; and

h) inform me if there is an automated decision making, including the

profiling, in accordance with article 22 of the GDPR. In this case,

Please provide me with consistent information on the logic used and the effects

intended of said treatment for my person.

i) If my personal data has been transferred to a third country or to an organization

international, please let me know, what opportune guarantees have been taken from

according to art. 46 of the GDPR in relation to migration.

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Please provide me with a copy of my personal data free of charge

stored by you. Attached you will receive my public PGP key, if you wish to use it

to protect the data.

Please note that an unencrypted transmission by email does not guarantee

an adequate level of protection.

2. Terms and legal consequences

According to article 12 paragraph 3 of the GDPR, the information must be

provided immediately, at the latest within one month. In case of not

receive information from you within this period, I will contact the

competent supervisory authority. I draw your attention to the fact that the lack or incomplete information provided, pursuant to article 83, paragraph 5 of the GDPR are punishable by a fine.

I have noted the date of 12.18.2020 for the resolution.

Kind regards

A.A.A.”

THIRD: In response to the previous email, on November 30, 2020 at 3:23 p.m.

an email was sent from datenschutz@openbank.com to the address ***EMAIL.1, with the following message (in German the original):

“Dear Mr. A.A.A.

To receive information about your personal data, you must first identify yourself.

To do this, you must send us, from the email address we have registered in our database, a copy of the front and back of your identification document. If you prefer to contact us from a different email address, you must additionally send us a form application signed manually in which the right to which it refers is exposed.

Thank you so much

We inform you that the data associated with this request has been used to process your request. We will store the data to fulfill the obligations laws, to which we are subject at Openbank. You can find more information about your rights and data protection on our website <https://www.openbank.de/datenschutzpolitik>”

FOURTH: On November 30, 2020, the claimant made two postal shipments to the address “Open Bank S.A. Paseo de la Castellana, 24 28046 -Madrid SPANIEN”, with identification number ***REFERENCE.1 and in each shipment the numbers ***REFERENCE.3 and ***REFERENCE.4, respectively. It is not known that these

shipments in question had been duly received by OPENBANK.

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FIFTH: On December 12, 2020 at 4:59 p.m. an email is sent

from the address datenschutz@openbank.com to the address ***EMAIL.2, with the following message (in German the original):

“Hello Mr. A.A.A.:

We are writing to inform you that unfortunately we cannot identify you.

correctly, because the email address from which you write to us does not is registered in our database.

In order for us to process your request, you must send us an email from the email address that is linked to your customer profile on our systems.

We remind you that you can change the email address from the web and the app, in the "Personal Information" section of your profile. Furthermore, this is also possible by phone, at +49 (0)69 945 189 175.

If you change your email address, write us again from the address you have specified to process your request.

Thank you so much

Your Openbank team”

SIXTH: On December 13, 2020 at 8:49 p.m. an email is sent

from the address ***EMAIL.1 to OPENBANK with the following message (in German the original):

"Dear ladies or gentlemen,

Thank you for your message.

Unfortunately, they seem to have mixed things up when answering my ask.

I have sent you my aforementioned email, dated 11.18.2020, from my email address registered with you in connection with my account

***EMAIL.1, see attached. Subsequently, in his email dated 11.30.2020, to 3:23 p.m., requested identity verification, see attachment.

Since your FAX was very unreliable, I sent you this justification immediately by mail.

On 11.13.2020, I sent you a request for information on the control authority corresponding in your case from my other email address, ***EMAIL.2.

However, this is irrelevant to my request for information.

I've been waiting a month in vain for an answer.

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By the way, I can't contact you by phone, because the call is interrupted immediately if I disagree with the recording.

When it comes to sending end-to-end unencrypted emails, the confidentiality of sensitive personal data is not guaranteed.

If necessary, provide an encrypted document upload medium on your online platform.

Kind regards

A.A.A."

Attached to said email is the following text of the fax supposedly sent on the 30th of

November 2020:

“***LOCATION.1, 11.30.2020

Identity accreditation for information according to GDPR - Request with date

11.18.2020 - Email: ***EMAIL.1 - IBAN ***ACCOUNT.1.

Dear ladies and gentlemen,

Thank you for your email dated 30.11.2020 in response to my request for information from 11.18.2020.

I am happy to send you a copy of my identity document. However,

I choose to send it by fax, since sending it by email does not guarantee protection of sensitive data such as the identity document. Remember that the identity verification does not extend the time to provide information.

I also want to expressly point out again that the unencrypted transmission of sensitive personal data by email does not guarantee protection of this data - you had already received my PGP key with my application on November 18, 2020. If, contrary to expectations, I receive the information by unencrypted email, I will inform the competent supervisory authority.

Yours sincerely"

SEVENTH: On January 11, 2021 at 4:27 p.m., an email is sent from the address incidencias@openbank.es to the address ***EMAIL.1, with the following message (in German the original):

“Dear Mr. A.A.A.:

In relation to your claim with number ***REFERENCE.2 referring to the documentation to qualify for access rights, we would like to inform you that

We inform you that you can exercise your right of access by the following means:

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- In the private part of the web, once identified with your Identity Document and access code, accessing the "Personal Data" section of your profile, in the option "Right of Access and Portability"

- Contacting by telephone with the telephone number +49 (0) 69 945 189 175, and identifying yourself with your signature key.

- Sending the request by email from the email address

that we have registered in our database at datenschutz@openbank.com,

attaching in this a copy of your identity document on both sides

- Sending the application by postal mail with a handwritten signature and also attaching

a photocopy of your identity document. This letter can be sent to: Open Bank

S.A., Privacy Paseo de la Castellana 24, 28046, Madrid

Without another particular, we take the opportunity to greet you very attentively.

Sincerely

Incident Service

For your convenience, Openbank provides you with a copy of this document translated into your

local language, for information purposes note that the official version of the response from

this Claims and Customer Service Service is this letter, which appears

in Spanish and that prevails, in case of discrepancy, over the translation into

local language: (...)”

EIGHTH: On October 29, 2021 at 12:05 p.m., an email is sent

from the address datenschutz@openbank.com to the address ***EMAIL.1, with the

following message:

"Dear Mr. A.A.A.:

In relation to the claim presented by you before the Authority for the Protection of French data, which has been brought to the attention of the Data Protection Agency (hereinafter, "AEPD") regarding your request for access to your personal data personnel who are subject to treatment by OPEN BANK, S.A. ("Open Bank"),

We confirm that we have analyzed it and proceed to inform you:

- Although we have received an email from you, at no time we have received a document proving your identity and therefore, from Openbank we consider that it was not appropriate to address the right of access since before to provide any information we must be sure that it comes from the appropriate information and, in this case, as it is financial information that can be considered sensitive, we consider that if the route by which you want to exercise the right access by mail, you should send us a copy of the identity card. In this

In the same vein, the Bavarian Data Protection Office is proclaimed, in its section of frequently asked questions.

- However, before the accreditation of your identity before a Supervisory Body,

We proceed to inform you that you can find the information we have about you at

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your website your private section of Openbank, specifically in the section "Information staff" from your customer profile.

- Likewise, we would like to remind you that, as we inform you in our privacy policy, privacy, from Openbank we make available to customers different

alternatives for the exercise of data protection rights:

You can email us at datenschutz@openbank.com

You can send a written request by postal mail to: Privacy, Open Bank SA,

Plaza de Santa Bárbara 2, 28004 Madrid (Spain).

You can contact our customer service center at 069945189175 or, if

Call from abroad at +49 (0) 69945189175.

And, if you are already an Openbank customer, you can send your request through our site

website by accessing the "Personal Information" section of your customer profile.

Finally, we inform you that privacy is a priority objective for Openbank

of the personal data of our clients and we guarantee that we comply with

all the measures established in the applicable data protection legislation.

If you need any additional clarification, do not hesitate to contact us through

our privacy mailbox (datenschutz@openbank.com).

Receive a cordial greeting,

Sincerely,

Openbank Privacy Office"

FUNDAMENTALS OF LAW

Competition and applicable regulations

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, 48.1, 64.2 and 68.1 of the

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

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish 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."

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II

previous questions

In the present case, in accordance with the provisions of article 4.1 and 4.2 of the GDPR, the processing of personal data is recorded, since OPENBANK carries out the collection of the following personal data of natural persons: name and email, among other treatments.

OPENBANK carries out this activity in its capacity as data controller, given that it is the one who determines the ends and means of such activity, by virtue of article 4.7 of the GDPR. In addition, it is a cross-border processing, since OPENBANK is established in Spain, although it provides services to other countries in the European Union.

The GDPR provides, in its article 56.1, for cases of cross-border processing, provided for in its article 4.23), in relation to the competence of the authority of main control, that, without prejudice to the provisions of article 55, the authority of control of the main establishment or of the only establishment of the person in charge or of the The person in charge of the treatment will be competent to act as control authority

for the cross-border processing carried out by said controller or commissioned in accordance with the procedure established in article 60. In the case examined, as has been exposed, OPENBANK has its unique establishment in Spain, so the Spanish Agency for Data Protection is competent to act as the main supervisory authority.

For its part, the right of access to personal data is regulated in article 15 of the GDPR.

II

Right of access

Article 15 "Right of access of the interested party" of the GDPR establishes:

"1. The interested party shall have the right to obtain from the data controller confirmation of whether or not personal data concerning you is being processed and, in such case, right of access to personal data and the following information:

- a) the purposes of the treatment;
- b) the categories of personal data concerned;
- c) the recipients or categories of recipients to whom they were communicated or personal data will be communicated, in particular recipients in third countries or international organizations;
- d) if possible, the expected period of conservation of personal data or, if not possible, the criteria used to determine this term;
- e) the existence of the right to request from the controller the rectification or deletion of personal data or limitation of data processing personal information relating to the interested party, or to oppose said treatment;
- f) the right to file a claim with a control authority;

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g) when the personal data has not been obtained from the interested party, any available information on its origin;

h) the existence of automated decisions, including the elaboration of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and the expected consequences of such processing for the interested.

2. When personal data is transferred to a third country or to an organization international, the interested party shall have the right to be informed of the guarantees appropriate under Article 46 relating to the transfer.

3. The data controller shall provide a copy of the personal data object of treatment. The person in charge may receive for any other copy requested by the interested party a reasonable fee based on administrative costs. when the The interested party submits the application by electronic means, and unless he requests otherwise provided, the information will be provided in an electronic format of Common use.

4. The right to obtain a copy mentioned in section 3 will not negatively affect to the rights and liberties of others”.

In the present case, it is clear that the complaining party had requested OPENBANK the access to your personal data on November 18, 2020 by email email without having attached a copy of your identity document, which was what OPENBANK required to facilitate access to such data.

For its part, on November 30, 2020, the claimant sent two

communications to the postal address indicated by OPENBANK for this purpose. The part

The claimant states that in these communications he requested access to his data

personal and provided a copy of his identity document and gave as

reference your email address and your IBAN account number.

However, it has not been proven in this proceeding the content of

such communications or that the postal items sent by the complaining party

they would have been duly received by OPENBANK.

Therefore, based on what is indicated in the previous paragraphs, no

Evidence proving the existence of an infringement in the area of competence of the

Spanish Data Protection Agency.

Thus, in accordance with what has been indicated, by the Director of the Spanish Agency for

Data Protection,

HE REMEMBERS:

FIRST: PROCEED TO THE ARCHIVE of the present actions.

SECOND: NOTIFY this resolution to OPEN BANK, S.A., with NIF

A28021079.

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

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

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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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