Procedure No.: PS/00070/2019

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RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 10/16/2018, this Agency received a claim filed by D.A.A.A. (hereinafter claimant 1), against the entity BANCO BILBAO VIZCAYA ARGENTARIA, S.A. (hereinafter BBVA), for sending to your mobile phone line, in dated 10/11/2018, from a promotional SMS. It adds that it has not authorized the sending of such messages and has been on the Robinson List for some time.

With your claim, you only provide a copy of the SMS object of the same, whose text is the following:

“Publi BBVA: We lend you UP TO 9,000 EUROS to start up your projects. Info 912975969. https://bbva.info/2xLgPps. No+publi sends LOW to 217582”.

This claim was transferred to the BBVA entity. In response to what was stated by claimant 1, BBVA informs this Agency that he gave his consent to the content of the document "Identification of the client, treatment of personal data and signature digitized”, signed by the claimant on 06/07/2016, by virtue of which the client consented to the sending of publicity by BBVA “through any means”.

BBVA adds that, however, in view of the claim made, it has proceeded to disable the option regarding the sending of commercial communications to the claimant 1.

BBVA provides the document “Customer identification, processing of personal data and digitized signature” signed by the complainant on 06/07/2016.

SECOND: On 12/09/2018, this Agency received a claim filed

by D.B.B.B. (hereinafter the claimant 2), against the entity BBVA, pointing out that the App

BBVA for Android systems of the entity does not meet the legal requirements relating to the

free and informed consent. In said claim it is clear that the past

11/09/2018 the aforementioned App, through a pop-up screen, required the provision of

consent whose scope should be known through a link to another page, in which

the option to transfer data to third parties appeared activated by default.

It adds that on the previous June 6, BBVA recognized by letter the right of opposition of the

claimant to the processing of their data for commercial purposes (provide a copy of this

communication), and that this circumstance should have been taken into account by BBVA before

require you again to provide your consent to the processing of data through

the BBVA App.

On the other hand, the claimant warns that he addressed the aforementioned entity exposing the

same circumstances and that said claim was dismissed on 11/29/2019.

The claimant provides a copy of one of the emails he addressed to BBVA, dated

09/11/2018, in which it expressly indicates the following:

“Dear BBVA DPO

The document attached to the previous message comes from the BBVA APP offered on the Android platform.

The aforementioned application requires the user, as a prior step to its use, to give consent by means of the

electronic signature of a document that only offers the possibility of objecting to data processing

for purposes other than those necessary for the purpose of providing financial services if the

client activates the boxes of opposition to a treatment that BY DEFAULT (see article 25 of the GDPR) should be considered activated. The informative text is inconsistent with the principle of transparency of article 12 of the RGPD and especially because after activating the aforementioned boxes opposition, a pop-up screen appears with a new warning that clearly limits the freedom of consent in the terms of article 7 of the RGPD.

I hope I have described more clearly the problem related to the aforementioned APP and the document of consent generated by it.

Finally, I would like to attach your communication regarding my exercise of the right to oppose the treatment of personal data already registered by your department, and that should have been taken into account account in relation to the operation of the BBVA APP".

BBVA responds to said email by means of another dated 11/29/2018 in which literally indicates:

"The way in which the consent to which you refer is obtained has been considered valid not only in the internal analyzes of our own entity, but in all those forums where raised the question, since the interested party has the option to choose in a simple and easily understandable which option you prefer. About the pop-up screens that you comments, BBVA understands that it must provide the interested parties with the necessary information so that they know what happens when they activate these boxes, so that with all the information in their hands, they can decide the option that satisfies them the most.

The claimant also accompanies the document generated by the App, with the label "Declaration of economic activity and personal data protection policy" (in what hereinafter also "Privacy Policy"), in which section 1 contains the data identification of the client (the claimant) and his declaration of economic activity. Among others Data includes those related to name, surname, tax ID, date of birth, nationality, address, marital status, matrimonial regime, contact information, fixed income and variables, entity in which he provides service, annual gross income.

Section 2 of this document is dedicated to the “data protection policy

personal”. The full content of this section, the "extended information" offered to the

interested and part of the "glossary of terms" that counts in the same document, which is

declares reproduced in this act, is attached as Annex 1.

In the document provided by claimant 2, all the options are marked

enabled for the interested party to give their consent to the processing of data

for the purposes expressed in said options:

“. Products and prices more adjusted to you

[x] I do NOT want BBVA to process my data to offer me products and services of BBVA, of the Grupo

BBVA and others personalized for me.

C/ Jorge Juan 6

28001 - Madrid

www.aepd.es

sedeagpd.gob.es

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[x] I DO NOT want BBVA to communicate my data to BBVA Group companies so that they can

offer own products and services personalized for me.

quality improvement

[x] I do NOT want BBVA to process my data to improve the quality of new products and services and

existing. We want to remind you that you can always easily change or delete the use that

we make of your data”.

THIRD: On 02/13/2019, this Agency received a claim filed

by D.C.C.C. (hereinafter claimant 3), against the entity BBVA, pointing out that for the

unlocking your account it was necessary to sign the data protection document

personal information, which was sent to him electronically, and that he did not have the possibility of marking the

information processing options.

Provides printing of the information available in the BBVA App, in the personal area

of the claimant (February 1 to 6, 2019), which includes a section “Use of personal data”

in which a box is made available to the interested party that they can mark with the indication

“I have read, understand and accept the Personal Data Protection Policy to be a client

of BBVA”.

Likewise, it provides a copy of an email sent to the address of the claimant

from the notifications-bbva@bbva.com address, with an attached file called

“LOPDDAE”, in pdf format, and the text “You have a pending signature… (name and surname of the

Claimant 3), you have a document pending signature. We recommend that you read with

Calm down the document that we attach to you, before signing it”. Below is a

button with the legend "Sign now". Subsequently, the interested party is informed that he has

other channels for signing the document in question (branch, App, web and telephone banking).

Said document, which is also attached to the claim, corresponds to the

“Declaration of Economic Activity and Personal Data Protection Policy”, whose

content coincides with that reproduced in Annex 1, except for the detail regarding the

box through which the customer is offered the option “I do not want BBVA to process my data

to offer me products and services of BBVA, BBVA Group and others personalized for

me”, which allows you to dial the following channels:

[ ] By email

[ ] By SMS

[ ] By phone (phone call)

[ ] By mail

The document provided appears dated 02/11/2019 and without signature. of the options

enabled in this document so that the interested party gives their consent to the treatment

of your personal data with the purposes that are expressed in each case, is marked the

option “I do not want BBVA to process my data to offer me BBVA products and services,

of the BBVA Group and others personalized for me by email".

The aforementioned claim was transferred to BBVA so that it could analyze it and send

pertinent information to this Agency. The period granted to BBVA to respond to

Said transfer took place without this Agency receiving any response.

FOURTH: On 05/23/2019, this Agency received a claim filed

by D.D.D.D. (hereinafter claimant 4), against BBVA, pointing out that, under the pretext

of having been informed through a document that you have not signed, said entity sends you

commercial communications that you have not requested or authorized. He adds that he informed him of the

adoption of measures to prevent you from continuing to receive commercial communications,

that the sending of emails stopped, but he continued to receive SMS, in which he did not

opt-out mechanisms are provided.

Provides several SMS in which pre-granted loans are offered; copy of a

writing in which BBVA considers the right of opposition exercised by the claimant,

04/10/2019; another previous letter, dated 02/25/2019, in which BBVA informs you that your data

are treated in accordance with the attached document, signed on 11/26/2018, in which

he was offered the possibility of refusing the aforementioned purposes. The attached document

The last document reviewed corresponds to the "Declaration of Economic Activity and Policy of

Data Protection", which contains the details of the complainant as a BBVA customer. In

This document does not include any of the options offered to the interested party for

consent to the processing of your personal data,

This claim was transferred to the BBVA entity. In response to what was stated by

claimant 4, BBVA informs this Agency that commercial communications were sent to the same, who did not object to this data processing in the document signed on 11/26/2018. It warns that the communications ceased after the exercise of the right of opposition by the claimant, although the mobile phone line cited in the claim as the recipient of commercial communications, it is not associated with its data in your information system.

Subsequently, BBVA stated that the SMS were sent manually by a manager business from the corporate mobile phone without first verifying that the customer was included in the Robinson list.

FIFTH: On 08/27/2019, this Agency received a claim filed by D.E.E.E. (hereinafter claimant 5), against the entity BBVA, for carrying out telephone calls and sending advertising SMS, to offer insurance, credit cards and financing of receipts, despite the fact that he exercised the right to oppose the assignment of his data for promotional purposes and that it was attended by said entity. In its The claim details the telephone lines issuing the calls and messages, the line receiving party and the date and time of the last call.

With your claim, you provide a copy of an invoice corresponding to the receiving line of calls and messages, issued in the name of the claimant; letter from BBVA addressed to same, dated 03/07/2018, in which your request to oppose the use and transfer of your data to third parties for the purpose of commercial or advertising prospecting of the entity or other companies of the Group; transcript of messages sent to BBVA warning again about your wish not to receive advertising, of 05/26/2019, answered on the day following by the person in charge with a message of apology; screen printing 08/27/2019, regarding the inclusion of its mobile telephone line in the Robinson List; and detail of received calls (consists of a call from the number object of the claim, made on 08/27/2019.

This claim was transferred to the BBVA entity. In response to what was stated by

claimant 5, BBVA informs this Agency that, on 06/18/2018, the interested party signed

digitally the document "Declaration of Economic Activity and Protection Policy of

Personal Data", giving their consent to the processing of their data for purposes

despite the fact that he was given the opportunity to object to the use of his

data to offer you products and services of BBVA and entities of the Group. This option the

formalized by the claimant by signing that document later through the

remote banking. It adds that the lines to which the complaint refers belong to

BBVA Seguros, of which the claimant is a client, which made three calls in August

2019 (days 20, 21 and 27); and that BBVA forwarded the claimant's opposition brief to BBVA

Insurance, which took the appropriate measures to stop commercial communications on

same day 08/27/2019.

BBVA provides the documents "Declaration of Economic Activity and Policy of

Protection of Personal Data", signed by the claimant on 06/18/2018 and

05/27/2019. In the first of them there is no mark in the boxes enabled for

that the client expresses his consent to the following treatments:

. Products and prices more adjusted to you

[ ] I DO NOT want BBVA to process my data to offer me products and services of BBVA, of the Grupo

BBVA and others personalized for me.

[ ] I DO NOT want BBVA to communicate my data to BBVA Group companies so that they can

offer own products and services personalized for me.

quality improvement

[ ] I do NOT want BBVA to process my data to improve the quality of new products and services and existing. We want to remind you that you can always easily change or delete the use that we make of your data".

In the document signed on 05/27/2019, these three boxes are marked.

SIXTH: The claims to which the proceedings refer were admitted for processing through resolutions dated 02/01/2019 (those relating to claimants 1 and 2), 08/06/2019 (relating to claimant 3), 09/13/2019 (relating to claimant 4) and 10/30/2019 (relating to claimant 5).

SEVENTH: On 11/21/2019, the Subdirectorate General for Data Inspection accesses the BBVA website ("bbva.com") and obtains available information about the entity.

On this website it is indicated:

"BBVA in Spain

As one of the leading entities in the country, with more than 10 million clients and close to 30,000 employees, we provide financial services through our network of 3,200 offices."

Financial information is also obtained, of which it is worth highlighting that relating to the Income Statement, which "as of 09/30/2019" reflects a "Net Margin" of 9,304 million euros. The section "Geographical diversification" indicates the breakdown by country, corresponding to Spain 23.4%.

According to the information that appears in the Central Mercantile Registry, the "Subscribed Capital" amounts to 3,267,264,424.20 euros.

EIGHTH: On 12/02/2019, the Director of the Spanish Agency for Data Protection

agreed to initiate a sanctioning procedure against the entity BBVA, in accordance with the provisions in article 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to Treatment of Personal Data and the Free Circulation of these Data (General Regulation of Data Protection, hereinafter RGPD), for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the aforementioned Regulation; and for the alleged infringement of the article 6 of the RGPD, typified in article 83.5.a) of the aforementioned Regulation, determining that the sanction that could correspond would amount to a total of 6,000,000.00 euros (3,000,000.00 euros for each of the alleged infractions), without prejudice to what result of the instruction.

The imputations indicated result from the analysis of the data collection form used by the BBVA entity after 05/25/2018, called "Declaration of economic activity and personal data protection policy", through which BBVA discloses the terms applicable to the protection of personal data and requires the consent of the interested parties. The reasons underlying the accusations indicated are, succinctly, the following:

a) Violation of article 13 of the RGPD:

. Use of imprecise terminology to define the privacy policy.

. Insufficient information about the category of personal data that will be submitted to treatment, especially in relation to the data that BBVA claims to obtain from the use by the customer of products, services and channels; economic and solvency data obtained from products contracted with BBVA or of which BBVA is a marketer; and the data personal data that will be transferred to BBVA Group companies.

. Failure to comply with the obligation to inform about the purpose of the treatment and legal basis that legitimizes it, especially in relation to the processing of personal data that

BBVA bases on legitimate interest.

. Insufficient information on the type of profiles that are going to be carried out, the uses

specific to which they will be allocated

b) Violation of article 6 of the RGPD:

. Inexistence of a specific mechanism for collecting the consents of the

clients for the processing of personal data. The options of the interested

are limited to marking a box by which you record your

opposition to data processing.

. Failure to comply with the requirements established for the provision of a

specific, unequivocal and informed consent.

. Insufficient justification of personal data processing based on interest

legitimate of the person in charge.

Likewise, for the purposes provided in article 58.2.d) of the RGPD, in said agreement of

At the beginning, it was warned that the imputed infractions, if confirmed, may lead to the

imposition on the BBVA entity of the obligation to adopt the necessary measures to

adapt to the personal data protection regulations the treatment operations that

performs, the information offered to its clients and the procedure by which they

give their consent for the collection and processing of their personal data, with the

scope expressed in the Legal Basis of the repeated agreement and without prejudice to what

resulting from the instruction.

NINTH: Once notified of the aforementioned initial agreement, BBVA presented a brief of allegations in the

requesting that a resolution be issued declaring the nullity of the right

proceeding for the reasons set forth in its first allegation below or, in its

default, your file is remembered. In short, the aforementioned entity bases its request on the

following considerations:

1. Setting the amount of the penalty in the agreement to initiate the procedure, which is

justifies in the Foundation of Law VI, produces helplessness to the interested party that vitiates

nullity itself. It understands that determining in said act the sanctioning reproach, evaluating

even the concurrent aggravating circumstances without minimally motivating them, on which he has not had

occasion to demonstrate, affects the application of the fundamental principles of the right

criminal, applicable with certain nuances to the sanctioning administrative procedure, such as

has shown repeated case law.

It considers that the initiation agreement exceeds the legally established content, insofar as

it should only incorporate the limits of the possible sanction that could be imposed, and not

determine a specific amount that implies the summary assessment of the circumstances

concurrent. The agreement issued goes beyond what is admitted in article 68.1 of the Law

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

Digital Rights (hereinafter LOPDGDD).

This early and unmotivated assessment of BBVA's responsibility, indicating

even the mitigating and aggravating ones, even if it is by their mere mention, and even when

intends to leave safe what finally proceeds based on the investigation, in the opinion of that

entity, an unprecedented part is made, without any allegation of the accused that would allow the

sanctioning body to assess the circumstances assessed in the light of said allegations,

generating defenselessness to the part.

It also produces defenselessness the fact that the amount comes from the mere enumeration

of circumstances, without setting out how they affect liability.

This is an issue that affects the impartiality of the investigating body designated in the

same agreement to initiate the procedure, which is known before initiating the procedure by the criterion of the body to which the file will finally be submitted, on which it depends hierarchically.

This supposes a rupture of the principle of separation between the instruction phase and the sanction phase. (article 63.1 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations -hereinafter LPACAP), depriving the instructor of a objective knowledge of the facts and the possibility of making an assessment of the circumstances arising from the instruction.

On the other hand, article 85 of the LPACAP is cited to specify in the operative part of the opening agreement the reductions entailed by the acknowledgment of responsibility or the voluntary payment of the penalty. However, the BBVA entity considers that this precept establishes that the amount of the pecuniary sanction may be determined “when the sanctioning procedure” and that it is only applicable to cases that give rise to the imposition of a fixed and objective fine. In the present case, the sanction is not fixed and nor necessarily of a pecuniary nature, given that the RGPD establishes a wide range of possible sanctions and corrective measures, including issuing a warning.

2. It is a cause that justifies the filing of the proceedings the non-existent link between the Claims formulated with the object of the procedure and the content of the file administrative, since the allegedly infringing facts that are invoked cannot be be the basis on which the AEPD relies for the opening of this procedure, nor the alleged violations can support the intended sanction.

The scope of the Privacy Policy is analyzed without linking any reasoning to the

content of the claims and without any record of any action carried out by the AEPD

that motivates the opening of the procedure. In this regard, he points out that the Agency has

limited, in the previous phases, to forwarding the claim to the DPD of the entity, except for the

relating to claimant 2, and to agree on its admission for processing once the clarifications have been received

of the aforementioned DPD.

This was understood by the National Court in Judgment of 04/23/2019 (appeal 88/2017), which

annuls the sanction of the AEPD, among other reasons, because there is a discrepancy between what was reported

and the object of the sanctioning resolution:

“This Chamber considers that the proven facts of the resolution are not adjusted to the requirements

that, in accordance with the principles set forth, must be respected in a sanctioning procedure.

In the first place, because such proven facts appear totally disconnected from the facts

denounced, and which motivated the opening of preliminary investigation actions, since

No mention is made in said proven facts about the behaviors denounced by the

three participants in the procedure, the AEPD totally disregarding the result of the

investigations carried out as a result of these complaints, as well as the numerous pieces of evidence

practiced.

The account of "proven facts", both in the criminal procedure and in the administrative sanctioning,

It is essential to establish the facts and the typified behaviors, since that is the only way to respect

the principle of typicity, which, according to the doctrine, is "the legal description of a specific behavior to the

that the administrative sanction will be connected”. This principle is only the projection of the need to

certainty that must guide the exercise of the sanctioning power of the Administration that collects the

article 25.1 CE and its foundation is found in respect for two other values such as freedom

and legal certainty.

At the same time, the AEPD has revealed throughout the entire file a

manifest inactivity, taking into account that it admitted for processing the claim of the

claimants 1 and 2 dated 02/01/2019, the last of them without prior transfer to the DPD, and

that the request sent by BBVA on 02/21/2019 requesting

information on the status of the claim (no information was given about its admission to processing).

Subsequently, without any further action, three other claims were admitted before

to dictate the initiation agreement. In other words, the preliminary investigation phase was kept open.

for ten months without any action aimed at investigating the content of the

claim. It could be considered that the AEPD expected that there would be a number of

complaints that it considered significant, in this case, five, even if they related to

different issues, to reactivate a procedure that remained “suspended” since the

first admissions for processing, and that deals only with the "Declaration of Activity

Economy and Data Protection Policy”, held by the AEPD since the presentation of

the claim by claimant 2, on 12/09/2018. We are faced with an assumption

in which the authority considers it necessary to allow a period of time to elapse from the

admission to processing of a claim related to a specific treatment, to

verify whether the conduct is due to a punctual or structural fault of the person in charge.

During that time, BBVA acted with the confidence that, being the Agency aware of

the circumstances stated in the claims and not having carried out actions

of investigation or other nature, the existence of irregularity was not appreciated. would fit

wonder if it has not been the inaction of the AEPD during those ten months that has aggravated

the reproach that it appreciates concurrently in BBVA, given that the Agency was aware of the Policy

of Privacy and did not warn about the admission to processing of claims or the eventual

illegality of this Privacy Policy. The reproach derived from its maintenance over time

should be attributable to whoever kept that opinion hidden.

Regarding the specific claims made, he points out that they show common elements that

illustrate BBVA's good work in respecting data protection regulations

personal, which represent a tiny and irrelevant percentage of the wide universe of

treatments carried out and the number of clients. In this regard, it provides certificate

issued by the DPD for the year 2019, noting that, out of a total of personal customers

physical communications of eight million and thirty-one thousand, received nine hundred and six communications and only

six referred to comments on the Privacy Policy. Understand that this shows

that the clients have not considered their rights violated, with the exception of the five

claimants.

As elements common to all claims, the following stand out:

. All interested parties/complainants were able to choose between all the alternatives offered and

manage their consent to the processing of their data when they formalized the document and

were able to change their preferences through multiple channels, thus respecting the power of

disposition of those affected.

. It has respected the rights exercised, responding in a timely manner to the

revocation of consent or exercise of opposition rights. This has happened in the

case of any of the claimants.

. In the cases in which the claimant shows his disagreement with the way of obtaining

consent, he had made use of the mechanisms made available to him,

either at the time of signing the "Declaration" or later electronically.

It is contradictory, in BBVA's opinion, that the signing of the document accompanied by the

Checking the boxes should be considered an affirmative action and the same signature of the

document without checking the boxes does not have, according to the Agency, the same scope or nature

affirmative action (implied consent, other than tacit, presumed or inaction).

. When an error has occurred, as in the case of claimant 4, it has been recognized and

repaired with the utmost diligence, having given rise to the development of a large number of

actions to fully comply with the regulations (also on the occasion of the

claims).

Subsequently, BBVA dedicates a part of this second allegation to highlighting

Some considerations specific to each of the claims:

a) Claimant 1 refers to the sending of advertising via SMS, carried out with the

consent of the interested party, as evidenced in the response made in the

framework of E/08334/2018, and his right to object was immediately addressed. Does not exist

no subsequent complaint or claim.

b) The claim filed by claimant 2 was not known by BBVA until the opening

of the procedure, so he has not had the opportunity to refute the accusations

made about the Privacy Policy, the operation of the application or the legality of the

data processing. In this case, the right to oppose the treatment of

data for commercial purposes; and so it appeared marked on the document whose signature was

required when downloading the APP. The download process offers the customer the possibility of

decide on the treatments and purposes, just as the claimant did, and informs of the

consequences of those decisions, without any of the messages that appear

conditions the interested party. The result was that, through the application, during the process of

Obtaining consent, he was able to manage the use of the data in a free and informed manner.

Provide a printed copy of the “become a client” process that the application follows, which includes the

contracting an online account. This process offers the interested party basic information on

matter of data protection, whose content coincides with that contained in Annex 1, and a

Link to extended information. Likewise, in both processes, consent is requested.

to the interested party for the processing of their data... and the possibility of marking

different options regarding consent for the processing of your personal data, which

coincide with those enabled in the "Declaration of Economic Activity and Policy of

Data Protection".

c) Contrary to what is indicated in the initial agreement, BBVA responded to the transfer

made by the AEPD of the claim filed by claimant 3 (file

E/04690/2019) and also responded to the complainant himself, although these responses have not

been incorporated into the file. BBVA blocked this client's account in accordance with

provided for in Law 10/2010, of April 28, on the Prevention of Money Laundering and

Financing of Terrorism, until the signing of the "Declaration of Economic Activity and

Personal Data Protection Policy", which took place on two occasions (in the office and

through the mobile application), and in both the interested party incorporated their preferences on the

refusal to receive advertising. Ask again if it is not to be considered an action

affirmative the subscription of the privacy policy and the marking of one of the boxes

enabled, or if there is a difference between that action and the subscription of said policy without marking

none of the boxes; all of them easily accessible, intelligible, simple and clear.

He adds that there is no record of any complaint from this client, beyond the claim made

before the AEPD.

Provides a copy of a written response to the transfer of the claim made within the framework

of file E/ 4690/2019, dated 06/21/2019 and proof of sending it to this

Agency through postal mail on the same date. This response, whose content

basically coincides with what was stated above, attaches a copy of the declarations

of economic activity and personal data protection policy completed with the

personal data of claimant 3, dated 01/17/2019 and 02/11/2019; the first of them

signed and the second unsigned. In both declarations, the option “No

I want BBVA to process my data to offer me products and services of BBVA, of the Group

BBVA and others personalized for me by email”.

d) The information relating to claimant 4 is contained in file E/06420/2019, which

sufficiently explain the facts. In this case, until the time of the opposition BBVA

was authorized to send commercial communications such as the one denounced and ceased to

these treatments after the exercise of the right, although an SMS was sent later

was due to a punctual error of little interference, committed by a manager of an office, which was

corrected immediately and gave rise to the sending of communications on the policies adopted

to the office network. These facts do not justify the reproach that is intended. He adds that BBVA

there was no record of the file of proceedings or of the admission for processing until the agreement of

initiation of the disciplinary proceedings.

It says Provide supporting documentation of the indicated extremes. However, only

provides what appear to be messages aimed at private customers, SMEs or the self-employed with

information regarding the protection of personal data, the entity or business. Some of

they have a date of May and July 2018, February 2019 and a final date of 09/24/2019, but not

include no indication that you link these alleged messages to claimant 4.

e) It refers to the content of the information provided on the occasion of the file

E/08740/2019, which shows that BBVA was respectful of the decisions of the complainant 5

in relation to the use of your data. In this case, claimant 5 signed the repeated

statement on two occasions, not expressing his refusal to treatment on the first

occasion and doing it on the second.

3. On compliance with the principle of transparency and the right to information to its customers about the processing of their data, BBVA states the following:

A) Previously, said entity refers to the scope, content and obligations derived of the principle of transparency, as regulated in the applicable regulations and interpreted by the AEPD itself, all the European Authorities, the Working Group of article 29 and, subsequently, the European Committee for Data Protection. Make a exposition on the requirements of the information that derive from the aforementioned principle, the information to be provided, how it should be provided, and the reporting system. levels or layers that can be used.

From what is expressed in these sections, it is worth mentioning the indications that BBVA includes on issues or aspects outlined in the agreement to initiate the procedure that, in his opinion, do not correspond to the requirements established by the standards analyzed. Specific, BBVA points out that the obligation to inform the interested parties about the data or categories of data subject to treatment is not provided for in article 13 of the RGPD; and is only required in article 14 of the same text for cases in which the data is not collected from the interested party, although this obligation refers to the categories of data and not to the specific data object of treatment.

Likewise, it also highlights that articles 12 to 14 of the RGPD do not require "the person responsible for the treatment provide the interested parties with such detailed information that it includes the characteristics that the treatment does not have, that is, it will not proceed to inform about, for example what data or categories of data are not subject to treatment or the purposes for which the data will not be processed, for example, the fact that they are not processed profiles".

And they do not require those articles, "when a treatment is based on the interest legitimate of the person in charge or of a third party, is included in the information that is provided to

interested parties the weighting trial carried out to verify that the rights or

interests of those affected do not prevail over said legitimate interest, despite the fact that the AEPD

reproaches this party in the Start Agreement for not having informed about the aforementioned

weighing".

B) BBVA reports in this section the previous work and studies that, since November

2016, they carried out to adapt their actions to the RGPD, the implementation of

measures and the definition of the Privacy Policy, which contemplated the revision of its

processes for the exercise of rights, obtaining the consent of the interested parties,

data portability, security measures and establishment of internal processes and

external. In March 2017 the privacy policy was revised in a new "Clause

LOPD", analyzed how to obtain the unequivocal consent of new clients, including

a series of boxes in the aforementioned LOPD Clause with a clear and simple text, and a

strategy to inform those interested, to end up approving in June of that year the plan

final definition of the new clause, which was subject to investigation by third parties

to be tested with clients. The conclusions were presented in October 2017 and in

March 2018, the definitive model of the text included in the LOPD Clause was presented for the

obtaining consent.

BBVA provides a copy of the analysis carried out by the entity itself on the impact of the

GDPR in its activity and the lines of work, measures and actions that make up the plan

of adaptation; copy of the definitive plan for the elaboration of the new LOPD Clause; and a

extract from the presentation made in October 2017 on the conclusions of these

jobs.

According to BBVA, the aforementioned plan consisted of drafting the text of said clause and in the performance by external third parties of an investigation with clients, differentiating between customers who relate to the entity by electronic means and that no, in order to validate the content and format of said text, test the comprehension of the and analyze the optimal channels to contact the interested parties and collect their consent.

Specifically, two investigations were carried out:

. BBVA states that the first investigation consisted of optimizing the effectiveness of the communication to clients, so that, respecting in any case the requirements of the RGPD, the clause would allow to capture the attention of the clients to obtain the acceptance of the consent-based processing. Interviews were conducted with users of online banking (web and app) presenting the new clause models.

According to BBVA, the results of this research showed that almost 90% of interviewees accepted the various treatments based on their consent and that, in the cases in which they did not, the rejection focused exclusively on the reception of commercial communications, especially from third parties.

Regarding this investigation, in the document provided by BBVA, corresponding to the extract from the presentation made in October 2017 on the conclusions of these works, says the following:

“Objective: Optimize communication to clients (email and signature page) to achieve a greater number acceptance of the purposes of data processing.

“General results: almost 90% of the interviewees accept all the conditions, either of expressly or by default; two thirds of the interviewees accepted the GDPR conditions of instantly, without reading; non-acceptance focuses exclusively on receiving commercial communications, especially from third parties”.

“Conclusions: the current model would be valid (after the modifications), it is efficient to stimulate the

acceptance of the data protection policy (nearly 9 out of 100 respondents accept all the

clauses); the mention of third parties generates rejection and mistrust, becoming a barrier and

causing the rejection of more purposes and not only commercial communications; non-acceptance

of the purposes focuses on the rejection of any type of commercial communication (especially

of third parties); the customer benefit is missing: it is difficult to identify the benefit on a day-to-day basis

accept the use of your data, the acceptance or rejection of the conditions will not have any repercussion;

on mobile less attention is paid: it is linked to an update and less is read (accepted

directly)".

“General considerations: in general, customers do not stop at the screen and those who do

read diagonally. They accept without reading since trust in BBVA is high and encourages an analysis

less exhaustive of the clause.

. Regarding the second investigation, BBVA indicates in its pleadings that it was

objective to determine the optimal structure and design of the LOPD Clause in order to show the

message in a way that does not divert attention from the main intention of the client and adapt the

text of the boxes to provide consent so that customers are fully

aware of the consequences that its granting or denial will have. For this,

Interviews were conducted with clients and non-clients.

In relation to this investigation, the extract of the conclusions states the following:

“Objective: to adapt the messages so that the client accepts the conditions aware of the loss that

It would mean not doing it."

In this investigation, the percentage of acceptance is verified according to the structure and

checkbox content. In all the cases analyzed, the marking of the box is requested.

in case of not authorizing the use of the data for the purpose in question.

C) Regarding the content of the Privacy Policy, it highlights that it follows the recommendations

contained in the Guide prepared by the AEPD. It is organized around a series of questions.

and the purposes are grouped, with basic and additional information, both with the

same sections.

In relation to purpose 2 "To get to know you better and personalize the experience", warns

that does not imply the sending of personalized commercial offers, but that the treatments

that are described refer to the analysis and evaluation of customer data, but not to the

sending advertising. The only communications mentioned in this section are those

Congratulations. In the extended information it is reported that the basis of legitimation is the interest

legitimate and the specific interest pursued is indicated. In both sections, it is recalled

possibility to oppose this treatment.

Purpose 3 “Offer you products and services of BBVA, the BBVA Group and other

personalized for you” is the one that refers to the sending of all types of communications for

commercial, through the channels indicated.

Purpose 4 also refers to commercial purposes, but the communication is described

of the data to other entities of the Group so that they are the ones that directly

communicate with the client, provided that they have authorized it. Entities are identified

receivers, the purpose and the categories of data that will be communicated.

Purpose 5 details the processing carried out by BBVA to "Improve the quality of data

products and services”, although, as indicated in the “Extended Information”, the information

obtained from the use of BBVA products, services and channels is anonymized and, therefore,

excluded from the scope of application of the regulations. Even so, it was decided to submit this purpose to the customer consent.

D) In relation to the assessments carried out in the Home Agreement on the Policy of Privacy, BBVA declares the following:

. As a preliminary consideration, it reiterates that it does not understand the criteria that have determined the initiation of proceedings and the amounts of penalties proposed for claims that are not they are related to the facts that justify said opening; and that among the different corrective powers have been chosen for the most serious, instead of other alternatives that would have allowed the correction of a hypothetical situation of non-compliance.

Understands that it is necessary to keep in mind the environment and the problems that the interpretation of the provisions of the RGPD, to which the Agency itself has not abstracted; Y cites the “Internet Privacy Policy Report. Adaptations to the RGPD” to point out which is a sample of these difficulties, although its conclusions did not suppose the same reproach.

In addition, BBVA understands that the procedure for adopting criteria is used general rules of interpretation of protection rules, which is not admissible in light of the doctrine of the National High Court.

. This subsection is dedicated to analyzing the content of the Home Agreement with regard to the information provided to customers by BBVA.

The procedure is initiated for violation of article 13 of the RGPD, but reference is made to the Failure to comply with the obligation to inform the interested parties about the categories of personal data processed, which is required in article 14 of said Regulation and not in article 13.

Even so, BBVA includes the categories of data at the beginning of the extended information, following

the example published in the "Guide for compliance with the duty to inform" of the AEPD,

adding, in addition, a description of the type of data, offering more information

exhaustive of what the EAPD itself suggests in the aforementioned Guide.

On the other hand, the Agency, in the repeated agreement, implies that it should be informed

on what specific data is used for each treatment, despite the fact that this requirement does not

it is foreseen in the RGPD or in any guideline published by the Agency, the GT29 or the EDPB.

In the same way, neither does any text indicate that information should be provided on the data or

treatments that are not carried out by the person in charge. Consider mere conjecture without any proof.

indications about what could happen if you enter the information collected by the Bank from the

use of BBVA products, services and channels will integrate information related to "the fee

trade union... or dues paid to political parties, or religious entities, or by the

use of services provided by health or religious entities", that is, categories

special personal data. The truth, adds BBVA, is that the privacy policy does not

refers to these data or treatments simply because they are not carried out.

If all the details that the AEPD now seems to require were added, it would give rise to a text

extensive and predictably incomprehensible, giving rise to fatigue or information fatigue,

proscribed by both the Agency and the WG29.

Along the same lines, the Agency indicates that the information provided does not allow the interested party

have a clear idea about the data that will be communicated to the entities of the Group. To this

In this regard, the aforementioned article 13 of the RGPD requires reporting on the recipients or categories

of recipients of the personal data, without mentioning the category of data. Still, if

informs that the identification, contact and transactional data will be provided, to

that the interested party can receive commercial offers. Transactional data is detailed in

the description of the purpose 4 (amounts of income and expenses, balances and use of our

channels).

The AEPD carries out an interpretation of article 13 of the RGPD that exceeds its

content and its own interpretation. In doing so, he would be issuing new guidelines on the

content of the duty to inform more demanding than that indicated in its Guide, using for this purpose

a sanctioning procedure to the clear detriment of BBVA. In this regard, it cites the Judgment of

the National Court of 04/23/2019 (appeal 88/2017), which declared contrary to the principles

of sanctioning law the establishment of general criteria within a

penalty procedure.

The Agency also considers the information provided in relation to the

with the purpose 2 "Get to know you better and personalize your experience", and indicates said Authority of

control that informs about the realization of personalized offers and the improvement of products

and services with legal basis in the consent of the interested party and in the legitimate interest. Without

However, in the description of that purpose it is spoken of assessing new functionalities,

products and services and assess personalized offers, but no reference is made to the referral

commercial or advertising offers. Purpose 2 allows knowing the channel that the user prefers.

customer, which products work better, which new products could be

interesting for customers, respond to a customer who is interested in the products of the

entity offering those that fit your needs. In this sense, the description

carried out in purpose 2 refers only to the realization of an internal profiling of

customers to personalize their experience or respond more efficiently to their requests.

The referral of advertising, which may be based on said profile, is part of the purpose

3, whose legal basis is consent.

Only purpose 2 refers to the use of the profile. In this sense, adds BBVA, the expressions

unclear and imprecise to which the Agency refers, such as "personalize your

experience", "offering you personalized products and services" or "commercial profile", are

substantially similar to those contained in the second layer example on page 11

of the "Guide for compliance with the duty to inform" of the AEPD: "to be able to offer

products and services according to your interests", "improve your user experience",

"we will elaborate a commercial profile".

In short, purpose 2 describes the processing for profiling and its use is not

commercial; while the purpose 3 the treatments that, being able to take advantage of said profile,

entails the submission of commercial offers.

Additionally, and contrary to what is indicated by the AEPD, in purpose 2 it is reported how

the client's profile is drawn up and to achieve this, different data are analyzed, which are detailed

below, and expresses the possibility of opposing the treatment.

On the other hand, regarding the objections indicated by the AEPD for not reporting on the

specific legitimate interests on which BBVA relies for these treatments, warns that

this information is included in the section "Why do we use your personal data?",

in which the bases that legitimize the treatment are detailed ("... so that from BBVA

we can better meet your expectations and we can increase your degree of satisfaction

as a client when developing and improving the quality of own products and services or those of third parties,

as well as carry out statistics, surveys or market studies that may result from

interest… to be a bank close to you as a customer…").

Finally, it states that the privacy policy does not mention the existence of decisions

automated regulated in article 22 of the RGPD since they are not carried out. The decisions referred to in the section on purpose 2 would not fit into the regime established in article 22 of the RGPD, since they would not produce legal effects in the recipients of the publicity that had been sent nor could it be considered that said referral similarly significantly affects clients.

4. The existence of a legal basis for the treatment of the data of the clients of BBVA.

A) Lawfulness of data processing carried out on the basis of legitimate interest prevalent.

As has been indicated, this question has to do with the treatments that are carried out with the purpose of "Knowing you better and personalizing your experience" (purpose 2), which in no way moment refers to the sending of commercial communications that BBVA bases on the consent of the interested party. Those treatments consist solely of the analysis of the customer behavior in relation to the channels, products and services offered by BBVA to obtain indicators that will allow it to properly adjust its model of business, develop and improve its portfolio of products and services, adjusting them to the customer preferences, as well as the quality of services. Only if you have the consent of the interested party, may apply the result of that treatment for the referral commercial communications to customers (purpose 3). There is therefore no confusion something between both treatments

In this regard, the Agency concludes that the legal basis of article 6.1 f) of the RGPD is not applicable to these treatments considering that the interests are not clearly exposed legitimate interests of BBVA (based on an incomplete definition of the legitimate interest contained in the glossary), the evaluation of the prevalence of legitimate interest is not reported and because the clause makes explicit the reasonable expectations of the interested parties that BBVA appreciates that they attend them.

BBVA considers that none of these arguments allows reaching the intended conclusion

by the Agency because the legitimate interest does not justify, as has been said, the sending of

commercial communications.

In addition, the extended information details the legitimate interest of BBVA (to better serve the

customer expectations and increase their degree of satisfaction, develop and improve the

quality of its products and services, as well as carry out statistics, surveys or studies of

market); the AEPD has not proven that the weighting test has not been carried out and the

The rule does not require that this information be transferred to the interested parties. BBVA considers that

must be public knowledge.

On the other hand, he understands that it is contradictory that the absence of weighting is objected to and

considers, at the same time, excessive that BBVA makes explicit what it understands that customers expect from

your financial entity, what is your reasonable expectation, capital element to determine the

prevalence of the legitimate interest of a data controller.

Based on this, the Agency understands that this expectation is induced by BBVA and that the

Customers do not reasonably expect their data to be used to improve products and

services and improve the customer experience. In this regard, in a study conducted in

2018 by BBVA among its new clients, consulted about what they expect from the entity, the

The first responses were, in this order, obtaining personalized treatment, in good

service in the office, amazing tools and products or the offer of products of

adapted savings or investment (according to the document provided by BBVA, this result

corresponds to the question “What aspects are most important to you and what do you expect

receive from BBVA in this new relationship?"). Thus, the reference made in the Privacy Policy Privacy to reasonable expectation responds to the result of the analysis carried out by the entity itself.

Understand that the reasonable expectation must remain hidden, that by revealing it in the informative clause loses its character of expectation, it is contrary to logic and It undermines the obligation to guarantee the greatest clarity of information.

In relation to the Agency's assertions about the possibility that the use of the data with the purpose of knowing the client better can entail an exhaustive analysis on the same, which is based on the possible use of data unrelated to the contracted products, collected from the use of BBVA products, services and channels; understands the entity It is mere conjecture that does not respond to the reality of the treatments carried out.

BBVA does not carry out these treatments, as stated in the information related to a BBVA project, called "Customer Data Cube", which indicates the data that are used within the framework of purposes based on legitimate interest to make models predictions about the propensities of customers to certain products or recommendations, which are not related to the identification of issuers of the orders of charge or credit nor are they treated in an aggregated way, and it is only differentiated if it is "receipts basic" or "non-basic receipts". None of this data includes information that does not refer to the behavior of the client in relation to the financial products marketed by BBVA and only includes as additional data the risk referred to the client, obtained from the CIRBE.

According to the detail contained in the "Customer Data Cube" document, BBVA uses the variables indicated below, which are calculated over a period of time determined, on the evolution in a period (percentage by difference between periods of time) or on the balances at a given date (last day of the month). In addition to the variables that identify the client and sociodemographic variables (age, national classification of

occupations, census section, sex, employment indicator, taking into account the

following variables (some examples are cited):

. Linkage and general business (customer seniority, category, amount and evolution of liabilities

and active...)

. Asset variables:

. Balances, holdings and seniority (amount, evolution, quarterly average, amortized percentage,

last maturity in consumer or mortgage loan).

. Cirbe (risk, percentage of guarantees, portfolio or leasing; long-term, short-term risk; direct or

indirect…).

. Of resources (amount, evolution and quarterly average in pension plan, funds, variable or fixed income,

savings insurance…).

. Of transactionality

. Cards (amounts and quarterly average with credit or debit card in shops, ATMs...).

. Income (amount, tenure or number of months of payroll, pension...).

. Accounts (monthly average, evolution of liquids, overdrafts...).

. Receipts (total amount in a year of basic and non-basic receipts, number of receipts in a year,

receipts returned, monthly average…).

. Insurance (premium, tenure, number of months of home insurance, life...).

. Companies (amount, evolution and average of guarantees; portfolio; transfer of payroll; foreign trade;

factoring; leasing; certified payments; lease…).

. Digitization and customer interaction

. General (bbvanet; banca_mvl, multichannel)

. Use of channels (days in which there are contracting, operation or consultation events, according to channel -including office and telephone).

Thus, the treatment analyzed is linked to legitimate interest and allows BBVA to optimize the business model; improve the quality of the products and services offered; improve internal management and the personalized relationship with the client; determine the propensity of customers to a certain product the preferences in terms of channels to through which they are related and the groups to which they can be offered certain products (commercial communications are not sent to them unless they have granted your consent in accordance with purpose 3).

In this sense, it considers logical the existence of a reasonable expectation of the clients about the processing of your data to design products that may be of interest to you.

In addition, for this, data of third parties linked to the client are not processed in the transactions you make. Only data referring to behavior in relation to products and channels, which meet the principle of suitability and necessity.

This conclusion coincides with the criteria supported by the AEPD in its report 195/2017, issued at the request of the Spanish Banking Association. In section VII, he analyzes the prevalence of the legitimate interest of financial entities for the analysis of the transactional movements and/or saving capacity of the client, to make observations and offer recommendations about products and services. And the same report also refers to the treatment of all the transactions in order to be able to carry out a more detailed that allows specifying with precision the products that must be offered. Y contemplates the adoption of additional guarantees, such as detailing in more detail the treatment that is going to be carried out, and particularly, the fact that the data transactional will be used for the elaboration of profiles and offer the interested party the possibility of specifically objecting to this treatment. Therefore, it understands that the Agency

he would be acting against his own acts and violating the principle of legitimate expectations.

Finally, on this issue, he points out that the Agency conjectures about the treatments that

BBVA would be carrying out, without having evidence to prove it.

B) Of the legality of the treatments carried out by BBVA on the basis of the consent of

its clients and the compliance of such consent with data protection regulations.

a) On the power of control of the affected party over their data

The client, from the moment in which he manages his registration and while maintaining the relationship,

You have absolute power and control over the processing of your data, since you are

offers the possibility of opting and choosing your preferences in relation to the operations of

treatment that are carried out, at any time and through the different channels

made available to you face-to-face and digital.

This power of control is what the regulations seek to guarantee, and this is how the

AEPD. In his recent document “User control in the personalization of ads in

Android”, referring to the duty to provide the user with real control over their data

personal, and in the document "Guide on the use of cookies" when it states "... the

need to implement a system in which the user is fully aware of the

use of those devices and the purpose of their use, ultimately being

aware of the destination of their data and the incidents that this system implies in their

privacy".

This result is what is obtained with the processes and means enabled by BBVA,

adjusted to the provisions of article 7.2 of the RGPD, in which the interested party has absolute

freedom of choice and control over your data, the different options are presented for the different treatments and purposes separately, does not refer to documents that are not easily accessible and uses a granular structure when providing information, promoted by the legislator, the AEPD and the GT29 in their "Guidelines on consent in the meaning of Regulation (EU) 216/679" in its revised version of 04/10/2018.

Likewise, the provisions of Recital 32 are respected, which admits many and different formulas to obtain consent, to the extent that it is clear that the interested party accepts the proposal to process your data, separately for the different treatment activities carried out with the same or same purposes; as well as the ban contained in article 7.4 of the RGPD, referring to the subordination of the execution of a contract to which the affected party consents to the processing of their data for purposes that are not are related to the maintenance, development or control of the contractual relationship; and the reference of Recital 43 when it states that "it is presumed that consent is not has freely given… when the performance of a contract, including the provision of a service, is dependent on the consent, even when this is not necessary for said compliance" or to the separate authorization of the different treatment operations of personal data.

There is no reproach in the Initiation Agreement for these fundamental issues, so that only the manner in which consent was obtained seems to be in dispute.

b) On obtaining consent by performing an affirmative action of the clients.

WG29, in relation to the unequivocal nature of consent, refers to an action by the affected party that reveals a behavior, a manifestation of will or, as it is said in the RGPD, "a clear affirmative action", which means that the interested party must have acted deliberately. For its part, the "RGPD Guide for Data Controllers Treatment" of the AEPD refers to a manifestation of the interested party or a clear action

affirmative.

In this regard, BBVA points out that it has opted for this clear affirmative action:

. Through any of the available channels, BBVA enables the signing of the "Declaration of Economic Activity and Data Protection Policy", which offers the interested party the different options in relation to the additional purposes to the management of the relationship contractual. The signing of this document is a clear affirmative action, which is carried out carried out with full knowledge of the scope and consequences that it entails (the claimants have effectively managed their preferences). Furthermore, through the application, the interested party has at their disposal a simple procedure to manage their preferences at all times (claimant 2).

. The registration process, through the indicated digital and face-to-face channels, meets the requirements expressed in the "RGPD Guide for data controllers" of the AEPD, that recalls that consent "can be unequivocal and granted implicitly when it is deduced from an action of the interested party". Furthermore, the Home Agreement incurs contradiction given that the AEPD, in relation to claimant 2, has considered valid the process in which the client has marked any of the boxes enabled for the provision of consent, but not when you have not checked those boxes and authorize with your signature the treatment of your personal data for the purposes that are made available to you. The holographic or digital signature of the document is a clear affirmative action that is carried out with full knowledge of its scope, considering the clear content of those boxes and that, therefore, their positioning, are clearly visible and directly accessible.

In the field of managing cookies or similar technologies, the control authority has

admitted as affirmative management actions such as navigating in a different section

of the website that would use them, close the privacy notice of the first layer or click on

some content of the service offered on the web. In this area, Document 02/2013

WG29 notes that “ensuring that the active behavior is close to the location

where the information is presented is essential to be sure that the user must refer

the action to the requested information”. The "Guide on the use of cookies" of the Agency

supports as valid a link or button to manage preferences along with the possibility

of “accept” or “reject”, or supports “the pressing of specific keys” as an affirmative action.

In the same way, the non-marking of the boxes and the subsequent subscription of the aforementioned

document involve a “physical movement” that can be considered as an action

clear affirmative in accordance with the RGPD, with which the interested party achieves control over their data

personal.

Moreover, in the regime of explicit consent, which reinforces the "ordinary" consent

In attention to the treatments and data submitted to it, the Guidelines on the

consent of the GT29 admit as valid explicit consents formulas or

less demanding processes than the one implemented by BBVA. Thus, in a written statement,

these Guidelines cite a case that could be assimilated, in which it admits a "yes" or a "no"

(example 17: “A data controller may also obtain explicit consent

from a person visiting your website by offering an explicit consent screen

that contains Yes and No boxes, provided that the text clearly indicates…”). I also know

cites as an example, in the digital or online context, the one in which an interested party can issue

the required declaration by filling out an electronic form, sending an email,

uploading a scanned document with your signature or using an electronic form.

. The consent enabled by BBVA cannot be considered a consent by default

or by inaction as there is in any case an active behavior of the interested party: on paper

insert the signature in the same place or having in view the options that are offered; in the

digital channel, on many occasions the person affected will have accessed, navigated through the different

screens enabled to manage your consent, having opted, or not, to reject

certain treatments.

In the latter case, the process involves carrying out two actions:

In the first place, the affected party has an interactive document included as a hyperlink

in the text that accompanies a box (“I have read and accept the processing of data

personal”), whose dialing is blocking in order to continue with the registration process; the

reiterated document that is used in this channel is configured in two layers: a first

that incorporates the boxes under discussion, and a second layer with expanded information;

Secondly, after the collection of personal data, the interested party again has

The document with the result of the affirmative action is available so that, if it is

agree, you must proceed to your signature.

Therefore, there is no inactivity or "silence" that is interpreted as an act of acquiescence or

acceptance, there is a concrete activity or, at least, the option to carry it out. BBVA,

nor any other person in charge, cannot materially ensure that the client's signature has

place after the leisurely reading of the privacy policy. However, in order to

ensure that such action takes place, facilitates repeated and insistent messages reminding

that need, so that the interested party is responsible for their decisions. And he can't

responsible to complete or replace the autonomy of the will of the affected party.

Presumed consent does not take place either, since there is no declaration or act

positive that implies acceptance of the privacy policy in its entirety. The

The interested party is aware of said policy and chooses to choose their preferences either by marking the

boxes, either by subscribing to said privacy policy without checking them.

There is no inaction, for the same reasons and it is not an assumption of boxes

pre-marked, the continuity of a service or functionality as a consequence of the silence or

Obtaining consent in the context of the acceptance of a contract or the

terms and conditions of a service. Moreover, the subscription of the document is necessary

to register as a BBVA customer, which entails the need for customers to

access the documents, opt for any of the alternatives offered and

sign the document, expressing their agreement or disagreement with the specific

processing operations subject to your consent.

C) The consent requested by BBVA as reinforcement of the right of customers in

treatments that could be based on the prevailing legitimate interest of the entity.

The treatment of the data for the majority of purposes for which the data is collected.

consent of the clients could have been founded by BBVA on the concurrence of the interest

prevailing legitimate interest of BBVA, so that the entity, when obtaining the consent of the

stakeholders has adopted reinforced measures of active responsibility.

The entity refers to purposes 3 and 5 of the Privacy Policy (offering products and

personalized services from BBVA, the BBVA Group and others; and to improve the quality of

products and services).

In this regard, it recalls report 195/2017 of the AEPD, cited in section A) of the

this point 4, whose sections VII and VIII are applicable to the case now analyzed,

referred to the treatments that a financial entity can protect in the legitimate interest in

relationship with purposes that, in BBVA's opinion, fit with those listed as 3 and 5 of the

basic information contained in the informative clause.

In view of what is stated in that report, it can be concluded that the AEPD considers that, in certain assumptions and under certain circumstances, the processing of data with the purpose of knowing the preferences of the client and his behavior in relation to the products, as well as for the establishment of profiles that allow the referral of personalized commercial communications, would be covered by article 6.1.f) of the GDPR, which would exclude the need for customers to provide their consent.

Thus, the entity has reinforced the power of disposal of the interested parties over their data personal data, allowing you to express your refusal or opposition to the treatment from the same time of collecting your data, without having to make use of the right of opposition in a later moment. In addition, the exercise of this right must be justified in some assumptions (“reasons related to your particular situation”), while in the option offered by the client is based on his sole and exclusive will.

Therefore, if the reasoning of the initial agreement were followed, the AEPD would be considering more harmful to request consent when it is not required than to report on the treatments that the responsible entity intends to base on the prevailing legitimate interest.

Based on everything stated in this point 4 of BBVA's allegations, this entity concludes that the treatment carried out for purpose 2 is fully based on legitimate interest; those made for purposes 3, 4 and 5 are based on the consent granted by the interested parties with all the established requirements; and what in In the case of purposes 3 and 5, this request for consent constitutes a measure of active responsibility adopted by BBVA.

TENTH: By letter dated 07/02/2020, notified to BBVA on the 6th of the same month, the

Instructor of the procedure agreed to open a period of practice tests,

considering reproduced for evidentiary purposes the claims filed and their

attached documentation, as well as the documents and statements obtained by the

Subdirectorate General for Data Inspection in relation to said claims in the

Information request process prior to admission for processing. Also, they were considered

presented the allegations to the initial agreement formulated by BBVA and the documentation

that accompanies them.

On the other hand, it was agreed to require the entity BBVA so that within a period of ten days

business days, provide the following information and/or documentation:

a) Copy of the record of all personal data processing activities carried out under the

responsibility of BBVA that are mentioned in the personal data collection form

called "Declaration of economic activity and personal data protection policy", in its

initial version, together with any additions, modifications or exclusions in the content thereof.

b) Copy of the evaluation(s) of the impact on the protection of personal data relative to any

type of personal data processing operations carried out under the responsibility of BBVA,

of those mentioned in the form "Declaration of economic activity and protection policy of

personal data", which entails a high risk for the rights and freedoms of natural persons,

in its initial version and, where appropriate, with the details of the modifications or updates that may

have been done.

Likewise, if there has been a change in the risk represented by the treatment operations

and if deemed necessary, the result of the examination that BBVA may have carried out was requested.

to determine whether the processing is in accordance with the impact assessment relating to the protection of data (article 35.11 of the RGPD).

c) Copy of the documents containing the evaluation carried out by the BBVA entity on the prevalence or not of the interests and fundamental rights of the interested parties against the interests of BBVA in relation to the personal data processing operations carried out under the responsibility of BBVA, of those mentioned in the form "Declaration of economic activity and personal data protection policy", with which the satisfaction of interests is intended legitimate pursued by the BBVA entity itself or by a third party.

d) Copy of the report containing the results of the opinion survey carried out among the months of January and February 2018 among new customers, to which BBVA refers on page 44 of its pleadings brief and Document 9 attached to said brief.

In response to what was requested by BBVA, the period granted was extended by five days skillful.

Once the total term granted had been exceeded, on 08/03/2020, a letter was received from response to which BBVA accompanied the following documentation:

A) Evaluation of the impact on the protection of personal data of the treatments related to the realization of commercial profiling.

This document indicates the following:

"Technology is the lever of change to redefine the value proposition focused on real customer needs and offer them a simple, pleasant experience that is in line with their interests, without diminishing security. In retail banking, the main change is in the way in which that customers access financial services in the future. In access channels, mobile is essential and will continue to grow.

At this point, BBVA is rethinking the user experience, the trust of users being fundamental. customers, to be able to offer you "personalized" products and services based on your preferences, and help you make smart decisions.

Data is the basis of the digital economy, and the Bank continues to advance in the implementation of different recommendations and suggestions of the client's ombudsman regarding the adequacy of the products to the customer profile and the need for transparent, clear and responsible information.

In this context, the data processing that will be analyzed in this document is framed.

document, whose legal basis is the legitimate interest of BBVA.

However, and for a better understanding, we have divided the customer profiling treatments into four modules:

. Processing of personal data for propensity modules and use of channels.

. Processing of personal data for relevant events.

. Processing of personal data for business analytics, billing and surveys.

. Processing of personal data for the "offers" and insight module.

The four modules mentioned are analyzed below.

I.- Description of the treatment for propensity modules and use of channels

Description

Personal data is processed for the design of analytical modules for the propensity to hire products and services by BBVA customers.

Likewise, the use of communication channels with BBVA by the customer is analyzed to determine your preferences.

Data categories

. Identification and contact: mainly for validations and use of addresses to carry out deductions or inferences such as, e.g. and. estimate that a person living in an expensive area has

more likely to have financial resources.

. Economic and financial solvency, in particular data of contracted products and services and

information derived from them.

. transactional data.

. Sociodemographic data.

. Data included in the aggregation and payment initiation services.

. Communications data.

. Data collected on the use of channels".

Both in the model of propensity to contract products and services, and in the

Regarding channel preferences, in the section "Participants involved" it refers to

"active holders"; "Destruction" indicates "24 months (depth of treatment)" and

"Personal data used in the model 10 years x Money Laundering Prevention Law

Capitals".

In the section "Systematic description of the operations and purposes of treatment"

Corresponding to these treatments for propensity modules and use of channels, the following is indicated:

"Procedure to comply with the duty of information: It is found in the policy document of

protection of personal data, which is an independent document to any contract, and of

required signature by the interested party at the time of becoming a client…".

"Procedure for requesting consent: Not applicable. The basis of legitimation is the interest

legitimate".

"Procedure for the exercise of rights: All the channels for the exercise of rights are explained.

rights… in the personal data protection policy document… This document is

published in its most recent version on the BBVA website... In addition, in any branch

(branch) of BBVA can request its exercise".

"Benefits for interested parties" section:

"These treatments benefit the interested party insofar as they allow BBVA to offer them a better service from

knowledge of the client in particular, being able to propose different management models (a manager

remote, a face-to-face manager or specialized managers) as well as offering the client solutions

that help you better manage your finances."

"Benefits for the entity in general" section:

". BBVA can understand with these treatments which product or service can best fit each

customer, anticipating their needs, this information being very valuable for the

Bank planning.

. It is a personalization of the tendency of each client towards the possible hiring of a

certain product or service, so that the Bank approaches the potential behavior of the client,

and this helps you understand it better.

. On the other hand, knowing better the preferences for the use of channels allows the entity to be able to improve

those that are more successful, improve their quality and consider new channels or the closure of some

existing".

"II.- Description of the treatment for relevant facts

Description

A behavioral analysis of the activity of customer accounts and cards is carried out, taking

taking into account factors such as movements categorized by BBVA, frequency, periodicity and

recurrence, which allows us to anticipate and predict customer movements and balances, with

potential impact on your finances. This is known as generating "relevant facts",

very relevant information for the client and thanks to this analysis we can inform each one

in particular of his own, allowing him to act and make decisions for the benefit of his economy and

In time.

Data categories

. Identification and contact.

. Economic and capital solvency (BBVA data without resorting to external sources)

. transactional data.

. CIRBE

. Asset and credit solvency files.

Treatment Analysis

Context

(…)

In order to better meet your expectations, and as a consequence, improve your

satisfaction with the BBVA service, to retain it and to place its trust in us, the

The DATA area at the Bank works on different projects.

In this internal context, this behavioral analysis is born, which allows the generation of facts

relevant, offering a great "personalization" of the finances of each client, anticipating

your potential financial needs to let you know, to help you make informed decisions

smartest".

“The relevant facts that are generated can be communicated in two different ways:

. Via Push type message in the client's mobile application, or

. In a space of the mobile application”.

In the section “Participants involved” it refers to “active holders”; in

“Use/treatment” is indicated “Behavioral analysis to generate relevant facts.

Presentation to the client”; “Destruction” indicates “24 months (depth of treatment)” and

“Personal data used in the model 10 years x Money Laundering Prevention Law

Capitals”.

In the section "Systematic description of the operations and purposes of treatment"

includes the same information on the procedure to comply with the duty of information,

procedure for the request of consent and procedure for the exercise of

rights already indicated in relation to the treatments for propensity modules and use of

channels.

“Benefits for those interested

It is about performing analyzes on the client's finances aimed at helping him with situations

that may have gone unnoticed, and that could have an impact on your

economy, such as the prediction of a payment that could generate an overdraft in your

bill. You may also be told of higher-than-usual savings on your finances, to

that you know you have more resources than normal.

Benefits for the Entity in General

The Bank expands and improves its product portfolio, with a clear focus on offering what the customer

needs and to do it with quality”.

“III.- Description of the treatment for business analytics and surveys

Description

In order to better meet customer expectations and increase their degree of

satisfaction, which results in the improvement of the quality of products and services, BBVA performs

data processing for the analysis of your business, allowing you to make decisions for the purpose

indicated.

This implies profiling the client, to better understand our portfolio, identifying client niches

with a specific financial profile that may be of greater or lesser interest to the entity. I know

It is a segmentation by stock exchanges for BBVA or, internally, "carterization".

Thus, each niche has different objectives and needs regarding their finances, and this

Knowledge enables business decisions.

This is complemented by carrying out statistics, surveys and, in some cases, studies

market.

Data categories

. Identification and contact: mainly for validations and use of addresses to carry out

deductions or inferences such as, e.g. estimate that a person living in an expensive area

are more likely to have financial resources.

. Economic and financial solvency, in particular data of contracted products and services

and information derived from them (BBVA internal data).

. transactional data.

. Sociodemographic data.

. Data collected on the use of channels.

. Data aggregation and initiation of payments.

. Communications data.

. Data about you (use of channels, your products and services)".

In relation to the "treatment of business analytics to satisfy the client and improvement of

the quality of the services", in the subsection "Participants involved" refers to

"Headlines"; "Use/treatment" indicates "Business monitoring analytics"; in

"Destruction" is indicated "24 months (depth of treatment)" and "Personal data 10 years

x Money Laundering Prevention Law".

In relation to the "processing of surveys to meet customer expectations and

improve your satisfaction with BBVA", in the subsection "Participants involved" refers

to "holders"; in "Use/treatment" it is indicated "Surveys to improve customer satisfaction";

in "Destruction" it is indicated "24 months (depth of treatment)" and "Personal data 10

years x Money Laundering Prevention Law”.

In the section "Systematic description of the operations and purposes of treatment"

includes the same information on the procedure to comply with the duty of information,

procedure for the request of consent and procedure for the exercise of

rights already indicated in relation to the treatments for propensity modules and use of

channels.

“Benefits for those interested

Business analytics and surveys are aimed at having a better understanding of the profile

of the client, which allows us to improve the portfolio of products and increase the quality of the

services. This results in greater customer satisfaction with BBVA.

Benefits for the Entity in General

The entity builds customer loyalty, earns their trust with products that are more interesting and of

Best Quality".

IV.- Description of the treatment for the "Offers" module (reactive mode and proactive mode) and

insights

"Description

In the Contact Center, commercial actions are carried out with customers who call to ask

for your questions or concerns. Such actions are carried out during the customer call,

always after attending to the question for which he has contacted.

. Reactive mode: when it is the customer who shows interest in one or more other products or

services, and ask the agent. This enters the "offers" module of the platform

Nácar, which contains the customer database, and which works in online mode. East
module loads at that time and based on the profile of that particular client, after
pass filters by the Robinson brand, the products and services that could be of interest to
that client, because of the profiling he does.

. Proactive mode: the agent enters the "offers" module of Nácar, which passes filters through the
Robinson brand, and presents you on the screen with the information you have uploaded based on the
profiling of that client, about the products and services that could be of interest to said
client. In this case, it is the agent who proactively offers them to the client. Nevertheless,
In this analysis, the possible subsequent commercial activity is excluded, limiting itself to the treatment
of personal data for the profiling that is carried out in the "offers" module.

Data categories

In both reactive and proactive modes, the "Offers" module deals with the same
categories of personal data, which are the following:

. Identification data.

. Economic and capital solvency data (BBVA information, without resorting to sources
external), data of contracted products and services.

. transactional data.

. Sociodemographic data.

. Channel usage data".

In relation to the "treatment for offering products and services in contact center to
clients" is indicated:

. "Participants involved": "Clients Contact center";

. "Use/treatment": <<The provider's agent enters the client file, "calls" the module
"offerings" and if it is not Robinson reactively or proactively offers you any of the products or
services shown on the screen. If the client decides to contract, the agent will access the process of
corresponding contracting";

. “Destruction” is indicated “24 months (depth of treatment)” and “Personal data 10 years x Law

Prevention of Money Laundering”.

In the section "Systematic description of the operations and purposes of treatment"

includes the same information on the procedure to comply with the duty of information and

procedure for the exercise of rights already indicated in relation to the treatments for

propensity modules and use of channels. On the "procedure for the request of the

consent” is indicated “Not applicable. It is not the object of analysis of this document the possible

commercial activity and the processing of personal data that it entails and that requires

consent".

“Benefits for those interested

Customers who are interested in hiring a service or product do not have to wait

for the agent to assess their needs and preferences, because the profiler has already done so,

facilitating the hiring, since it can be done during the call, and saving time when

client.

Benefits for the Entity in General

The Bank maximizes its sales potential by taking advantage of the customer's interaction with BBVA”.

The section “Analysis of the need for treatment” indicates:

“. Legitimation: for legitimate interest.

Justification: see weighing report of legitimate interest where they are justified in detail”.

On the other hand, in this document, in relation to all the exposed modules, it is

identify, among others, the following risk reduction measures:

“. Transparency of the procedures: Clause of treatment of personal data of clients

valid.

. Exercise of rights: Internal response procedure to exercise of rights; reported in the

personal data processing clauses.

. Lack of legitimacy in the treatment: Weighting analysis on legitimate interest to carry out

risk profiling.

B) Evaluation of the impact on the protection of personal data of the treatments

related to carrying out risk profiling.

This document analyzes treatments that respond to regulatory models and those

that respond to analytical models. The review of the former is omitted and they are highlighted

Below are the main aspects of the analytical models:

“The entity must comply with certain regulatory obligations related to the so-called

responsible credit and financial risk control. This implies a continuous evaluation of the

financial solvency of its customers through the processing of personal data that most

detailed below, and that as a result assigns a limit of potential indebtedness to

each client, in dynamic mode.

For this purpose of continuous assessment of the solvency of its customers, BBVA generates and applies to

the same systems and algorithms (analytical models) that allow anticipating or predicting the

compliance of the client against the possible contracting of an asset product (normally

loans), defining granting parameters and cut-off points to decide, where appropriate,

what financing can

be the ideal one for the particular client and what maximum amounts could

assume without compromising their financial stability.

In this way, the Bank grants the consumer the possibility of accessing optimal financing

in relation to their particular solvency, resulting in better credit conditions, in

quick access to financing lines and in a particularization or personalization of

these lines of credit, minimizing default situations.

The application of these analytical models also allows the entity to maintain thresholds

of risk conveniently established, which would avoid, as already indicated, a possible

financial destabilization of the company and therefore, potentially of the financial system

Spanish".

"… the deployment of risk models by BBVA results in obtaining a

complete information of the circumstances that concur in a potential borrower, acting the

system as an essential tool to ensure compliance with credit principles

responsible imposed by the… legislation".

"Data Categories

The categories of personal data processed for the creation and management of risk models

analytics are:

. IDs.

. Economic and financial solvency, in particular data of contracted products and services.

. transactional data.

. Sociodemographic data.

. Risk Information Center of the Bank of Spain (CIRBE).

. Solvency and credit files".

In relation to the "treatment for analytical models" it is indicated:

. "Participants involved": "owners and guarantors";

. "Use/treatment": "Customer economic predictive profiling treatment";

. “Destruction” is indicated “Model result: monthly”; “The data for the elaboration of the model:

10 years x Money Laundering Prevention Law”.

In the section “Systematic description of the operations and purposes of treatment”

Corresponding to these treatments for propensity modules and use of channels, the following is indicated:

“Data Flows Between Analytical Model Systems: Proactive Passive and Proactive Limits Engine

the data comes internally and entirely from the information systems of BBVA and the solvency of

external credit.

Procedure to comply with the duty of information: It is found in the policy document of

protection of personal data, which is an independent document to any contract, and of

required signature by the interested party at the time of becoming a client…”.

“Procedure for requesting consent: Not applicable. The basis of legitimacy in the models

of analytical risk is the legitimate interest”.

“Procedure for the exercise of rights: All the channels for the exercise of rights are explained.

rights… in the personal data protection policy document… This document is

published in its most recent version on the BBVA website... In addition, in any branch

(branch) of BBVA can request its exercise”.

“Benefits for those interested

Analytical Models: the main result is, generally, the pre-granting of operations

of credit, including the delimitation of the amount and term of return, which facilitates the

provision and reduces the documentation necessary for processing, in the event that the

The interested party effectively requests the contract, which results in greater speed and

comfort for the contracting party.

Benefits for the Entity in General

. It enables risks to be measured and managed as a basis for the entity's solvency.

. In addition, it ensures regulatory compliance.

. Added to other variables, the Bank can fulfill its obligation to provide a

responsible credit to its customers, for the benefit of society and the banking system”.

In the section “Analysis of the need for treatment. Justification” indicates:

“Analytical risk models: see legitimate interest weighing report where justified

in detail".

On the other hand, the following risk reduction measures are identified, among others:

“. Transparency of the treatments: Clause of treatment of personal data of clients in force.

. Exercise of rights: Internal response procedure to exercise of rights; reported in the

clauses of treatment of personal data of the clients.

. Lack of legitimacy in the treatment: Weighting analysis on legitimate interest to carry out

risk profiling.

C) Weighting report of the prevalence of legitimate interest in the treatments to which

refers to the purpose numbered as 2 in the section “For what purposes the

will we use?”, contained in the personal data collection form “Declaration of

economic activity and personal data protection policy”.

1. After a brief introduction, in which mention is made of article 6.1 f) of the RGPD

and its Considering 47 to 49; to “Opinion 6/2014, on the concept of legitimate interest of the

responsible for data processing under article 7 of the Directive”, of the Group of

Work of article 29 of Directive 95/46/EC, issued on 04/09/2014; and Report 195/17,

issued by the Legal Office of the AEPD, dated 07/24/2017; the following is added:

<<By means of this document (hereinafter, the "Report"), the weighting of the

Legitimate interest as a legal basis for the processing described below.

2. Description of the treatment activity

2.1. Reference to the reflection of the treatment in the Register of Treatment Activities (in hereinafter, "RAT") of BBVA

The treatments analyzed in this report are included in the BBVA RAT with the following purposes of treatment:

. Allocation of pre-granted limits

. Profile Application

. Propensity Models

. Contact Center - Offers module

. Relevant facts and insights

. Card portfolio analysis and profitability proposals

2.2. Purpose pursued by the treatment

The purpose of the treatment activity analyzed in this Report is to configure by BBVA of analytical models to, through propensity models, have a better understanding of its customers, thus being able to optimize its business model, offer more personalized attention to those and determine their preferences, in order to improve the quality of products and services offered and make the best suggestions about them, which could be subsequently communicated - only to customers who have consented to it - through the different means of interaction with the Entity. These suggestions may not refer only to products but, for example, to the way of interacting with the entity (e.g. in case the client is a regular user of digital channels, it could be suggested not to receive postal items).

In this way, the aforementioned treatment has as its object the analysis of the behavior of the customers and their interaction with BBVA in relation to the channels, products and services offered by the Entity, which will also require knowing its level of financial risk. From said information, BBVA will be able to obtain different indicators that will allow it to adequately adjust its business model, determining propensity models of its customers towards a certain type of products and services or towards the use of different channels of interrelation with the Bank, offering them a more personalized treatment through the application of the model.

Therefore, the treatment activity examined is limited to analyzing the behavior of the BBVA customers, without carrying out any additional processing activity that implies relationship with these clients.

As indicated, this treatment would only suppose the best knowledge of the client through the generation and application of the analytical model, but in no case will it imply the realization commercial communications to customers. Only once the mentioned models have been generated and carried out therefore the treatment analyzed in this report, BBVA could carry out a treatment of data, differentiated from that, which would consist of the remission of said commercial communications of the Entity's products and services, where appropriate.

23. Delimitation of the affected groups and the data subject to treatment

The personal data processed to carry out the treatment activity object of this Report are those related to BBVA customers, understanding as such those who maintain with the Entity a current contract.

Regarding the data submitted to treatment, it includes those referring to categories that are previously object of treatment by BBVA under the protection of article 6.1 b) of the RGPD, as it derives from the relationships contractual agreements that the customer already has with BBVA as a result of contracting other products or services or their interaction with the Entity on the occasion of the development of the relationship contractual. These data would be the following:

Yo. Identification and contact data, such as name, surname, photograph, DNI, passport or NIE,

nationality, postal addresses, electronic addresses, fixed telephone, mobile telephone, voice and image.

ii. Economic and financial solvency data, such as monthly net income, average balance in accounts, asset balance, direct debit receipts, direct debit payroll, income and expenses, as well as the related to the client's financial qualification.

iii. Transactional data in a categorized way, such as average balances, average income, number of direct debits, number of receipts referring to the provision of basic services, type of movements of accounts and cards. The data referring to the texts of the receipts by inference from the detail of account and card movements (such as origin, destination, concept and third party related to the transaction).

IV. Sociodemographic data, such as age, marital status, family situation, residence, studies and occupation (type of contract, length of employment) or membership of groups.

v. Data of contracted products and services, such as contract number, limit associated with the contracted products, type of contracted products and services, contract data (attributes associated with the contract), risk with BBVA, as well as any documentation associated with any of the these contracts.

saw. Data of communications and the use of the channels that BBVA makes available to the client for the management of products and services.

vii. Data on the use of BBVA digital channels,

viii. Data resulting from statistics and market studies carried out by BBVA.

ix. Sociodemographic statistical data from the National Institute of Statistics (in hereinafter, "INE"), obtained in accordance with the provisions of article 21.1 of Law 12/1989, of May 9, regulator of the Public Statistical Function (hereinafter, "LFEP").

x. Data obtained from the Risk Information Center of the Bank of Spain (hereinafter,

"CIRBE"), regulated by Chapter VI of Law 44/2002, of November 22, on Reform Measures

of the Financial System (hereinafter, "LMRSF").

xi. Data obtained from asset and credit solvency files, currently regulated by article

29 of Organic Law 15/1999, of December 13, on the Protection of Personal Data.

The data used for the application of the different profiles will refer to the last

twenty four months.

The data will not be communicated to any third party (not even to other companies of the Group),

remaining in any case in the BBVA systems.

2.4. How the data will be processed and possible transmissions or communications thereof.

BBVA will process the data referred to in the previous point with the

purpose of obtaining algorithms whose configuration is determined by the analysis of three phases

successive in order to guarantee the successive improvement and adjustment of the result obtained in relation to the

different clients:

Yo. The general determination of the relationship of the clients with both the products and services of BBVA

as well as with their communication channels (web, App, postal and offices), as well as their level of risk

(exclusively in relation to the possible offer of pre-granted credits), which is

established using propensity models designed internally from different models

mathematical studies performed on probabilistic studies. Customer data is used for this.

mentioned in section 2.2.

ii. The digital behavior of the user, with which the recommendations are completed and adjusted.

iii. The result is optimized by including the expected value of the hypothetical hiring for each

client. In this way, a broader knowledge can be obtained about the acceptance of the

portfolio of BBVA products and services by its customers.

Additionally, once the aforementioned algorithm was obtained, BBVA would proceed to a differentiated treatment,

consistent in its application with the purpose of directing those clients who have lent their

consent to do so in accordance with the provisions of the privacy policy, and only to this

group, offers of products or services of BBVA or marketed by it.

Finally, the process of obtaining the algorithms is periodically evaluated and validated by the

own department in charge of configuring the models, giving an exhaustive control

on the outputs of the algorithm.

3. Description of the legitimate interest to which the treatment responds

In general, the legitimate interest pursued by the treatment consists of achieving a better

knowledge of customers and improve the portfolio of BBVA products and services, through models

profiling analytics. As already indicated, the models are developed by BBVA and the data

resulting from its application are not communicated to any third party, whether or not they belong to the BBVA Group.

In this regard, BBVA's privacy policy and the information clause provided to customers

point out that this treatment will aim to "better meet (the) expectations" of the client and

"increase (your) degree of satisfaction as a customer by developing and improving the quality of products and

own or third-party services, as well as carry out statistics, surveys or market studies that

may be of interest."

In this way, through the aforementioned treatment it is intended to satisfy the legitimate interest of BBVA

consisting of carrying out the study of the interaction of the Entity's customers with its products

and services, which will allow to determine:

. How to optimize BBVA's business model.

. How to improve the quality of the products and services offered by BBVA.

. How to improve internal management and the personalized relationship with the client.

. What is the propensity model of customers towards a particular product or service.

. What are their preferences regarding the channels through which they relate to

BBVA.

. To which groups of users who have given their consent to do so could

offer certain specific products or services from the BBVA portfolio.

It must be taken into account that the treatment analyzed can be identified with the one that was the object of analysis by the AEPD in its report 195/17, given that it refers in its section VII to the possible prevalence of the legitimate interest of financial entities for data processing consisting of the "analysis of the transactional movements and/or saving capacity of the client, to make observations and offer recommendations on products and/or services of the banking entity in benefit of a better management of the clients' finances", in order to facilitate the client, from said analysis of information "about the products or services that best fit your profile in order to maximize the performance that the latter could obtain or offer the best prices in products or services that it had contracted or could contract in the future".

The aforementioned report, before analyzing the case in question, refers to two others already analyzed previously, in which it recognized the prevailing legitimate interest for carrying out Certain treatments...

On the other hand, with regard to determining the client's level of risk, it is necessary to show that the analysis of the same will only be carried out with the purpose of know what the interested party's credit threshold may be, without the information about the fulfillment of its monetary obligations is included for the analysis of the rest of the profile of the client.

That said, this determination is directly linked to the best knowledge of the customer and offering him personalized treatment, which necessarily requires BBVA to be able to adequately know the aforementioned level of risk in the event of a request by the

credit products. This treatment is necessary to fully comply with the obligations

compliance with the principles of responsible credit and credit risk control.

These obligations are already included in Law 2/2011, of March 4, on Sustainable Economy,

whose article 29.1 establishes…

Article 29.2 of the Law empowered the Minister of Economy and Finance to, among other provisions,

adopt within six months…

This authorization was exercised through the approval of Order EHA/2899/2011, of October 28, of

transparency and protection of the client of banking services, whose article 18.1 imposes on entities

of credit, before any credit or loan agreement is concluded, the obligation to "evaluate

the customer's ability to meet the obligations arising from it, based on the

Sufficient information obtained by appropriate means for this purpose, including information provided by

the client itself at the request of the entity", for which "they must have internal procedures

specifically developed to carry out the solvency evaluation mentioned in paragraph

previous. These procedures will be reviewed periodically by the entities themselves, which

will keep up-to-date records of such reviews.

Section 2 of the aforementioned article 18 regulated the scope of these procedures…

On the other hand, the obligations derived from the principle of granting responsible credit by

financial entities have been subsequently developed by the regulations governing the

credit contracts.

Thus, article 14 of Law 16/2011, of June 24, on consumer credit contracts regulates the

Obligation to assess the consumer's solvency...

Finally, article 34.1, second paragraph, of the aforementioned Law recalls that "non-compliance with the provisions relating to (...) the obligation to assess the creditworthiness of the consumer provided for in the article 14, as long as they are not occasional or isolated, they will be considered as infractions serious, and may be considered as very serious infractions according to the criteria provided for in article 50 of the aforementioned Consolidated Text (of the General Law for the Defense of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007, of November 16).

The aforementioned and described evidence that the assessment of the risk of its clients by part of BBVA results in obtaining complete information on the circumstances that concur in them, acting the system as an essential tool to guarantee the compliance with the principles of responsible credit imposed by the aforementioned legislation, in a that in any relationship between the Bank and the client this circumstance may be taken into account in the personalized treatment with him.

From all of the above, it is possible to appreciate the existence of a legitimate interest of BBVA in the configuration of the analytical models in which the treatment consists.

4. Judgment of suitability and necessity of the treatment for the satisfaction of the legitimate interest

In accordance with the reiterated jurisprudence of the TC (for all, STC 207/1996) "to verify if a restrictive measure of a fundamental right exceeds the judgment of proportionality, it is necessary verify whether it meets the following three requirements or conditions: "if such a measure is susceptible to achieve the proposed objective (judgment of suitability); if, in addition, it is necessary, in the sense of that there is no other more moderate measure to achieve such purpose with equal effectiveness (judgment of necessity); and, finally, if it is weighted or balanced, to derive from it more benefits or advantages for the general interest than harm to other goods or values in conflict (judgment of proportionality in the strict sense)." Since the trial of proportionality will be the result of this Report, we will now analyze the suitability and necessity of the treatment.

4.1. Suitability

The processing of customer data detailed in section 2.2 of this report for the

generation of analytical propensity models is appropriate, and therefore suitable, for the best

knowledge of the interests and preferences of its clients in order to offer them a personalized treatment and

improve the quality of its products and services. This guarantees the best commercial management of the

entity and the optimization of the commercialization policies of said products and services.

4.2. Need

In the same way, the treatment of the aforementioned data is essential so that the Entity can

carry out an adequate and effective management of its resources, anticipating the needs of the

customers, who will be able to see their present and future needs met in relation to products of

assets and liabilities that can be adjusted to your needs and financial situation.

5. Consideration of legitimate interest and compliance with the principle of proportionality in the

data treatment

5.1. General considerations

The treatment described in this Report logically supposes an effect on the right to

data protection of the interested parties, since their personal data will be processed to carry out

carry out an analysis of your preferences and interests in relation to the products and services of the

Entity or marketed by it, thus carrying out an assessment of which can

best fit your needs.

Having established the aforementioned premise, and once the suitability and necessity of the

data processing to comply with the legitimate interest pursued by BBVA, it is necessary

analyze whether the aforementioned affectation would suppose a prevalence of the rights of the interested parties over the legitimate interest of BBVA or if, on the contrary, that legitimate interest would prevail over the rights of the interested parties, in the terms established by article 6.1 f) of the RGPD.

As indicated, the treatment analyzed in this report allows the development of models analysis and the generation of algorithms that will allow knowing their clients, their level of risk, the acceptance by them of the Entity's products and services, and, consequently, detect the improvements to its business model and its portfolio of products and services, which allow greater satisfaction of the needs of its customers. In this way, BBVA uses for these purposes the data described in section 2.2 of this Report. The treatment of this data in order to generate propensity models can entail an intrusion into the private sphere of clients,

It must be taken into account that BBVA will not request the consent of its clients for the treatment of the data in the process of generating the models, but only for, where appropriate, the sending of commercial communications.

However, as previously indicated, the AEPD, in its report 195/17, already comes to recognize the prevalence of the legitimate interest of financial entities in relation to the treatments consisting of the "analysis of transactional movements and/or the ability to customer savings, to make observations and offer recommendations on products and/or services of the banking entity for the benefit of a better management of the clients' finances", provided that additional guarantees are adopted, that is, those through which the entity it manages to acquire a better knowledge of the client to personalize its relationship with it.

In particular, the aforementioned report indicates that "the treatment that is going to be carried out, and particularly, the fact that the transactional data are going to be used for the elaboration of profiles and must also be offered to the interested party the possibility of specifically objecting to this additional processing".

The treatment object of analysis in this report expressly adopts the aforementioned guarantees, given that, as will be analyzed in more detail in section 5.3, BBVA:

. It informs the interested parties in detail about the purposes of the treatment, so that

it is clearly understandable by its customers, as will be analyzed later.

. It clearly differentiates, through its inclusion in separate sections in the informative clause, the

treatment consisting of the elaboration of analytical models and their application to the interested parties,

of any commercial interaction with them, for which in any case your consent will be collected.

consent.

. It individualizes in detail the categories of data that will be subjected to treatment, even

when this is not required in accordance with the provisions of article 13 of the RGPD, with express reference

to the transactional data mentioned by the AEPD report, indicating that among the same

data such as "income, payments, transfers, debits, receipts, as well as

any other operation and movement associated with any products and services that you have

contracted with BBVA or of which BBVA is a marketer".

. Strengthens the channels to guarantee the adequate exercise by the interested parties of the rights

established in the data protection legislation, establishing both the postal channel and the

electronic or face-to-face, without prejudice to the fact that, in accordance with the provisions of the

data protection, the interested party may exercise their rights through the channel they deem

convenient.

Regarding the age of the data subject to treatment in the preparation and application of the

models, this would be twenty-four months. However, in BBVA's opinion, this does not prevent considering

that the model is in accordance with the guarantees established in report 195/17 of the AEPD and does not imply

a decrease in the prevalence of the legitimate interest of the entity that allows to base the treatment

of the data.

Indeed, it should be noted that the relationships of banking entities with their clients cannot be considered in a sporadic way, but rather they are links characterized by continuity and permanence in time. In this way, contracting a product or service is nothing more than the beginning of a stable (and generally long-term) relationship between BBVA and its customers that can entail the contracting of subsequent products or services, directly related or not with which it was the object of a first contract and which, moreover, is based on the need for the entity can anticipate the needs of the client, which requires, as has been indicated to throughout this report, a deep and personalized knowledge of it.

This knowledge can only be achieved if they are excluded from the assessment that could be made of the client, and particularly his risk situation, facts that could affect him in a way sporadic or transitory, minimizing the impact of said circumstances on the global evaluation of customer needs. Thus, for example, to assess the financial risk situation of the client should be able to reduce the impact of a transitory situation in which a situation of greater financial difficulty, which is not particularly relevant in situations of economic crisis like the one suffered at the beginning of this decade, attending to a more of the same than to one that would have a much more conjunctural character.

Furthermore, it should not be forgotten that the banking authorities (Bank of Spain, European Central Bank and European Banking Authority) impose specific obligations on financial credit institutions related to conducting risk assessment examinations of its clients, establishing in them the obligation to take into consideration their financial behavior for a period of five years. Although the models currently analyzed do not include this temporal depth, since they do not respond to an express request from the client, this does not exclude the need to attend to a reasonable, adequate and proportionate period that has been estimated in the twenty-four months to which the treatment refers.

To all this, two three elements must be added that also contribute to considering the prevailing

legitimate interest of BBVA as a legal basis for the processing of personal data for the purposes

analyzed in this report:

. The data object of processing is already being processed by BBVA as a consequence

of the adequate development of the contractual relationship that it maintains with its clients. That is, no

the information is enriched with other data from third-party sources, but

that the analytical models are based on the existing relationship between the customer and BBVA.

. The treatment of the data related to the client's risk profile is necessary so that

BBVA can adequately guarantee compliance with responsible credit obligations and

financial risk control, as discussed earlier.

. Likewise, as will be analyzed separately and in greater detail in the following point of this

report, it should be noted that in this case the principle of reasonable expectation of the

interested, to which the RGPD refers with particular emphasis when in its recital 47.

From all this, it can be concluded that there are elements of such an entity in the analyzed treatment that

allow us to consider the prevalence of the legitimate interest of BBVA over the rights of the

Interested parties, who are also protected through the adoption of additional guarantees, such as

will be indicated later.

5.2. Application of the principle of reasonable expectation of the interested party

In this case, as has just been indicated, the principle of reasonable expectation

established in the General Data Protection Regulation as a criterion for weighing

of the prevailing legitimate interest.

In effect, in general, the relationship between the client of a financial credit institution and the entity itself relies on most assumptions in establishing a link of trust with it, so that the client expects the entity to be able to advise personalized way about the products that can best fit your situation or your needs. needs, which necessarily requires greater knowledge of the client than just can be achieved through the generation and application of the models in which the treatment.

In this regard, it should be noted that BBVA has consulted its new customers about their expectations in relation to the Entity itself. In this sense, when asked "What aspects are most important to you and what do you expect to receive from BBVA in this new relationship?" (that is, what was your "reasonable expectation" in relation to it) the first answer was the obtaining personalized treatment (with 40.3%), also appearing among the first results "good office service", with 33%, "surprising tools and products", with 17.3%; or the offer of "adapted savings or investment products", with 16.5%.

It follows that the customer who maintains a relationship with BBVA expects said Entity to can advise you on the products and services that can best meet your needs financial information based on individualized information from the client. That is, the Entity of credit can anticipate the needs of the client by offering products or services that the You can later consider the most relevant ones for your profile.

Well, the knowledge and personalized treatment of the client can only, in short, be achieved if BBVA can previously analyze its behavior and its financial risk, determining what products could be interesting for him or, in other words, what he can expect the client that the entity can offer him based on the information with which he has that.

In other words, the treatment is necessary for the client to fulfill his or her reasonable expectation that BBVA knows your needs and can recommend you (subject to your request if there is no

given their consent for the sending of commercial communications) products that fit

to their interests, anticipating their own needs. Thus, although this commercial offer

will only be made to clients who consent to it, there is no doubt that the expected purpose of

personalized treatment by the client can only be fulfilled in the event that the

treatment that has been analyzed that allows the subsequent application of the model to the circumstances

of a specific client.

To indicate it in a more graphic way, when the BBVA customer addresses his manager, he expects the

himself has sufficient knowledge of your situation to enable him to make suggestions for

products or services that can best be adjusted to your needs and your level of risk, starting

of the experience acquired by the Entity.

Therefore, it is possible to understand that the clients of a financial institution such as BBVA not only have

a reasonable expectation that the processing of your personal data will be carried out with the

purpose of making them the offer of products of the Entity or that are marketed by it, but

that in addition, in attention to the uses of the market, they will be perfectly aware of the possibility of

that such communications are adjusted to their specific needs and may result in an improvement

of the profitability of your savings or in a mitigation of the adverse circumstances that could

happen in the future.

It should not be forgotten that this type of action has been carried out uninterruptedly

in recent years with practically no claims invoking the

illegality of this treatment. Ultimately, the average consumer can reasonably expect that,

when it meets the appropriate characteristics (for example, high balances in liability accounts) it will be

informed by BBVA about the existence of savings and investment products that allow it to capitalize on the funds available, thus obtaining information that is not only in the interest of the entity, but on their own. In this way, the cessation of this treatment would mean precisely a breach of the expectations of the interested party, who could consider that BBVA has disregarding its mission to offer you the best financial solutions that fit your concrete situation.

At the same time, it should not be forgotten that, as has been indicated on several occasions throughout this report, recital 47 of the RGPD, after making express reference to the principle of expectation reasonable, remember that the legitimate interest "could occur, for example, when there is a relationship relevant and appropriate relationship between the data subject and the controller, such as in situations where the The interested party is a client or is at the service of the person in charge". This reinforces, in our opinion, the application in this case of the principle of reasonable expectation of the interested party.

5.3. Guarantees adopted by BBVA in data processing

5.3.1. proactive responsibility

BBVA has adopted the necessary technical and organizational measures to guarantee the integrity, availability and confidentiality of the information, having also appointed a Delegate of Data Protection, in compliance with the provisions of article 37 of the RGPD.

5.3.2. Compliance with the right to information

Following the guidelines established by the AEPD, BBVA establishes an information system for layers, indicating in the basic information communicated to the interested party not only about the treatment of the data for the purposes of this weighting analysis, but also that the basis The legal nature of said treatment is the legitimate interest of the Entity.

This information is completed in the second information layer provided to the interested party (information enlarged), indicated…

In this way, the client is fully aware of the scope of the treatment, its legal basis and the purposes for which the aforementioned treatment is carried out.

5.3.3. Minimization of interference in the private sphere of the interested parties

On the other hand, BBVA minimizes the intrusion into the private sphere of its customers to the extent that in the generation of the algorithms, following the guidelines derived from report 195/17 of the AEPD, will only process the information generated by the client during the last twenty four months.

In any case, the information used for the treatment will only include data linked to the relationship established by the customer with BBVA, without including additional information that could

result from it, such as the origin, destination or concept of the transactions carried out or data obtained from external sources (with the sole exception of those from the CIRBE), as indicated in section 2.2 of this report.

5.3.4. Guarantee of the exercise by the interested party of the right to oppose the treatment

As reproduced in point ii above, BBVA establishes different channels to guarantee the exercise by the interested party of the rights established in the data protection regulations, enabling said exercise through face-to-face, electronic and postal channels, with the purpose of reinforce the power of decision of the interested party about the treatment of their own data for the fulfillment of the purposes that justify the treatment analyzed in this report, and this even when said treatment will not affect the interested parties, since only the remission of commercial communications or suggestions to those interested parties who have consented to it specifically.

6. Final assessment

By virtue of the foregoing, it can be concluded that the processing of data under study in this

report, with the scope and for the purposes indicated therein, is covered by the

article 6.1 f) of the RGPD>>.

D) Study on new BBVA customers, carried out by the Business Area in February

of 2018.

It includes a section on the client's expectations in the new relationship, with the result

Next:

. Personalized treatment in the office: 40.3%

. Tranquility and security: 39.2%

. Good office service: 33.0%

. Well-functioning digital channels: 30.6%

. Simplicity and transparency in information: 28.9%

. Amazing tools and products: 17.3%

. Adapted savings/investment products: 16.5%

. That do not charge commissions: 1.6%

In the “Conclusions” section, it is indicated: “High satisfaction with the process to become

customer (NPS:

+48%) and currently expect customization (deal/offer),

tranquility/security and good service (office/digital channels)”.

ELEVENTH: By letter dated 08/11/2020, notified to BBVA on 08/17/2020,

granted BBVA a new period of five business days to provide a copy of the

documentation indicated in section a) of the requirement indicated in the antecedent

above (register of processing activities), which was not incorporated by BBVA into its

response from 03/08/2020.

The response to this second requirement was also produced once the

total term granted. On 09/16/2020, a letter was received from the aforementioned entity to which

accompanied the record of treatment activities.

This document describes the treatments with an indication of the purpose, its

basis of legitimacy and the personal data that is processed, among other details.

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Based on legitimation in the legitimate interest, treatments are described with the

following purposes:

. Related to purpose 2 of the privacy policy: surveys, assignment of limits

pre-approved, profile application, propensity model, contact center: module of

offers, relevant facts and insights, analysis and portfolio profitability proposals

Of cards.

. Related to purpose 3 of the privacy policy: preparation of groups for

commercial campaigns for Commercial Banking and Consumer Finance.

. Related to purpose 4 of the privacy policy: transfer of data.

. Related to purpose 5 of the privacy policy: anonymization.

TWELFTH: On 10/07/2020, a resolution proposal was issued in the sense

Next:

"1. That the Director of the Spanish Data Protection Agency sanction the

BBVA entity, for an infringement of articles 13 and 14 of the RGPD, typified in article

83.5.b) and classified as minor for prescription purposes in article 74.a) of the LOPDGDD,

with a fine amounting to 3,000,000 euros (three million euros).

2. That the Director of the Spanish Data Protection Agency sanction the

BBVA entity, for an infringement of article 6 of the RGPD, typified in article 83.5.a) and

classified as very serious for prescription purposes in article 72.1.b) of the LOPDGDD,

with a fine amounting to 3,000,000 euros (three million euros).

3. That the Director of the Spanish Data Protection Agency proceed to impose

to the BBVA entity, within the period determined, the adoption of the necessary measures to

adapt to the personal data protection regulations the treatment operations that

performs, the information offered to its clients and the procedure by which they

must give their consent for the collection and processing of their personal data, with

the scope expressed in Legal Basis X of the proposed resolution".

THIRTEENTH: Notification to the BBVA entity of the aforementioned resolution proposal, with

date 11/03/2020, a letter of allegations was received in this Agency in which it requests

again that the nullity of the procedure be declared null and void or, as the case may be, the

expiration thereof. Subsidiarily, request that your file be remembered or, failing that,

the sanction of warning is imposed or a significant reduction of the amount

established in the motion for a resolution.

He declares that his allegations to the initial agreement have been reproduced in their entirety, that, in his opinion, the

proposed resolution does not take into account or refute; and formulate the considerations

following, which basically reproduce those allegations at the opening of the

process:

1. Regarding the setting of the amount of the sanction in the initial agreement, it indicates again that

a substantial vice of nullity is incurred, produces defenselessness and breaks the principle of

impartiality of the examining body. Considers that this causes a confusion between the phases

investigation and resolution, as evidenced by the fact that the proposal for

resolution sets an amount identical to that indicated by the sanctioning body in the

start and reproduce the concurrent circumstances. This supposes a breach of the principles

inspiring the sanctioning law that is not remedied by the mere fact that the entity

has been able to issue arguments at the opening and at the proposed resolution.

BBVA understands that the proposal incurs a contradiction when considering that the

Determination of the amount of the sanction is an obligation imposed by article 64.2 of the

LPACAP and point out later that "not only are the requirements amply met

mentioned, but goes further by offering legal reasoning that justifies the

possible legal classification of the facts valued at the beginning and, even, mentions the

Circumstances that may influence the determination of the sanction. BBVA considers that the

The aforementioned rule does not impose that obligation nor is it possible for the Administration to "go beyond" what is

foreseen in the norm, which constitutes an excess of the competences of the

sanctioning party that violates the rights of the entity against which the procedure is directed.

Warns that article 64.2 of the LPACAP does not represent an important innovation of the

legal system regarding the sanctioning regime previously in force, which already

indicated that the initial agreement should incorporate “the sanctions that could

correspond, without prejudice to what results from the instruction”, under whose validity the AEPD

indicated in its initiation agreements the maximum and minimum limits of the aforementioned infraction

in the agreement, without establishing the amount or exact amount of the penalty.

Likewise, article 85.1 of the LPACAP does not require this prior determination of the amount,

given that it does not refer to a pre-established sanction, but to the imposition of the sanction that

proceed. This rule, applicable "beginning of the procedure", provides that the recognition of

responsibility may determine the imposition of the "proper" sanction, so that

This fixation seems to be foreseen after the acknowledgment of responsibility itself.

In its section 3, the same article provides that the reductions must be adopted on the

“proposed” sanction, which requires that it has actually been determined in the procedure

what is that amount, and the diction of the precept itself seems to refer to the

proposed resolution as the ideal place to determine the aforementioned amount,

This power corresponds to the instructing body.

According to BBVA, this conclusion is not contradicted by the fact that the discounts that

would proceed by the acknowledgment of responsibility and advance payment of the sanction

must be made clear in the initiation agreement. Both benefits can be granted

although the penalty is not quantified.

2. About the non-existent link between what was attributed to my client and the claims to the

referred to in the motion for a resolution and on the inactivity of the AEPD.

In relation to this issue, he considers that the arguments contained in the proposal for

resolution are not admissible, as there is no doubt about the inactivity of the Administration, which has

contributed to the maintenance of BBVA's conduct and affects the validity of the procedure.

The AEPD expressly considers that there has been no phase of previous actions of

investigation, prior to the adoption of the opening agreement, but that the claims

were admitted for processing without any decision being adopted on them until

start of this proceeding, and that it can maintain that situation with the only limitation

temporary that said decision does not violate the statute of limitations of the alleged

infraction, which would not begin to be computed until BBVA modified its policy of

privacy. However, this situation is contrary to the principles of the procedure

penalty, generating a situation of legal uncertainty to the detriment of BBVA.

In this sense, articles 64.2 and 67 of the LOPDGDD establish a regulated procedure

with clearly marked time limits, differentiating those that are a consequence

of a claim of those in which the AEPD decides on its own initiative. In the

In the first case, three successive phases are established, without a break in continuity: (i) admission to

processing of the claim within a period of three months; (ii) the (optional) realization of

investigative actions for a maximum period of twelve months; and (iii) the opening of a

sanctioning procedure, which will have a maximum duration of nine months.

The AEPD may choose to dispense with carrying out investigative actions, but

that decision cannot imply a paralysis or stagnation of the admitted claim

pending for an indefinite period of time, only limited by the statute of limitations,

given that this availability contravenes the principle of legal certainty of the company.

In case of deciding not to carry out any type of investigations, admitted for processing the

claim must proceed immediately to the opening of sanctioning procedure.

In this case, there has been a delay of ten months, without there being a decision to

carry out investigative activities. The AEPD should have agreed to open the

procedure at the time it decided to admit claimant 2's claim, that is,

on 02/01/2019, so the procedure should have concluded on 11/04/2019. Without

However, that opening took place on 12/02/2019, almost a month after the date on which

should have concluded the procedure by means of the corresponding resolution. Understands

BBVA that this unjustified inactivity results in the expiration of this procedure,

given that the term to resolve would be expired on the same date on which the order was issued.

start agreement.

Applicable to this case is the doctrine established by the National High Court (AN) in its

Judgment of 10/17/2007 (appeal 180/2006), in which the illegality of the

Inappropriate or unfounded prolongation of the previous investigation actions:

“[…] when the delay in initiating the sanctioning procedure occurs, as in the present case,

for a long period of time, in which the relevance or otherwise of said

initiation, but no action is carried out by the Administration and ultimately,

there is no justification for such a delay, there is a spurious and fraudulent use of what

provided for both in article 12 of RD 1398/1993 and in article 69.2 of the LRJ-PAC.

[…]

And this because, as has also been indicated, and once the AEPD had information and data

sufficient, provided in the first two months of the processing of the repeated actions

and could already direct the accusation against […], complying with the legal requirements, left without

However, almost eleven more months pass without carrying out any action, maintaining such

request for information open, but completely inactive.

[…]

For all these reasons, we consider that […] there has been a fraudulent use of the institution of the

preliminary proceedings. Consequently, we are faced with a case of fraud of the Law contemplated in

Article 6.4 of the Civil Code, since it is intended to circumvent the application of Art. 42.2 of the Law

30/1992 using the request for information to, with it, avoid the expiration of the file

sanctioning

Fraudulent use that entails the nullity of the sanctioning procedure and the consequent

estimation of the claims of the lawsuit, with revocation of the sanction imposed on […] in the

contested decision."

The AEPD decides, deliberately, not to process any procedure and wait for the moment

that it deems appropriate to initiate the sanctioning procedure, which implies, taking into account

account the doctrine supported by the SAN that has just been reproduced, a fraud of Law

aimed at the violation of the regulations governing the terms and deadlines of
resolution established both in the LPACAP and in the LOPDGDD, with the consequent
detriment to BBVA. Faced with this, it cannot be argued that the AN doctrine cannot be extrapolated by
the fact that it refers to a fraudulent use of the previous actions of
investigation whose realization was not agreed in this case, given that precisely the fraud of
law derives from the complete inaction of the Administration, which considers possible the extension
ad aeternum of the initiation of the sanctioning procedure for some facts regarding the
that he has already collected all the information that, in his opinion, is pertinent to direct the
sanctioning action against BBVA.
BBVA's conduct is aggravated by the ongoing nature of the infringement, at least
until the moment in which it proceeded to modify the aforementioned policy in July 2020.
BBVA acted, from the moment it responded to the requirements that were
directed until the date on which the initiation of this procedure was agreed, in the confidence
legitimate that the AEPD considered that its Privacy Policy was in accordance with the
data protection legislation, not having directed any reproach or carried out, with
knowledge of my client, no investigative action.
All this derives in the nullity of full right of the performance of the Administration, which
deliberately dispenses with the clearly established legal procedure
prejudice to the principles of legitimate trust and legal certainty that assist BBVA.
On the other hand, the aforementioned entity dedicates a section of this second allegation to the necessary
link between the object of the sanctioning procedure and the claims made, in
the assumptions of ex officio initiation of the procedure by complaint, already revealed
in his arguments at the opening of the proceeding.
He questions whether the AEPD can decide to open a procedure in relation to the
extremes that it deems appropriate (the motion for a resolution itself allows itself to warn
on issues that are not subject to processing).

The relevant issue is found in the factual account of the proposal, which founds the

processing of the procedure in the existence of five claims against BBVA, and not in the

decision of the AEPD to initiate its processing on its own initiative, in use of its powers.

Thus, once the claim has been admitted for processing, it must continue with its processing and

There must be a precise and direct link between the content of said claims and the

sanctioning reproach.

The AEPD equates the fact that the procedure is initiated ex officio with the initiation "by its own

initiative". And in the present case, it begins as a result of five claims,

whose terms the procedure must adjust, which cannot suppose a kind of

general doctrine directed against BBVA. BBVA points out that this argument derives from the doctrine

issued from the AN Judgment of 04/23/2019, already exposed in the allegations to the

openness, from which it turns out that a proposal that does not refer in its justification to

the claims made exceeds the necessary congruence required between the facts and the

infractions, turning the five claims into a kind of general cause against

BBVA.

In BBVA's opinion, such a conclusion affects the principle of legal certainty and represents a

flagrant violation of the principle of interdiction of the arbitrariness of public powers,

enshrined in article 9.3 of the Constitution.

3. Regarding the change in classification of the sanction imputed to BBVA and some considerations

general information about the application of articles 13 and 14 of the RGPD.

a) Regarding the change in classification of the infraction attributed to BBVA and the non-application to

present case of article 14 of the RGPD.

While in the Initiation Agreement only article 13 of the

RGPD, the Resolution Proposal extends the sanctioning reproach to the provisions of the

Article 14 of the aforementioned legal text, which is not applicable to this case, taking into account

what is established in section 5 c) of the same article 14 and in article 2.1 of the RGPD:

. As indicated in the weighting report provided by BBVA, the information

sociodemographic object of treatment refers only to statistical data

"obtained in accordance with the provisions of article 21.1 of Law 12/1989, of May 9,

regulation of the Public Statistical Function", which do not constitute personal data or

disclose information about identified or identifiable natural persons.

. Regarding the data collected from the CIRBE, it is also indicated in the Report of

Weighting that said data is obtained in accordance with the provisions of Law 44/2002, of

November 22, on Financial System Reform Measures, article 61.2, and in the

Law 5/2019, of March 5, regulating Real Estate Credit Contracts (in

hereinafter, "LCCI"), article 12.1.

The same argument supports the exclusion of the duty to inform regarding information systems.

credit information, access to which is provided for in the aforementioned article 12.1 of the LCCI.

BBVA adds that, however, in its Privacy Policy it informs about the treatment of

this data and, within the categories of data that it submits to treatment, indicates

expressly "economic and financial solvency data (including those relating to all

the products and services that you have contracted with BBVA or of which BBVA is

marketer).

b) On the supposed obligation to include the categories of data in the information to be

be provided to the interested party.

BBVA has made an effort to be clear in drawing up its Privacy Policy

Privacy, incorporating into it the categories of data that would be processed,

despite not being required in article 13 of the RGPD.

The AEPD indicates that the aforementioned article 13 imposes the obligation to inform each and every one of the data submitted to treatment, breaking down this information for each of the specific purposes, regardless of whether the origin of the data is the interested, in the cases in which the treatment intends to be based on the legitimate interest of

BBVA or in the consent of the interested parties. For this, refer to what is indicated in the "Guidelines on consent" document, adopted by the European Committee on Data Protection (hereinafter, for its acronym in English, "EDPB"), "which has been updated by the European Committee for Data Protection on 05/04/20", that is, five months after of the initiation agreement, so this issue does not deserve any further consideration.

An additional obligation is imposed that is not expressly included in the RGPD. And that it cannot be modified by the AEPD in a sanctioning resolution nor by the European Committee of Data Protection in an Opinion, for the simple reason that they lack the powers regulations. The LOPDGDD (article 55) attributes to the AEPD the competence to set its action criteria in Circulars, which will be mandatory, but this cannot be imply the imposition of an obligation not recognized in the regulations.

In this case, in addition, the AEPD modifies its criteria with respect to what is supported in its "Guide on compliance with the duty to inform" and does so in a singular resolution, violating the principle of interdiction of the arbitrariness of the public powers, by not exposing the reasons that support such a surprisingly novel criterion, and of the principle of singular non-derogability of the regulations, enshrined in article 37 of the LPACAP.

Finally, it invokes again what was indicated by the AN in the Judgment of 04/23/2019, which does not admits that a sanctioning procedure be used to establish a criterion interpretative.

4. About the assessments of the AEPD regarding the presumed inadequacy, imprecision and intentional indeterminacy of the information provided by BBVA.

a) Subjective assessments made by the AEPD in relation to the transparency of the BBVA Privacy Policy.

- Pronouncements regarding the terminology and expressions used.

Despite the foregoing, BBVA makes allegations on the above issues in which merely states that the Agency bases its above conclusions on assessments subjective; that the terms used are clear and precise, widely used in the current and that they meet the intelligibility requirement; who uses those expressions with the intention to provide its clients with a service adapted to their specific circumstances, for which it is essential to "know them"; and that the context in which the information, which is determined by the contractual relationship, as well as the system of document in two layers, allow a better understanding of the expressions used.

It provides an explanation of some expressions referred to by the AEPD:

. "We will apply statistical and classification methods to correctly adjust your profile". It involves a specification of two of the techniques used to better understand the client, frame him properly and be able, in this way, to offer him a service correctly adapted to your personal circumstances.

. "analyzing the uses of BBVA products, services and channels", used in the BBVA's Privacy Policy in the context of personalizing the user experience user, in order to be able to offer a service adapted to their circumstances and needs.

The AEPD describes this expression as unclear, imprecise and ambiguous. However, in a later point of the Proposal (p. 73), she herself exposes its meaning: “[a]ll this refers to the data processed by reason of the contracted products and services”.

He adds that some of the expressions explained above are similar to expressions offered as examples in the "Guide on the use of cookies":

. “Perform statistics, surveys, actuarial calculations, measurements and/or studies of market that may be of interest to BBVA or third parties”, is similar to the expression “for analytical purposes”.

. “Analyzing the uses of BBVA products, services and channels” is similar with the expression “show you personalized advertising based on a profile drawn up based on your browsing habits.

- Similarity between the expressions used in BBVA's Privacy Policy and those included in the "Guide for compliance with the duty to inform" of the AEPD. Change of unjustified criteria: violation of legitimate expectations and the jurisprudence of the AN

The AEPD avoids ruling on the contradiction involved in the reproach made to BBVA and the recommendations included in the aforementioned Guide, which offers examples of possible formulas to inform about the purposes of the treatment similar to those included in the Policy of Privacy.

The publication of a Guide by the AEPD generates legitimate confidence in its recipients, who adapt their behavior in the belief that its application contributes to the compliance with the regulations, so that now consider contrary to law those expressions would mean acting against their own acts and would determine the violation of

legitimate expectations and legal certainty that documents must provide

published by a control authority, as well as the jurisprudence of the AN collected in the

Judgment of 04/23/2019, already cited, which declared contrary to the principles of law

sanctioning the establishment of general criteria within a procedure

sanctioning

- Subrogation of the AEPD in the position of the interested parties. Reproach of an action of

marketing carried out by BBVA under the protection of business freedom.

The AEPD engages in conduct analogous to one of the reproaches it makes against me

represented, the impersonation of the interested parties, when he puts himself in the place of the

receivers of the information to conclude it is not easy to understand for any interested party or

he can deduce the meaning of expressions from the context.

In this regard, it is recorded as a proven fact that BBVA analyzed during 2017 and 2018 the

impact of the RGPD in its activity and carried out two investigations by third-party experts to

assess the content and format of the text, or test its understanding, resulting in

indisputable that he acted with proactive responsibility to know the people about the

that collects information and determine if said audience is likely to understand,

adapting the information provided and the terminology for it.

The Agency's reproach reaches the way of presenting the document to the interested parties,

pointing out that it intends to offer an image of courtesy and good treatment to the client, criticizing with

this is nothing more than a simple commercial decision by BBVA about how to present a

document to its clients, for which the Bank is fully entitled by virtue of its

right to free enterprise enshrined in article 38 of the EC.

b) Information requirements to the interested parties that are excessive and that could cause information fatigue.

The AEPD seems to indicate that the Privacy Policy, when referring to the type of data affected by the treatments it carries out, it should reach a level of detail similar to that shown in (i) the Weighting Report provided by the Bank to requirement of the Instructor and (ii) the documentation corresponding to the project "Customer DataCube".

The incorporation of all this information related to the typology of data to a document already in itself excessively extensive, it would be likely to cause information fatigue in the stakeholders, contrary to the GT29 Guidelines, which recommends efficient information and succinct; or from the AEPD itself, which has highlighted the importance of not overwhelming information, as in the "Guide on the use of cookies".

c) Alleged lack of determination of the interested parties affected by the communication of data to the companies of the BBVA Group.

As indicated in the Privacy Policy, the data of representatives, guarantors, authorized or beneficiaries are treated only for the management of the contract in which intervene as a result of their legal relationship with a Bank customer. In no case These data are communicated to the BBVA Group companies.

5. On the realization of profiles.

Purpose 2 of the Privacy Policy seeks to personalize the experience of its customers and concludes by indicating the usefulness of these profiles.

The treatment carried out is detailed (analyzing and evaluating the data), the type of data that is used in said treatment (data that allows you to be identified, financial evolution and contracted products and services, operations -payments, income, transfers, debits, receipts- as well as the uses of BBVA products, services and channels) and the purpose for

which this analysis is carried out (prepare a profile and use it in business models).

Said entity considers that the knowledge of the clients, the analysis of their interrelation with

the products and services offered and the assessment of their preferences expressed to

through the use or not of the same, and the way in which they are used, is the basis of the information

that any company uses to assess its business strategy and improve it, ultimately,

to design their business models and to manage the relationship with the client.

This treatment in no case will suppose the individualized analysis for the realization of

commercial communications, which supposes an additional and differentiated treatment, which only

could be carried out with clients who have given their consent for it.

The AEPD seems to understand that the sole purpose of profiling is the

personalization of the offers, when such processing may also have the purpose of

many other purposes, such as improving the business model, the portfolio of

products and services offered by the person in charge or the customer experience. For this,

reason this part understands that the Agency confuses at this point two purposes that

They are collected in two different sections of the Privacy Policy.

6. About the legality of the treatments that BBVA protects in the legitimate interest in its policy

Of privacy.

The arguments on this issue contained in the proposal are presented in a

scattered, making it difficult for BBVA to really understand the reasons for which the AEPD

base your reproach. However, it seems to be concluded that, in the opinion of the Agency, there would be no

in this case the requirements derived from Recitals 41 and 47 of the RGPD. Understands

BBVA that the AEPD intends to highlight that the legitimate interests are not clearly described, the treatment described in purpose 2 does not comply with the principle of necessity, does not the reasonable expectation of the interested party concurs and, in short, there has been no proper weighting of the rights and interests at stake.

a) On the concepts of legitimate interest and purpose and their alleged confusion on the part of BBVA.

The AEPD in its Resolution Proposal highlights the, in its opinion, substantial difference between the legal concepts of purpose and legitimate interest. BBVA understands that It is about elements inextricably linked to each other. This is the only way to understand the article. 6.1 f), which considers the treatment based on legitimate interest to be lawful; that is, the interest Legitimate is the purpose (to be satisfied) for which the data processing proceeds.

Following the reasoning of the AEPD, any treatment carried out on the basis of the legitimate interest in a business environment is illegal because the sole purpose is the mere obtaining an economic benefit (or reducing a loss). even the treatments that the AEPD has considered founded on legitimate interest would be contrary to the Law, since all would fit into the assumption proscribed by the STS of 06/20/2020, which refers to data processing of people who are the recipients of pranks for the sole purpose of chrematistics. And the same can be said of assumptions accepted by the CJEU, the AN or the AEPD when the treatment is carried out by a company (he cites several examples: treatment for the promotion of free competition in a certain sector - for example, access by electricity marketers to the Information System of Supply Points of the dealers; data processing by search engines; treatments based on media freedom of information; treatments carried out in exercise by the entrepreneur of his business control functions; building systems common fraud prevention; credit information systems; even the treatments for management and internal administration of business groups or the

processing of personal data for marketing purposes -indicated in Recital 47

of the GDPR).

The legitimate interest that BBVA intends to fulfill is to continuously improve the relationship

with its customers and the portfolio of products and services it offers, being able to respond

diligently to their needs in case they require them.

Obviously, this legitimate interest is aimed at the continuous improvement of the model of

business and ensure that customers are satisfied with the service provided. Otherwise

would choose to break the business relationship with the entity and hire the services of a

competitor.

As is logical, this circumstance will entail a loss for BBVA which, lawfully,

intends to avoid. But that does not mean that the legitimate interest that justifies the treatment of the

data by BBVA other than to provide the best service to its customers, to be able to

anticipate their needs, offer them, if they consent, the products they can

better fit your profile and, logically, continuously improve and perfect

your business model.

BBVA has a legitimate interest in knowing its customers as well as possible in order to be able to lend to

the same their services with the highest degree of excellence possible, even when this leads, in

your case, coupled (obviously that is to say in the case of a commercial company) the consequence of obtaining

an economic benefit. And that is also the description made by the Report of

Weighting, in which reference is not made to obtaining a benefit, but to the improvement

of quality, the relationship with the client and attention to their needs.

b) On the reference to the principle of necessity made in the Resolution Proposal.

The AEPD considers that the principle of necessity required in article 6.1 f) of the RGPD in relation to the satisfaction of legitimate interest, does not occur in this case. And part of the doctrine sitting in the Judgment of the ECHR of 03/25/1983, referring to an assumption of possible violation of the secrecy of communications, in which the term "necessity" is not corresponds to the one resulting from the application of the RGPD.

As far as the principle of necessity is concerned, the interpretation is much simpler and it is also of the ECHR doctrine, which has been repeatedly applied and summarized in Spain by our Constitutional Court when analyzing the proportionality of a restrictive measure of a fundamental right.

The STC 207/1996, cited by the AEPD in the explanatory statement of its Instruction 1/2006, points out:

“[…] to verify if a restrictive measure of a fundamental right exceeds the judgment of proportionality, it is necessary to verify whether it meets the following three requirements or conditions: "if such measure is capable of achieving the proposed objective (judgment of suitability); if, in addition, it is necessary, in the sense that there is no other more moderate measure to achieve such purpose with equal efficacy (judgment of necessity); and, finally, if it is weighted or balanced, for deriving from it more benefits or advantages for the general interest than harm to others goods or values in conflict (judgment of proportionality in the strict sense)”.

Well, in the present case, the purpose pursued by BBVA can only be carried out with the same probabilities carrying out the treatment that has been described and establishing models that allow to really know the preferences of its clients.

For this reason, the Weighting Report clearly indicates that the treatment is necessary for the fulfillment of that legitimate interest (of BBVA and its customers), not existing less intrusive means, in the current state of the art, to carry it out, adopting the necessary measures to minimize the information processed (excluding the

identification data of the client) and ensure the full guarantee of the exercise by the same of its right of opposition.

c) On the application to this case of the principle of reasonable expectation of the interested party.

As already indicated in our pleadings to the Initiation Agreement, the reasoning of the Resolution Proposal can only be qualified as contradictory:

. The AEPD considers that the treatment must be able to be foreseen directly by the interested party, without this forecast being mediated by the indications of the person in charge. However, the Article 13 of the RGPD imposes on that person in charge the obligation to inform about the treatment and indicate that it is based on a prevailing legitimate interest under penalty of breach this rule. BBVA wonders if the AEPD intends to say that they do not have to be informed processing based on legitimate interest. Once the information is produced It is impossible to know whether or not the interested party could have foreseen the treatments in advance.

. The assessment of the concurrence of reasonable expectation can be derived from the relationship of the affected with the responsible. However, the AEPD considers that the interested party is The excellence that may exist in the Bank's relationship with him is irrelevant.

. Carrying out a study in which the client is asked "what he expects" from his relationship with my principal is not sufficient to be able to consider that its answer responds to a expectation. Well, the Dictionary of the Royal Spanish Academy introduces as the first The meaning of the term “expectation” is that of “hope to do or achieve something”. And in relation to the term "hope", which indicates that it derives from the verb "to wait", the same Dictionary indicates that this term means, in its first meaning, "state of mind that

arises when what is desired is presented as attainable. Considering this

literal meaning of the cited terms it is not understood how the AEPD considers that the

study is not related to the "expectation" of the interested party to ask him about what

that waits". It is not clear how the issue should have been raised for the

The study provided could have some validity for the AEPD.

. At no time does the AEPD take into consideration what is stated in the Report on

Weighting, in which it is clearly shown how the processing of the data has

been carried out by BBVA without any claim having been made

specifically related to the generation of this type of models, nor does it contradict the

conclusion reached in the report in the sense of indicating that "the cessation in this

treatment would mean precisely a breach of the interested party's expectations, which could

consider that BBVA has neglected its mission to offer the best solutions

finances that fit your specific situation.

Finally, BBVA understands that nothing in the Proposal contradicts what is indicated in the

Weighting in view of the uses that govern the legal relationships established by the

credit institutions with their clients, on the bond of trust on which the

relationship between the client and the financial institution, as well as what the client expects from the institution.

d. On the sufficiency of the Weighting Report provided by BBVA.

The Resolution Proposal attributes various defects to the Weighting Report, some of which

which have already been refuted throughout this sixth allegation.

Along with them, it seems to be indicated by the AEPD that the report should have followed the

structure established by the WG29, including a kind of provisional weighting prior to

the determination of the measures adopted by BBVA to make its interest prevail

legitimate, even though a mere recommendation or sample report cannot be imposed

mandatory as a model if there is no mandatory rule that so provides.

In addition, the Weighting Report includes a clear description of the legitimate interest that

justifies the treatment (as much as the AEPD claims otherwise), as well as the incidence

of the treatment in the rights of the interested parties, assessing the suitability, necessity and

proportionality of the treatment that lead to the determination of the prevalence of

legitimate interest, with express inclusion of the guarantees adopted in relation to the

treatment in order to minimize its impact on the rights of the interested parties and guarantee the

exercise of rights, particularly the right of opposition. In particular, in order to

minimize the impact of the treatment on the rights of the interested parties, "the information

used for the treatment will only include data linked to the relationship

filed by the client with BBVA, without including additional information that could be

of the same, such as the origin, destination or concept of the transactions carried out or

data obtained from external sources.

Likewise, the AEPD erroneously interprets what is stated about the period of conservation of

the data to carry out the treatment. This period will be two years, not being used

data that are older or keeping the data for this treatment

for a longer period. A different matter is that the data collection form of the

interested party is used not only as the initiator of the customer's relationship with BBVA, but also

for the fulfillment of the due diligence obligations established in the legislation of

prevention of money laundering. The data is kept for the period established in

this legislation, for the purposes set forth therein, but not for the disputed treatment.

However, as appears from the Motion for a Resolution, the subjects

obligors should request the same data from the affected party on as many occasions as

treatments of the same will carry out, which obviously does not conform to the norm, nor

it would be reasonable.

Finally, the Motion for a Resolution considers the reference to the Report

195/2017 of the Legal Office of the AEPD, considering that "the premises valued in

said report does not conform to the present assumption. In the aspects indicated, this report

analyzes the realization of treatments for marketing purposes, provided that the offer is

refers to products similar to those contracted by the interested party, and only the

information available as a result of product management". BBVA manifests

not understand how the aforementioned assumption differs from the one currently being discussed

analysis.

7. On obtaining consent and its compliance with the RGPD and the LOPDGDD.

a) Previous considerations; precise identification of the possible illicit.

In relation to the condition of informed that is required with respect to consent, it is

BBVA refers to what is indicated in the previous sections.

Regarding the form of obtaining consent, it refers first of all to the

considerations formulated by this Agency on the "conscious design" carried out by BBVA

with the purpose of favoring the provision of the consent of the majority of its clients,

which that entity does not consider legally relevant.

It clarifies that the conclusion of those works by pointing out that the interested parties do not read the texts

motivated the need to pay more attention to the Privacy Policy, designing the texts

and processes contained therein in such a way as to draw the attention of the interested party and in

definitively reflected in one way or another the meaning of his decision.

Lawfully intending to process a large amount of data for as many purposes as are legitimate,

is for the benefit of the interested party and does not imply non-observance of the regulations, for which

It cannot be sanctioned or considered in the graduation of responsibility.

It would be relevant to assess the element of fault, if BBVA had designed the mechanism

“knowingly” that he was breaking the regulations, which he categorically denies.

b) On the characteristics that the consent must have (other than the form,

mechanism or formula for obtaining it).

The AEPD considers that the criterion contained in recital 43 of the RGPD is not met,

which requires that the processes for accepting the treatments allow “separately authorizing

the different personal data processing operations”, and criticizes that there is no

adequate separation of the different treatments, understanding that the signing of the Privacy Policy

Privacy is the consent or the "only action" carried out by the interested party to authorize the

treatments for which consent is requested by BBVA.

It is paradoxical that "inaction" is argued as the basis for the responsibility that is

imputes and it is also pointed out that said “only action” is also punishable.

In any case, it is irrefutable that the different purposes for which

sought the consent of the interested party, as can be seen from the mere reading of the text, which

It provides various and different purposes. As many consents are obtained as purposes or

intended uses.

c) About the way in which consent was obtained.

The Agency considers that consent is not unequivocal. Estimated that we do not

We find ourselves before a declaration or a clear affirmative action, which is intended to obtain a

consent through the inaction of the interested party (“do not check the boxes in which

indicates “I don't want…”).

The BBVA entity does not share this criterion, as anticipated in the brief of allegations to the

Initiation Agreement, in which he presented a series of considerations in relation to the so-called power of control of the interested party over their data, which is respected if we analyze the mechanism designed as a whole and not in an isolated way, attending only to the boxes contained in the Privacy Policy. This is an issue on which the AEPD does not argue.

And it is that, as already indicated, the RGPD admits many and different formulas to obtain the consent, provided that it is clearly derived from them that the interested party "accepts the proposal for the treatment of your data".

The AEPD is based exclusively on the "negative" nature of the boxes without analyzing whether the set of actions that the interested party can perform allows to conclude whether or not there is a will deliberate decision to consent or not to certain treatments, knowing that it can never be achieved absolute certainty of what the motivation of the interested party was. In this case, whatever the option of the interested party (the marking or not of the boxes), it will never be possible to consider that there has been an inaction of the same, because that specific inactivity cannot be isolated from the set of actions that the interested party must carry out to register as a client.

Next, it highlights some essential aspects of any registration process for a Interested as a BBVA customer:

. In any registration process, the subscription and signing of the Privacy Policy is facilitated. Privacy, in which the options offered, manifest and obvious to the interested party. It is a clear affirmative action carried out with full knowledge of the scope and consequences. In addition, the client has at his disposal, through the application, a procedure to manage your preferences.

. The established formula allows the interested party to make different decisions in relation to the
treatment of their data, it being obvious that if the interested party does not use them, they will not
is reprehensible to the entity.

There is a clear affirmative action, given that all interested parties subscribe digitally or
the Privacy Policy in person, but, previously, the interested party takes
various decisions, choosing options or preferences. On paper, the signature is
inserted in a place where the offered options are visible, then there is a
conduct that implies acceptance of what is signed; in digital format, the affected party accesses
to different screens enabled to manage your consent, it has a “Check
of acceptance” and after collecting the data, the document is available again
to proceed to your signature, if you agree.

Presumed consent does not take place either, since in no case is there a
statement or act of "positive silence" that implies acceptance of the Privacy Policy
Privacy in all its extension; these are not already checked boxes; nor the inactivity
supposes the continuity of a service or functionality.

The claim made by claimant 3 is an example of BBVA's compliance
of their obligations.

In short, the registration processes through digital and face-to-face channels comply with
the requirements expressed in the Guide for those responsible for the AEPD, which recalls that the
Consent “can be unequivocal and implicitly granted when it is deduced from
an action of the interested party.

Finally, it is worth paying attention again, in relation to the written declaration, to the
case referred to as “example 17” in the EDPB Consent Guidelines,
since it is a case that can be assimilated to the one that is the subject of this file,
by admitting a scenario that contains the marking options of a “yes” and a “no”. A) Yes,
notes that:

“A data controller may also obtain explicit consent from a person who

visits your website by offering an explicit consent screen containing Yes and No boxes,

provided that the text clearly indicates the consent, for example, “I, give my consent to the

processing of my data” and not, for example, “I am clear that my data will be processed”. Strike

say that the conditions of informed consent must be met, as well as the rest of the

conditions necessary to obtain valid consent.

8. Application to the present case of the principles of culpability, proportionality and

modifying circumstances of the concurrent responsibility in the same.

a) Of the non-concurrence of culpability in the action of BBVA.

It has acted with total diligence at all times, following the guidelines of the AEPD and

including in its Privacy Policy the mandatory content established in article 13

of the RGPD and extremes that neither the norm nor its interpretation impose; and in the conviction,

after he reported on the complaints made, that the Agency had not

warned element that contravenes the provisions of the RGPD and LOPDGDD.

Invokes the AN Judgment of 11/19/2008, which justifies the concurrence of the principle

legitimate expectations, having acted in the belief that his conduct was consistent with the

legality.

And the Sentence, also of the AN, of 10/15/2012 (appeal 608/2011), in which “the

active participation of the Administration”, which could lead the interested party to the conclusion that

his action was in accordance with the law; that his conduct is not protected by a

reasonable legal interpretation of the applicable regulations; and the difficulties in

interpretation described by the Administration.

b) The application of the principle of proportionality.

BBVA considers that certain aggravating factors appreciated by the Agency would not be applicable to the

BBVA's conduct and that there are certain circumstances that reduce its

responsibility.

c) Aggravating circumstances assessed by the AEPD.

- Nature, seriousness and duration of the infringement (article 83.2 a) of the RGPD).

The Agency considers an element of the type as an aggravating circumstance, such as the

alleged breach of the principle of transparency, intrinsically related to the

Non-compliance with articles 13 and 14 of the RGPD, which is not acceptable in law. And the

The same can be said in relation to the violation of article 6 of the RGPD, which according to the

Agency is aggravated by affecting the principle of transparency.

- Alleged absence of adequate procedures for action in the collection and

processing of personal data (article 83.2 k) of the RGPD).

It can be concluded in the same sense expressed in the previous subsection, given that the

fact that the Agency considers that BBVA does not have procedures in place

appropriate course of action derives from your understanding that the Privacy Policy does not

complies with the information obligations or with the requirements for obtaining the

consent.

- Presumed intentionality in the commission of the infringement (article 83.2 b) of the RGPD).

BBVA has carried out extensive work since 2016, characterized by its diligence and

proactivity, in order to achieve a full adaptation to the RGPD of your organization and of the data processing that it carries out. To this end, it designed a work plan with the aim of adapt its entire organization, as well as the processing of personal data that it carried out, to the provisions of the aforementioned regulation, whose execution began in November 2016. Additionally, it set up a Steering Committee in charge of bimonthly reviewing the progress of work and make strategic decisions.

Within the framework of the aforementioned work plan, in March 2017 BBVA had carried out a review of its privacy policy for customers, in order to check if it reflected all data processing carried out by BBVA. The review showed result that the aforementioned document contemplated such treatments and it was concluded that the consent of the interested parties had been obtained in accordance with the requirements imposed by the GDPR.

With regard to new customers, it was necessary for BBVA to obtain their consent through an updated privacy policy in accordance with the RGPD. overlooking the achievement of these objectives, an analysis was carried out on how to obtain a unequivocal consent in accordance with the aforementioned rule and how to have evidence of have obtained it.

It designed a strategy to inform the interested parties, drawing up a new Policy on Privacy, which included a series of boxes for the provision of consent by the clients whose text was previously analyzed to make it clear and simple, and established a plan to send said Privacy Policy to the interested parties. Previously, two Privacy Policy models, which were tested with customers.

All of this, which appears in the Bank's annual reports from 2016 to 2019, is proof of BBVA's firm and determined will to achieve full compliance with the GDPR from before its application, as well as to the LOPDGDD. How early they started the aforementioned works, as well as the fact of having involved the interested parties themselves in the

preparation of the new privacy policy, attest to good will, responsibility

BBVA's proactive approach and diligence in complying with data protection regulations

data.

It shows the good faith of the Bank and the will to adapt its activities to the aforementioned

normative. If the Agency considers that the adaptation work to the RGPD and the LOPDGDD

are irregular or insufficient, the aforementioned regulations contemplate other mechanisms

other than the imposition of a fine to correct the deficiencies that could be appreciated

by the controlling authority.

It cannot be accepted that having carried out diligent and proactive actions in order to

adapt their activities to the new regulatory framework is used against them and considered

as an aggravating circumstance of his presumed responsibility. Especially having

Bear in mind that BBVA has adjusted its actions to the guidelines issued by the AEPD.

- Supposed continuous nature of the infraction.

The Agency was perfectly aware of BBVA's Privacy Policy for almost a year

before agreeing to start this sanctioning procedure. He let ten months pass

between the first admission for processing and the beginning of the procedure, without making any reproach

to BBVA, which acted with the confidence that it was not appreciated by the supervisory authority

the existence of any violation.

Well, the reproach derived from the maintenance over time of the Privacy Policy

of BBVA should only be attributable to those who, knowing that they considered the conduct as

reprehensible, he kept that opinion hidden for such an extended period of time. The

AEPD, through its inaction, made it easier for BBVA not to adopt any measure to remedy or

modify the Privacy Policy.

d) Mitigating circumstances concurrent in the supposed object of this procedure.

-

Intentionality or negligence in the infringement (article 83.2 b) of the RGPD) and degree of

responsibility of BBVA given the technical or organizational measures

applied (article 83.2 d) of the RGPD): adaptation work to the RGPD and the

LOPDGDD.

The actions carried out since 2016 to adapt its activities to the GDPR,

already exposed, show the special diligence and proactivity with which he faced the

approval and entry into force of the new regulatory framework. These actions cannot

be used against them as an aggravating circumstance, much less to point out that they were

made with the intention of violating the norm.

He understands that the lack of intentionality in the commission of crimes should be considered mitigating.

the infractions that are imputed and the high degree of proactive responsibility shown to

through the aforementioned works.

- Measures taken by BBVA to alleviate the effects of the alleged infringements.

Diligent regularization (article 83.2 c) of the RGPD). Regularization measures

taken in connection with the claims. Preparation of a new version of the

BBVA Privacy Policy.

BBVA has developed a large number of actions to fully comply with the

regulations on data protection and remedy any failures revealed

for the aforementioned claims. It may be mentioned that the Bank complied with the wishes of

each of the claimants as soon as they became aware of them, with

regardless of the validity or correctness of the arguments put forward by them,

immediately implementing the precise and sufficient actions to prevent your data from being

were treated against their will.

BBVA also carried out a whole series of internal actions aimed at

repeatedly remind the whole of its commercial network, the policies adopted in

data protection matters; Another example of the diligence used.

Knowing the opening of the procedure, it has intensified its activity with the purpose of

reinforce the information provided to customers and has produced a new version of the

Privacy Policy, without implying in any case the recognition of the

offenses charged.

According to BBVA, this new version of BBVA's Privacy Policy would render the

totality of the reproaches made by the AEPD in relation to the transparency of the

same. It highlights the following aspects:

. It exposes in an even clearer and differentiated way the purposes of the treatment of the data.

data of representatives, guarantors, authorized or beneficiaries, separated from the clients

(in this way, the communication of data appears only among the purposes of the

treatment of customer data). Likewise, the New Privacy Policy

specifies the categories of data affected in each case.

. It offers more detailed information in relation to the categories of personal data of

clients object of treatment, distinguishing between those provided directly

by the interested party, those collected or generated by BBVA and those obtained from other sources.

. The purposes related to the preparation of commercial profiles and

of risk, systematically indicating the types and purposes, the basis of legitimacy –

describing, where appropriate, the legitimate interest of BBVA-, the data used and the period

of time they comprise, as well as the sources of such data.

. Indicates what personal data of customers will be communicated to third parties, who can

be said third parties, the purpose of the communication and the basis of legitimacy for the

same. For this, reference is made to communications as a specific purpose

and differentiated from the processing of BBVA customer data.

Finally, BBVA points out that, despite what is alleged in this sanctioning file, given

that the Agency does not share the criteria of that entity (despite the complete legality of its

action), and exclusively considering the very serious consequences that for BBVA

may imply the maintenance by the Agency of this criterion, the

mechanism for obtaining the consent of the interested party, including in the first layer

informative differentiated and granular boxes that the interested party must mark if they wish to

authorize BBVA to process your data for each of the purposes indicated. Each

box is accompanied by a description of the treatment and a referral to the

additional information about the purpose contained in the second layer.

BBVA considers that all of the above shows the diligence, proactivity and speed shown

to improve the information provided to customers, representatives, guarantors,

authorized parties and beneficiaries and correct the defects that, in the opinion of the Agency, suffered

such information. Consequently, in BBVA's opinion, in the event that the AEPD

considers that it is responsible for the two infractions that are attributed to it, the measures

taken by the Bank should be taken into account as extenuating circumstances of its

possible liability.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

58/146

1. On 10/16/2018, this Agency received a claim made by the

Claimant 1 against BBVA, for sending to his mobile telephone line, on 10/11/2018,

a promotional SMS without your authorization.

In relation to this claim, BBVA informed this Agency that claimant 1 lent his

Conformity to sending advertising by subscribing, on 06/07/2016, to the

document "Client identification, processing of personal data and digitized signature",

contributed to the actions by the entity itself.

2. On 12/09/2018, this Agency received a claim made by the

claimant 2 against BBVA, pointing out that the BBVA App does not meet the legal requirements

related to free and informed consent.

In relation to his complaint, claimant 2 provided a copy of an email he sent

to BBVA, dated 11/09/2018, in which it expressly indicates the following:

“Dear BBVA DPO

The document attached to the previous message comes from the BBVA APP offered on the Android platform.

The aforementioned application requires the user, as a prior step to its use, to give consent by means of the

electronic signature of a document that only offers the possibility of objecting to data processing

for purposes other than those necessary for the purpose of providing financial services if the

client activates the boxes of opposition to a treatment that BY DEFAULT (see article 25 of the

GDPR) should be considered activated. The informative text is inconsistent with the

principle of transparency of article 12 of the RGPD…”.

BBVA responded to said email by means of another dated 11/29/2018 in which literally

indicates:

“The way in which the consent to which you refer is obtained has been considered valid

not only in the internal analyzes of our own entity, but in all those forums where

raised the question, since the interested party has the option to choose in a simple and

easily understandable which option you prefer.”

The claimant provided the proceedings with a copy of the document generated by the App, with the

label "Declaration of economic activity and personal data protection policy", in

whose section 1 contains the identification data of the client (the claimant 2) and his declaration

of economic activity. All enabled options are marked in this document

for the interested party to give their consent to the processing of personal data with

the purposes that are expressed in said options (“I do not want…”).

3. On 02/13/2019, this Agency received a claim made by the

claimant 3 against BBVA, in which it shows that the aforementioned entity required it, to

unlocking your account, signing the personal data protection document.

Said document, which appears contributed to the actions by claimant 3, corresponds to

with the so-called "Declaration of Economic Activity and Data Protection Policy

personal”. This document appears dated 02/11/2019 and without the signature of the interested party. Of

the options enabled in this document for the interested party to give their consent

to the treatment of your personal data with the purposes that are expressed in each case,

marked the option "I do not want BBVA to process my data to offer me products and

services of BBVA, the BBVA Group and others personalized for me by email”.

With its pleadings, BBVA also provided another copy of the aforementioned "Declaration"

signed by claimant 3 on 01/17/2019 and with the mark in the same option of the

consents.

4. On 05/23/2019, this Agency received a claim made by the

claimant 4 against BBVA, for sending commercial communications that it has not requested

nor authorized.

In relation to this claim, BBVA informed this Agency that claimant 4 did not

objected to the data processing denounced in the document “Declaration of Activity

Economy and Data Protection Policy”, signed by the same on 11/26/2018.

In the aforementioned document, which has been contributed to the actions by BBVA, it does not appear marked

none of the options offered to the interested party to consent to the treatment of their

personal information.

5. On 08/27/2019, this Agency received a claim made by the

Claimant 5 against BBVA, for making phone calls and sending SMS

advertising.

In relation to this claim, BBVA informed this Agency that claimant 5, on the date

06/18/2018, signed the document “Declaration of Economic Activity and Protection Policy

of Personal Data”, consenting to the processing of your data for commercial purposes. Add

that said document was signed for the second time by claimant 5, on 05/27/2019,

expressing their opposition to the aforementioned treatments.

Both documents are provided to the proceedings by the entity BBVA. In the first

of them there is no mark in the boxes enabled for the client to express their

consent to the treatments indicated and in the second the interested party marked all

the options (“I don't want…”).

6. For the adaptation of its actions to the RGPD, the BBVA entity enabled the form of

collection of personal data called "Declaration of economic activity and privacy policy

personal data protection". Section 1 of this document contains the data

identification of the client and his declaration of economic activity. Among other data, there are

those related to name, surnames, tax ID, date of birth, nationality,

address, marital status, marriage regime, contact details, fixed and variable income,

entity in which he provides service or annual gross income.

Through this document, established by BBVA as mandatory for all customers, the

The aforementioned entity discloses the terms of its privacy policy and establishes the

mechanisms for clients to give their consent for the treatment of

your personal data for the purposes indicated in the aforementioned document.

The signature of the document by the client and the date is included at the end of section 2 “Privacy Policy”.

protection of personal data”, expressly indicating to the interested party that with the process of

signature agrees to the "Declaration of economic activity and protection policy

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of personal data”.

Immediately after signing, the "Extended Information" is included regarding

protection of personal data and a glossary of terms.

In relation to the provision of consent, immediately before the space provided

For the signature, the interested parties are offered the possibility of marking the following options:

“We inform you that if you do not agree with the acceptance of any of the following purposes,

you can select them below.

. Products and prices more adjusted to you

[ ] I DO NOT want BBVA to process my data to offer me products and services of BBVA, of the Grupo

BBVA and others personalized for me.

[ ] I DO NOT want BBVA to communicate my data to BBVA Group companies so that they can offer own products and services personalized for me.

quality improvement

[ ] I do NOT want BBVA to process my data to improve the quality of new products and services and existing. We want to remind you that you can always easily change or delete the use that we make of your data".

(The content of the form "Declaration of Economic Activity and Protection Policy of Personal Data" provided by claimant 3 is similar to the one reproduced in Annex 1, except the detail related to the box through which the client is offered the option "I do not want BBVA treats my data to offer me products and services of BBVA, BBVA Group and others personalized for me", which allows you to bookmark the following channels:

[ ] By email

[ ] By SMS

[ ] By phone (phone call)

[ ] By mail)

The full content of this "Declaration of economic activity and protection policy of personal data" is declared reproduced in this act for evidentiary purposes (section 2 "Personal Data Protection Policy" and "Extended Information" is included as Appendix 1).

7. During 2017 and 2018, BBVA carried out various activities to analyze the impact of the new RGPD in its activity, among which is the design of a plan for the elaboration of a new informative clause on the protection of personal data, which it calls "LOPD Clause". This plan included the drafting of the text of the aforementioned clause with the privacy policy, the analysis of the procedure to obtain consent unequivocal name of the clients, including a series of boxes in the clause itself, and the execution by external third parties of two investigations in order to validate the content and

format of said text, test its comprehension and analyze the optimal channels for

Contact the interested parties and obtain their consent.

According to BBVA, the first investigation, which consisted of optimizing the effectiveness of the

communication to clients, showed as a result that almost 90% of those interviewed

accepted the various treatments based on their consent and that, in cases where

that they did not, the rejection focused exclusively on receiving communications

commercial, especially from third parties.

Regarding this investigation, BBVA provided a document corresponding to the extract from the

presentation made in October 2017 on the conclusions of these works, in the

which indicates the following:

“Objective: Optimize communication to clients (email and signature page) to achieve a greater number

acceptance of the purposes of data processing.

“General results: almost 90% of the interviewees accept all the conditions, either of

expressly or by default; two thirds of the interviewees accepted the GDPR conditions of

instantly, without reading; non-acceptance focuses exclusively on receiving

commercial communications, especially from third parties”.

“Conclusions: the current model would be valid (after the modifications), it is efficient to stimulate the

acceptance of the data protection policy (nearly 9 out of 100 respondents accept all the

clauses); the mention of third parties generates rejection and mistrust, becoming a barrier and

causing the rejection of more purposes and not only commercial communications; non-acceptance

of the purposes focuses on the rejection of any type of commercial communication (especially

of third parties);... in mobile less attention is paid: it is linked to an update and less is read (it is accepts directly).

“General considerations: in general, customers do not stop at the screen and those who do read diagonally. They accept without reading since trust in BBVA is high and encourages an analysis less exhaustive of the clause.

. Regarding the second investigation, BBVA has stated that its objective was to determine the optimal structure and design of the LOPD Clause in order to display the message in a that does not divert attention from the main intention of the client and adapt the text of the boxes to provide consent in such a way that customers are fully aware of the consequences of granting or denying it. In relation to this investigation, in the extract of the conclusions the following is said:

“Objective: to adapt the messages so that the client accepts the conditions aware of the loss that It would mean not doing it."

In this investigation, the percentage of acceptance is verified according to the structure and checkbox content. In all the cases analyzed, the marking of the box is requested. in case of not authorizing the use of the data for the purpose in question.

8. According to the documentation provided by BBVA, corresponding to the project “Customer Data Cube”, the data processing carried out by said entity on the basis of the prevailing legitimate interest, uses the variables calculated over a period of time determined, on the evolution in a period (percentage by difference between periods of time) or on the balances at a given date (last day of the month).

According to this document, in addition to the variables that identify the client and the sociodemographic (age, national classification of occupations, census section, sex, employment indicator), the following variables are taken into consideration (some examples):

. Linkage and general business (customer seniority, category, amount and evolution of liabilities

and active...)

. Asset variables:

. Balances, holdings and seniority (amount, evolution, quarterly average, amortized percentage,

last maturity in consumer or mortgage loan).

. Cirbe (risk, percentage of guarantees, portfolio or leasing; long-term, short-term risk; direct or

indirect…).

. Of resources (amount, evolution and quarterly average in pension plan, funds, variable or fixed income,

savings insurance…).

. Of transactionality

. Cards (amounts and quarterly average with credit or debit card in shops, ATMs...).

. Income (amount, tenure or number of months of payroll, pension...).

. Accounts (monthly average, evolution of liquids, overdrafts...).

. Receipts (total amount in a year of basic and non-basic receipts, number of receipts in a year,

receipts returned, monthly average…).

. Insurance (premium, tenure, number of months of home insurance, life...).

. Companies (amount, evolution and average of guarantees; portfolio; transfer of payroll; foreign trade;

factoring; leasing; certified payments; lease…).

. Digitization and customer interaction

. General (bbvanet; banca_mvl, multichannel)

. Use of channels (days in which there are contracting, operation or consultation events, according to channel

-including office and telephone).

9. In response to the request for evidence that was made by the instructor of the procedure, BBVA provided the following documents to the proceedings:

. Evaluation of the impact on the protection of personal data of the treatments related to the realization of commercial profiling (The detail of the content of this document, as far as this procedure is concerned, is outlined in the Antecedent Eighth).

. Evaluation of the impact on the protection of personal data of the treatments related to the realization of risk profiling (The detail of the content of this document, as far as this procedure is concerned, is outlined in the Antecedent Eighth).

. Weighting report of the prevalence of legitimate interest in the treatments to which refers to the purpose numbered as 2 in the section “For what purposes the will we use?”, contained in the personal data collection form “Declaration of economic activity and personal data protection policy” (The content of this document is also outlined in the Eighth Antecedent).

. Record of processing activities (the content of this document is excerpted in the Ninth Antecedent).

These documents are declared reproduced in this act for evidentiary purposes.

10. BBVA has stated in its pleadings that the total number of individual customers amounts to eight million thirty-one thousand. On the entity's website it is reported that the number of customers exceeds ten million.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each Authority of Control, and according to what is established in articles 47, 48, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, in so far as they are not contradicted, on a subsidiary basis, by the general rules about administrative procedures.

II

Previously, it is considered appropriate to analyze the formal issues raised by BBVA in its pleadings brief.

In the first place, BBVA considers that the initial agreement is null and void due to the defenselessness caused by setting the amount of the sanction in the agreement itself opening, instead of expressing only the limits of the possible sanction, and without in the The aggravating circumstances have not been motivated, nor has the entity had the opportunity to express itself to the regard. Due to this same circumstance, it considers that the initial agreement exceeds the legally foreseen content, violated article 68 of the LOPDGDD, and understands affected the impartiality of the investigating body, which knows before starting the procedure the criterion of the body to which the file must be submitted, in a clear breach of the principle of separation of the instruction and sanction phase (article 63.1 of the LPACAP).

In this regard, BBVA adds that article 85 of the LPACAP, which is invoked in the operative part of the agreement to initiate the procedure to specify the reductions that the acknowledgment of responsibility entails, determines that the amount of the sanction

pecuniary may be determined "once the sanctioning procedure has been initiated" and that it is only applicable to assumptions that give rise to the imposition of a fixed and objective fine.

This Agency does not share the position expressed by BBVA in relation to the content of the opening agreement of this sanctioning procedure.

In the opinion of this Agency, the start-up agreement issued is in accordance with the provisions of the Article 68 of the LOPDGDD, according to which it will suffice that the agreement to start the procedure specify the facts that motivate the opening, identify the person or entity against whom the procedure is directed, the infraction that could have been committed and its possible sanction (in this case, of the different corrective powers contemplated in article 58.2 of the RGPD, the Agency considered the imposition of a fine to be appropriate, in addition to the adoption of measures to adjust their actions to the regulations, without prejudice to what could result from the procedure instruction).

In the same sense, article 64.2 of the LPACAP is expressed, which establishes expressly the minimum content of initiation agreement. According to this precept, among others details, must contain "the facts that motivate the initiation of the procedure, its possible legal qualification and the sanctions that may correspond, without prejudice to what is of the instruction".

In this case, not only are the requirements mentioned amply fulfilled, but that goes further by offering reasoning that justifies the possible legal classification of the facts valued at the beginning and, even, the circumstances that can influence determination of the penalty.

In accordance with the above, it cannot be said that pointing out the possible sanction that could correspond for the imputed infractions is determinant of defenselessness or that supposes a breach of the principle of separation of the phases of investigation and resolution. To the Otherwise, this fulfills one of the requirements set forth in the regulations reviewed.

Likewise, it cannot be forgotten that article 85 of the LPACAP contemplates the possibility of applying reductions on the amount of the sanction if the offender acknowledges his responsibility and in case of voluntary payment of the penalty. This rule establishes the obligation to determine those reductions in the notification of initiation of the procedure, which entails the need to set the amount of the sanction corresponding to the facts charged.

Contrary to what BBVA stated, this article 85 of the LPACAP does not establish that the The amount of the penalty is determined once the procedure has begun. It is the recognition of responsibility and voluntary payment of the sanction, which must occur later at that time, and not the setting of the amount of the penalty, as BBVA affirms.

If this acknowledgment of responsibility or voluntary payment does not occur, which would determine the termination of the procedure, the same is instructed and subsequently dictated the resolution proposal, in which the facts that are considered proven and its exact legal qualification, the infraction will be determined, which, in its case, they constitute, the person or persons responsible and the sanction that proposes, the evaluation of the tests carried out, especially those that constitute the basics of the decision. This must be notified to the interested party, granting him a term to formulate allegations and present the documents and information deemed pertinent. In no case shall a resolution be adopted without the The interested party has the opportunity to express himself on all the points considered. No arguments contain the brief of arguments to the proposed resolution

presented by BBVA that modifies that approach and the conclusion exposed.

BBVA, in this case, has seen respect for all the guarantees of the interested party that it foresees the procedural regulations and it cannot be said that the determination of the amount of the fine in the opening agreement supposes no reduction of said guarantees causing defenselessness.

Nor does this circumstance break the impartiality of the examining body, which has all the powers attributed to it by the regulations in question and full freedom to dictate its resolution proposal. All you have to do is go to the Agency's website, where all resolutions issued in sanctioning procedures, to verify the great number of them that end with a file resolution of actions, following the proposal issued by the instructor of the procedure, as well as those others in which said proposal increased or decreased the amount of the penalty established in the opening agreement or even proposed the application of a corrective power other than the sanction of a fine.

The interested entity questions, likewise, that the start-up agreement is “exceeded” adding to its content a brief statement of the circumstances that, in the opinion of the body sanctioning justify the initiation of the procedure, understanding that this violates their rights.

This Agency does not understand this argument, especially considering that BBVA has alleged the concurrence of some reason causing defenselessness on several occasions.

Article 68 regulates the content that must be included in the agreement to start the procedure for the exercise of sanctioning power, noting that they will specify the facts, the identification of the person or entity against whom the procedure is directed, the infraction that could have been committed and its possible sanction. However, it is the

minimum content required, of the elements that must be detailed in the aforementioned agreement
to determine its validity. But nothing prevents, as indicated above,
offer reasoning related to the possible legal classification of the facts valued at
start or mention the circumstances that may influence the determination of the sanction,
which will undoubtedly benefit the interested party, who sees his
right of defense.

It is true, on the other hand, that during the sanctioning regime prior to the
LPACAP this Agency did not set the amount of the possible sanction in the initiation agreement,
indicating instead the minimum and maximum limits that corresponded to the infraction
imputed. And so it was until the entry into force of the aforementioned LPACAP in October 2016;
moment in which that approach was modified, precisely to address the
established in article 85 of said Law and offer the interested party the alternatives that
establishes.

Likewise, BBVA understands that what is established in this article 85 of the LPACAP
entails that the amount of the fine is determined once the procedure has begun. A) Yes,
warns that this rule provides that the acknowledgment of responsibility can determine the
imposition of the “proper” sanction, so that this fixation seems to be foreseen with
subsequent to the acknowledgment of responsibility; and that in section 3 establishes
that the reductions should be adopted on the “proposed” sanction, which seems to refer
to the proposed resolution as the ideal place for determining the aforementioned amount.

This Agency cannot share this argument. It suffices to point out that the payment
voluntary can be done by the interested party at any time of the above procedure
to the resolution and implies its termination. Thus, so that the interested party can use
In this option, the amount of the penalty must be established at the beginning. In the same way,
It will be difficult for said interested party to recognize his responsibility by initiating a procedure
sanctioning if the agreement that determines that beginning does not indicate the scope that will be attributed to that

acknowledgment of responsibility.

On the other hand, BBVA alleges that the AEPD has shown manifest inactivity,

having limited itself to transferring the claims, and not all of them, to the DPD of the entity and to

agree to its admission for processing. Considers that the preliminary phase of

investigation for ten months without carrying out any activity tending to investigate the

content of the claims, and that it waited for a significant number of

claims to reactivate a procedure that remained “suspended” since the

first admissions for processing, which deals only with the "Declaration of Activity

Economy and Data Protection Policy”, held by the Agency since the presentation

of the claim by claimant 2. He adds that during that time BBVA acted in the

confidence that no irregularity was observed, so that the inaction of the AEPD has

aggravated reproach. Finally, in relation to these questions, he indicates that he answered

to the transfer of the claim made by claimant 3, contrary to what is indicated in the

agreement to open the procedure, indicating that the Agency did not receive

response.

The procedures carried out by this Agency to which BBVA refers in its allegation

above have to do with the process of admission to processing of the claims received,

which included for four of the five claims received their transfer to the person in charge,

prior to the agreement to admit the claim.

In accordance with the provisions of article 55 of the RGPD, the Spanish Agency for

Data Protection is competent to perform the functions assigned to it in its

Article 57, among them, that of enforcing the Regulation and promoting the awareness of the responsible and those in charge of the treatment about the obligations that incumbent on them, as well as dealing with the claims presented by an interested party and investigating the reason for the themselves.

Correlatively, article 31 of the RGPD establishes the obligation of those responsible and those in charge of the treatment to cooperate with the control authority that requests it in the performance of their duties. In the event that they have appointed a delegate of data protection, article 39 of the RGPD attributes to it the function of cooperating with said authority.

Similarly, the domestic legal system, in article 65.4 of the LOPDGDD, has provided for a mechanism prior to the admission to processing of the claims that are formulated before the Spanish Agency for Data Protection, which consists of transferring the same to the data protection delegates designated by those responsible or in charge of the treatment, for the purposes provided in article 37 of the aforementioned rule, or to these when they have not designated them, so that they proceed to the analysis of said claims and to respond to them within a month. It is a optional process. so that this transfer is carried out if the Agency deems it so.

In accordance with this regulation, prior to the admission for processing of the claims that give rise to this procedure, in four of them a transfer of the same to the responsible entity to proceed with its analysis, respond to this Agency within a month and will certify having provided the claimant with the due response.

The result of said transfer was not satisfactory, therefore, for the purposes foreseen in its article 64.2 of the LOPDGDD, it was agreed to admit claims for processing presented through agreements that were duly notified to the claimants, and not to BBVA, in accordance with the provisions of article 65.5 of the LOPDGDD. In this regard, the The aforementioned entity has stated that it responded to the transfer of the claim made by

claimant 3 and provides proof of its mailing, although said response does not

It is included in the corresponding admission file for processing.

On the other hand, the entity BBVA makes a mistake by stating that the previous phase of

investigation remained open for ten months without carrying out any activity, without

there is no specific investigative action. In this case, it should be clarified, not

agreed to open a preliminary phase of investigation, established as optional in the

Article 67 of the LOPDGDD.

No legal consequence can be attributed to this fact, nor to the time

elapsed between the acceptance of claims for processing and the opening of the procedure,

as there is no rule that limits the time available to the Administration to start

this type of procedure, beyond the rule of prescription and the effects that are

attribute. During that time interval there was no ongoing procedure that

could be understood as suspended, as indicated by the responsible entity, nor can it be sustained

that said period endorses BBVA's privacy policy or that during that time the

responsibility of the entity in compliance with regulations. Regardless of the

effect that can be attributed to the time interval prior to the opening of the procedure

sanctioning party, there can be no doubt about the non-existence of circumstances that

have allowed BBVA during that temporary space to understand, even indirectly,

that there was no reproach on the part of this Agency in relation to the issues

raised by the claims filed. BBVA was aware of the claims made and

I also knew that there was no pronouncement of this Agency in this regard.

Nor is there any rule that prevents the opening of a single procedure

sanctioning party that originates from several claims directed against the same

responsible.

In its brief of allegations to the proposed resolution, BBVA reiterates its protest

on the inactivity of the Administration. In his view, this inactivity is

manifesto, once the AEPD agreed to dispense with carrying out previous actions

investigation, for the entire period between the admission for processing of the

claim made by claimant 2, on 02/01/2019, and the opening of the procedure on

12/02/2019, ten months later.

On the other hand, it rejects the approach put forward above, according to which the

The only temporary limitation for the opening of the sanctioning procedure is determined

for the statute of limitations of the alleged infringement. Considers that articles 64.2 and 67

of the LOPDGDD establish three successive phases without solution of continuity (admission to

procedure, preliminary investigation actions and opening of the sanctioning procedure), each

one of them with marked time limits, so that, if you choose not to carry out

prior investigation actions, once the claim is admitted for processing, it must

proceed immediately to the opening of the sanctioning procedure.

In this case, according to BBVA, the AEPD should have agreed to open the

procedure at the time it decided to admit claimant 2's claim, that is,

on 02/01/2019, so the procedure should have concluded on 11/04/2019. Without

However, that opening took place on 12/02/2019, almost a month after the date on which

should have concluded the procedure by means of the corresponding resolution. Understands

BBVA that this unjustified inactivity results in the expiration of this procedure,

given that the term to resolve would be expired on the same date on which the order was issued.

start agreement.

It should be noted that BBVA's approach to this issue in its

allegations to the opening does not conform to law. On the one hand, it should be noted that there is no

no rule applicable to the sanctioning procedure in terms of data protection

personal that establishes a preclusive term to agree on its opening; and, on the other hand, that

the expiration term of this procedure, established in nine months, is computed from

the date on which its start is agreed, resulting inadmissible to add to that computation,

effects of measuring the duration of the administrative file, no other period, such as the

time of the previous investigation actions, in case it had been agreed upon

realization, or, in this case, the time corresponding to the phase of admission for processing of the

claims filed.

This has been repeatedly declared by our Supreme Court. In Judgment of

10/21/2015 cites the Judgment of 12/26/2007 (appeal 1907/2005), which states the following:

“[…] the term of the procedure […] is counted from the initiation of the sanctioning file, which

obviously excludes from the calculation the time of the reserved information";" […] the greater or lesser

The duration of the preliminary phase does not entail the expiration of the subsequent procedure".

Also in the Judgment of the Supreme Court of 10/13/2011 (appeal 3987/2008) that

examines a ground of appeal related to the calculation of the expiration period of the procedure,

the following is declared:

“We cannot share the reasoning that the Trial Chamber exposes to set a dies a quo

different from the one established by the Law, indicating as the initial date of the computation the day following the

completion of the preliminary informative proceedings.

[…]

Well, once these preliminary actions have been carried out, the time it takes for the Administration to agreeing to initiate the procedure […] may have the appropriate consequences in terms of the computation of the prescription (extinction of the right); but cannot be taken into consideration effects of expiration, since this figure is intended to ensure that once the procedure the Administration does not exceed the period available to resolve. in the foundation third of the appealed judgment, the Trial Chamber makes an interpretation of the norm that is not in accordance with the nature of the institution of expiration, since unlike prescription, which is cause of extinction of the right or responsibility in question, expiration is a way of termination of the procedure by the expiration of the term established in the norm, for which its appreciation does not prevent, if the term established for the prescription of the action of restoration of urban legality by the Administration, the initiation of a new process".

On this same issue, BBVA invokes the doctrine established by the National High Court (AN) in its Judgment of 10/17/2007 (appeal 180/2006), which is outlined in the Background, in which it revealed the illegality of the inappropriate extension or unfounded from previous investigative actions. This Judgment refers to a course processed by the AEPD in which the previous investigation actions are remained inactive for almost eleven months, when the entity in question had attended the request for information in the first two months of the processing of said actions.

The National High Court concluded that there was a "[…] fraudulent use of the institution of preliminary investigations. We are therefore faced with a case of fraud of Law contemplated in article 6.4 of the Civil Code, since it is intended to circumvent the application of Art. 42.2 of Law 30/1992 using the information request to, with it, avoid the expiration of the sanctioning file".

It is necessary to specify that the National High Court modified this criterion based on the Judgment of 11/19/2008 (appeal 90/2008).

In any case, this file does not conform to the assumption analyzed in the Judgment invoked, not only because it refers to a case of fraudulent use of the previous investigative actions, which have not been carried out in the event that we occupies; but because in this case no procedure has been used nor has any precept to avoid the expiration of the procedure, which has not occurred. It is not breached the provisions of article 6.4 of the Civil Code, according to which "The acts carried out under the of the text of a norm that pursue a result prohibited by the legal system, or contrary to it, they will be considered executed in fraud of law and will not prevent the due application of the norm that was attempted to be circumvented.

Moreover, in this case it cannot even be said that the period to which BBVA refers, which includes the time elapsed between the admission for processing of the claim of the claimant 2 (02/01/2019) and the opening of the procedure (12/02/2019), in the case of a period of inactivity of the Administration, given that during that time the admission procedures for the rest of the claims. The claims filed by Claimants 3 to 5 entered this Agency on the dates 02/13/2019 (a few days after that admission for processing on 02/01/2019), 05/23/2019 and 08/27/2019; and admitted for processing through agreements of 08/06/2019, 09/13/2019 and 10/30/2019, respectively.

On the other hand, BBVA understands that the procedure for the adoption of general criteria for interpreting the regulations to the detriment of BBVA. In this regard, quote the Judgment of the National Court of 04/23/2019 (appeal 88/2017), which declared contrary

to the principles of sanctioning law the establishment of general criteria within

of a sanctioning procedure.

This Agency does not share the conclusion expressed by BBVA. how can

verified in the opening agreement, and much more in this act, the agreements that are

adopted are based on what is expressed in the applicable regulations and in consolidated

interpretations of it.

III

Taking into account the regulatory change that the approval of the RGPD has brought about,

applicable from May 25, 2018, these actions are carried out for the

analysis of the personal data collection form used by the BBVA entity with

after that date, referred to by said entity as "Declaration of activity

economic and personal data protection policy", to determine the scope of said

document and the possible irregularities that can be appreciated from the point of view of the

personal data protection regulations. Therefore, any reference to the

document relating to the processing of personal data signed by claimant 1 in the year

2016.

From the perspective of personal data protection regulations, it will be analyzed

In this resolution, the information offered by BBVA to its customers regarding

protection of personal data through said document, and specifically: (1) the

BBVA's compliance with the principle of transparency established in articles 5,

12 and following of the RGPD, and related precepts; (2) the different data processing

information of its clients that the entity carries out according to the information offered; Y

(3) the analysis of the mechanisms used to obtain the provision of the consent of

the interested.

All this, within the framework of the new regulations, constituted by the RGPD, applicable

from 05/25/2018, and the LOPDGDD, in force from the day following its publication in

the Official State Gazette, which took place on 12/06/2018.

The information offered in this matter through any website will not be analyzed.

other channel or document, such as the forms used for contracting

products or services that, due to their specialty, include their own clauses of

Data Protection.

Neither is the action that could be carried out by the companies that make up the

the so-called “BBVA Group” in relation to the personal data communicated to them

by BBVA in accordance with the provisions of the "Declaration of economic activity and policy of

personal data protection".

Likewise, analysis of the procedures established by BBVA for the

management of customer rights, as well as the mechanisms used by the aforementioned

entity for the modification of the consents given through the repeated

form.

Likewise, although the information contained in the Evaluations of

Impact provided by BBVA, which has been outlined in the Background, is not carried out

any data security analysis.

In accordance with the foregoing, the conclusions that could be derived from this

procedure will not imply any pronouncement regarding the previous aspects

discarded, nor in relation to the entities of the BBVA Group.

It constitutes, therefore, the object of the procedure, as expressly declared in the

opening agreement, the form that discloses the terms applicable to the protection of

personal data and requires the consent of the interested parties.

In BBVA's opinion, the cause that justifies the filing of the proceedings is the non-existence

connection between the claims made and the stated object of the procedure, for

as the allegedly infringing facts that are invoked cannot be the basis in

that the AEPD supports the opening of this procedure. Understand what is being analyzed

the scope of the Privacy Policy contained in that form without linking any

reasoning to the content of the claims, and invokes in this regard the same Judgment of

the National Court cited in the previous Legal Basis (SAN of 04/23/2019;

resource 88/2017), which annuls the sanction of the AEPD, among other reasons, because there

discrepancy between what was reported and the object of the sanctioning resolution.

This allegation must also be dismissed for several reasons, the first being

of them (i) that the doctrine established in the cited judgment is applicable to facts prior to the

RGPD, which establishes a new and different legal regime that must be taken into account in

The procedure; (ii) in addition, the facts revealed in the claims of the

claimants/complainants are closely linked to the document that contains the

privacy policy and through which BBVA collects consent for the

activities carried out, and the examination of said claims, the documentation

provided by BBVA, and the form used shows that BBVA's actions transcend

of the five claims filed because their performance in those five actions

described by each of the claimants responds to the general policy of the entity in

matter of data protection, which this AEPD understands to be carried out, in the words of the

RGPD itself, "with violation of the Regulation"; and (iii) that unlike what was reported in the judgment of such a repeated citation of the National High Court (see its legal basis Ninth), in this resolution reference is made to the specific complaints, a assessment of the tests carried out around them, which are specific behaviors and individualized in relation to certain natural persons, but also transcend these complaints.

The RGPD has established its own and specific regime regarding the Procedures before the control authorities in matters of data protection. The chapter VIII of the RGPD is entitled "Resources, responsibility and sanctions", and the first of the articles of said Chapter VIII, article 77, establishes the right to present a claim before a control authority. Art. 77.1 Without prejudice to any other resource administrative or judicial action, all interested parties shall have the right to file a claim before a supervisory authority, in particular in the Member State in which it has its habitual residence, place of work or place of the alleged infringement, if you consider that the processing of personal data concerning you violates this Regulation. At the same time, the art. 79 RGPD establishes that [w]ithout prejudice to administrative or extrajudicial remedies available, including the right to file a claim with a supervisory authority in Under article 77, every interested party shall have the right to effective judicial protection when consider that your rights under these Regulations have been violated as consequence of a processing of your personal data.

We see therefore that a "claim" of an individual can give rise to two types of procedures, one of them related to infractions of the RGPD, in general, and another for violation of their rights.

In the LOPDGDD this distinction has been embodied in Title VIII, which regulates jointly the procedures in case of possible violation of the regulations of Data Protection. Thus, your art. 63.1, Legal Regime, includes (a) the procedures in case

of infringement of the RGPD and the LOPDGDD itself and (b) those derived from a possible violation of the rights of the interested parties. The LOPDGDD does not provide for any additional type of procedure in case of possible violation of data protection regulations, of so that all the functions and powers that the RGPD grants to the control authorities in arts. 57 and 58 RGPD will have to be exercised through said procedures in case of possible violation of data protection regulations. There are no others.

It follows, also taking into account art. 64 LOPDGDD, which when the procedure is directed exclusively to the lack of attention to a request of the rights articles 15 to 22 RGPD a claim will be necessary, but that (art. 64.2 LOPDGDD) [w]hen the purpose of the procedure is to determine the possible existence of an infringement of the provisions of Regulation (EU) 2016/679 and in this organic law, will be initiated by means of an initial agreement adopted on its own initiative or as consequence of claim. In other words, both the RGPD and the LOPDGDD consider that a claim from an affected party may be the way or the means of bringing to the knowledge of the control authority a possible infringement of data protection regulations but in

no case restricts the action of the control authority to the specific and concrete complaint of those affected. And this for many reasons, among which stands out, as may be the case in the present procedure, that from the confluence of several claims of people individuals affected reveals an action by the person in charge who, with general character (that is, not only in the specific cases presented by the complainants) from which it turns out that said specific cases are the reflection of a common guideline or policy

applied to all those affected persons who are in the same case as the

interested.

With a different example of the current procedure can be understood more clearly.

It could be considered that an entity incurs a violation of the protection regulations

of data in a specific case when said action individually considered supposes a

deviation from the norm or general company policies (for example, the introduction of

a debt in a delinquent file in a specific case breaching its own policy of

privacy); but when an action that is considered incorrect derives from a policy

adopted by the person in charge of the treatment, so that it is not about errors

punctual in five cases, but these five cases are just the button or the sample of

a general adopted policy that is considered in violation of the GDPR, the violation does not

resides exclusively in the five cases examined but in the privacy policy

adopted by the person in charge. It will be said privacy policy that constitutes a

violation of the RGPD, and not only the specific violations based on said privacy policy.

privacy.

To do otherwise would be inconsistent with the purpose and will of the Community legislator,

expressly embodied in the RGPD that the control authorities control and make

apply the RGPD, and with the provisions of the RGPD that may be revealed

"infractions" of the data protection regulations through "claims" that can

transcend the individual claims made.

It is enough to point out in this regard, already in the present specific case, that all the actions of

processing of personal data that are the subject of the claims made are justified

by BBVA with the aforementioned document "Declaration of Economic Activity and Policy of

Data Protection" and its signature by the claimants, as stated in the Proven Facts.

The BBVA entity itself declares in its allegations that the claim made by the

Complainant 2 refers to the content of the privacy policy and the process of obtaining the

consent; makes a general reference to “those cases in which the claimant

has shown its disagreement with the way of obtaining consent”; and also in

relationship with the claimant 2 BBVA expresses itself by referring to the “accusations

made about the privacy policy… or the legality of data processing”; what

dismantles his argument about the lack of relationship between the claims and the settlement agreement

beginning. In this case, claimant 2 expressly warned that in order to give consent

“only offers the possibility of objecting to the processing of personal data for purposes other than

to those necessary for the purpose of providing financial services if the client activates the

opposition boxes to a treatment that BY DEFAULT (see article 25 of the RGPD)

should be considered as activated” and that “The informative text is inconsistent with

the principle of transparency of article 12 of the RGPD”.

In the case of claimant 1, the sending to his mobile telephone line of a

Promotional SMS, which is justified by BBVA stating that claimant 1 lent his

consent by signing, on 06/07/2016, the document “Identification of the

client, treatment of personal data and digitized signature”.

The claim made by Claimant 3 refers specifically to the

“Declaration of Economic Activity and Personal Data Protection Policy”.

Claimant 4, for his part, denounces the sending of commercial communications that

has not requested or authorized, which is also justified by BBVA stating that this

The claimant did not object to the data processing reported in the document “Declaration of

Economic Activity and Data Protection Policy”, signed by the same on the date

11/26/2018.

And, finally, claimant 5 makes a claim against BBVA for receiving telephone calls and advertising SMS, also justified by that entity based on the consent given by the claimant with the signature of the document "Declaration of Economic Activity and Personal Data Protection Policy" for the treatment of your data for commercial purposes.

Based on the foregoing, all these claims have to do with treatments of personal data of the claimants that BBVA protects in the consent given by the holders of the data by signing the repeated "Declaration of Economic Activity and Data protection policy". To assess the regularity of these treatments, it is It is essential to analyze the consent given and its validity, for which it is decisive, in particular, verify the information offered in terms of protection of personal data and the mechanisms enabled to obtain the consent of the affected, without forgetting the rest of the principles and guarantees established in the applicable regulations.

Consequently, the AEPD has decided to analyze the impact of the repeated document "Declaration of economic activity and personal data protection policy", which contains the information that BBVA provides as a priority to its customers and the mechanisms for consent collection. In view of the deficiencies noted therein regarding data protection regulations, it turns out that such deficiencies have a general scope, so that all the entity's customers are affected, and not just the five claimants, which would result, as stated, that the infringement does not occur exclusively with respect to the five claimants, but in general as consequence of said privacy policy.

It cannot be said, therefore, that there is no link between the object of the procedure and claims. Proof of this is the definition of the object of the file that appears in the initial paragraphs of this Legal Basis.

As stated in the well-deserved AN ruling, "the story of "proven facts",

both in criminal proceedings and in administrative sanctions, it is essential

to fix the facts and typified behaviors, since that is the only way to respect the

principle of typicity, which, according to the doctrine, is "the legal description of a conduct

specific to which the administrative sanction will be connected". In the present case, it is reiterated,

the proven facts are clear insofar as it is BBVA itself that reveals

that their action responds to the fact that all the claimants agreed to and signed the

“Declaration of economic activity and personal data protection policy”, for which

in no case is there helplessness.

In any case, no rule prevents the body that exercises the power

sanctioning, when it determines the opening of a sanctioning procedure, always of

ex officio (art. 63.1 law 39/2015, of October 1), determine its scope in accordance with the

circumstances revealed, although they do not strictly conform to the

statements and claims of the complainant. That is, the agreement to start the

sanctioning procedure is not constrained by the complaint (the “claim”) filed

by the individual. This is not the case in the case of procedures carried out at the request of the

interested, in which article 88.2 of the LPACAP requires that the resolution be consistent

with the requests made by him. Even in this case, the authority of the

Administration to initiate ex officio a new procedure.

This same article 88 of the LPACAP, referring to the content of the resolution, in its

Paragraph 1 establishes the obligation to decide all the issues raised by the

interested parties and those others that derive from the procedure, including related issues not raised by stakeholders. This article expressly establishes the following:

"1. The resolution that puts an end to the procedure will decide all the issues raised by the stakeholders and those others derived from it.

In the case of related issues that have not been raised by the interested parties, the competent authority may rule on them, making it clear to them beforehand by a period not exceeding fifteen days, so that they formulate the allegations that they deem pertinent and contribute, in his case, the means of proof".

In the sanctioning procedure, even the facts that are revealed during their instruction, which will be determined in the proposal for resolution, and may motivate the modification of the imputations contained in the agreement of start of the procedure or its legal qualification.

In this sense, when referring to the specialties of the resolution in the sanctioning procedures, article 90 of the LPACAP establishes:

"two. In the resolution, facts other than those determined in the course of the trial may not be accepted. procedure, regardless of its different legal assessment…".

IV

The aforementioned form enabled by BBVA for the collection of personal data of its clients announces the new terms applicable to the protection of said data due to the contracted services and the consent of the users is required. interested parties for its use for the purposes indicated in the document. The The full content of this information is reproduced in Annex 1 to this agreement of procedure opening.

However, it is considered relevant to highlight the following aspects:

In the information provided to customers, the BBVA entity is identified as responsible for the treatment of the data, the types of personal data that will be

object of treatment, the treatment operations that will be carried out, including the

data communications, and the purposes for which the data in question are processed,

as well as the legitimizing basis of the treatment. The final two sections are devoted to the

conservation of personal data and the rights of the interested parties.

About the types of data of clients, representatives, guarantors, authorized or

beneficiaries, in the section “What personal data does BBVA process about you?”, included in the

“Extended information”, the following categories are expressly specified:

“. Identification and contact data (including postal and/or electronic addresses).

. Signature data (including the digitized and electronic signature that we will discuss later).

. Codes or identification keys for access and operations in the remote channels that you use in

your relationship with BBVA.

. Economic data and financial solvency (including those relating to all products and services

that you have contracted with BBVA or of which BBVA is a marketer).

. Transactional data (income, payments, transfers, debits, receipts, as well as any other

operation and movement associated with any products and services that you have contracted with

BBVA or of which BBVA is a marketer).

. Sociodemographic data (such as age, family situation, residences, studies and occupation)”.

Regarding the purposes for which the personal data of clients will be used

the document lists the following:

1. Manage the products and services you have, request or contract with BBVA.

2. Get to know you better and personalize your experience.

“At BBVA we want your experience as a customer to be as satisfactory as possible, through a personalized relationship that is most adapted to your customer profile and your needs.

To achieve this we have to get to know you better, analyzing not only the data that allows us to identify you as a customer, but also your financial evolution and that of the products and services you have contracted with us or through BBVA as a marketer, your operations - payments. income, transfers, debits, receipts- as well as the uses of BBVA products, services and channels.

Additionally, we will apply statistical and classification methods to correctly adjust your profile. Based on the above, we managed to develop our business models.

Thanks to this analysis we will be able to get to know you better, assess new functionalities for you, products and services that we consider appropriate to your profile (own or marketed by BBVA), as well as offers customized with more adjusted prices for you. As we get to know you better, we can congratulate you for your anniversary, wish you a good day or happy holidays.

If you do not agree, you can object by sending an email to: derechoprotecciondatos@bbva.com or at any of our offices.

This section is only applicable to BBVA customers”.

3. Offer you products and services from BBVA, the BBVA Group and others, personalized for you. Nope We are going to flood you with information.

“Offering you BBVA products and/or services

We would like to keep you up to date on new BBVA products and services, as well as give you advice recommendations to better manage your financial situation.

We can also send you information about BBVA products and services with lower prices. adjusted to your profile, informing you of what may interest you as a client.

Offer of products and/or services of the BBVA Group and third parties

We can send you information, according to your customer profile, about products, services and offers financial and non-financial assets of BBVA Group companies and third parties (including products and services of which BBVA is a marketer) belonging to these sectors of activity: financial,

parabanking, insurance, automotive travel, telecommunications, supplies, security, IT,

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education, real estate consumer products, leisure and free time, professional services and services

social.

Channels for sending commercial information

We will contact you through different channels: postal mail, email

push notifications, SMS, social networks, banners, web pages or other means of communication

equivalent electronics.

This section only applies to BBVA customers".

4. Communicate your data to BBVA Group companies so that they can offer you products and services

own personalized for you.

do you want to

the societies of

"Yes

included in this address

https://www.bbva.es/estaticos/mult/Sociedades-grupo.pdf can offer you products and services

personalized in characteristics and price, we need your authorization to communicate data

relating to your customer profile (amount of income and expenses, balances and use of our channels).

This information will be processed to try to improve the characteristics and prices of the product offer and

services. The BBVA Group companies will only process your data for that purpose".

BBVA Group

5. Improve the quality of products and services.

“We need to use your information anonymously without any features that can

identify, because at BBVA we want to:

Increase your degree of satisfaction as a customer.

Meet your expectations.

Perfect our internal processes.

Improve the quality of existing products and services.

Develop new own or third-party products and services.

Carry out statistics, surveys, actuarial calculations, averages and/or market studies that may be

interest of BBVA or third parties.

Improve anti-fraud instruments.

Said information is obtained from the use of BBVA products, services and channels. Throughout

At this time, we process the data using secure and up-to-date internal protocols.

This section only applies to BBVA customers”.

BBVA refers to legitimate interest as a legitimizing basis for the use of data

with the purpose indicated with number 2 and to the consent in relation to the purposes

3, 4 and 5.

Regarding the use of data based on legitimate interest, it is warned about the

possibility of objecting by sending an email to the address indicated or in any of the

entity offices. And added:

“In the legitimate interest of BBVA, so that BBVA can better meet your expectations and

we can increase your degree of satisfaction as a customer by developing and improving the quality of

own products and services or those of third parties, as well as carry out statistics, surveys or studies of

market that may be of interest.

Likewise, due to the legitimate interest of BBVA to be a bank close to you as a customer and to be able to

accompany you during our contractual relationship, we could congratulate you on your anniversary, wish you a

good day or happy holidays.

These legitimate interests respect your right to personal data protection, honor and

personal and family intimacy. At BBVA we believe that, as a customer, you have an expectation

reasonable for your data to be used so that we can improve products and services and you can

Enjoy a better customer experience. In addition, we estimate that you also have a

reasonable expectation to receive congratulations on your anniversary. wish you a good day or

Happy Holidays. But remember that in both cases based on legitimate interest, you can always exercise

your right to object if

you consider it appropriate in

the following address:

rightsprotecciondatos@bbva.com or at any of our offices".

About the data of representatives, guarantors, authorized or beneficiaries, it is reported

that will be treated only for the management of the contract.

On the other hand, in the repeated document it is reported that

communications of personal data to the companies of the BBVA Group, basing this

communication of data in the consent of the interested party. In this case, it is not distinguished whether

the data that will be communicated correspond to clients or representatives, guarantors,

authorized parties and beneficiaries, but given that the data of these interested parties is only

used for the fulfillment of the contractual relationship, it is understood that the information on

the communication of data to the companies of the Group does not refer to them.

In relation to the communication of personal data, in the "extended information" it is

indicates the following:

“We will not transfer your personal data to third parties, unless we are obliged by law or that you

you have previously agreed with BBVA

As we have indicated, if you previously consent, we can communicate to the companies of the

BBVA Group included in this address https://www.bbva.es/estaticos/mult/Sociedades-grupo.pdf your

identification, contact and transactional data so that you can receive offers

personalized.

In order to provide you with an adequate service and manage the relationship we have with you as

client, at the following address http://bbva.lnfo/empresasdatos you will find a list by

categories of companies that process your data on behalf of BBVA, as part of the provision of

services that we have hired.

We also inform you that, for the same purpose as that indicated in the previous paragraph,

certain companies that provide services to BBVA could access your personal data

(international data transfers).

These transfers are made to countries with a level of protection comparable to that of the European Union.

European (adequacy decisions of the European Commission, standard contractual clauses as well as

certification mechanisms) For more information you can contact the Protection Delegate of

BBVA details at the following email address: dpogruppbbva@bbva.com”.

The signature of the document by the client and the date is included at the end of section 2

“Personal data protection policy”, in which it is indicated that with the process of

firm agrees to the Declaration of Economic Activity and Protection Policy

of data.

Immediately before the space enabled for the signature, it is reported as follows:

“We inform you that if you do not agree with the acceptance of any of the following purposes,

you can select them below.

. Products and prices more adjusted to you

[ ] I DO NOT want BBVA to process my data to offer me products and services of BBVA, of the Grupo

BBVA and others personalized for me.

[ ] I DO NOT want BBVA to communicate my data to BBVA Group companies so that they can

offer own products and services personalized for me.

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quality improvement

[ ] I do NOT want BBVA to process my data to improve the quality of new products and services and

existing. We want to remind you that you can always easily change or delete the use that

we make of your data".

v

Article 5 "Principles related to treatment" of the RGPD establishes:

"1. The personal data will be:

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

transparency");

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

manner incompatible with those purposes; according to article 89, paragraph 1, further processing

of personal data for archiving purposes in the public interest, scientific research purposes and

historical or statistical purposes shall not be considered incompatible with the initial purposes ("limitation of the

purpose»);

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

("data minimization");

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

Delete or rectify without delay the personal data that is inaccurate with respect to the purposes

for which they are treated ("accuracy");

e) kept in a way that allows the identification of the interested parties for no more than the

necessary for the purposes of the processing of personal data; personal data may

be kept for longer periods as long as they are treated exclusively for archival purposes

in the public interest, scientific or historical research purposes or statistical purposes, in accordance with

Article 89(1), without prejudice to the application of technical and organizational measures

appropriate measures imposed by this Regulation in order to protect the rights and freedoms of the

interested party (“limitation of the retention period”);

f) processed in such a way as to ensure adequate security of the personal data, including the

protection against unauthorized or unlawful processing and against loss, destruction or damage

accident, through the application of appropriate technical or organizational measures ("integrity and

confidentiality").

2. The controller will be responsible for compliance with the provisions of section 1 and

able to demonstrate it (“proactive responsibility”)”.

In relation to the aforementioned principles, what is stated in the

Considering 39 of the aforementioned RGPD:

“39. All processing of personal data must be lawful and fair. For natural persons, it must be

completely clear that data is being collected, used, consulted or otherwise processed

that concern them, as well as the extent to which said data is or will be processed. The

The principle of transparency requires that all information and communication regarding the treatment of said

data is easily accessible and easy to understand, and that simple and clear language is used. Saying

principle refers in particular to the information of the interested parties on the identity of the person in charge

of the treatment and the purposes of the same and to the added information to guarantee a fair treatment and

transparent with respect to the affected natural persons and their right to obtain confirmation and

communication of personal data concerning them that are subject to treatment. The

natural persons must be aware of the risks, standards, safeguards and rights

regarding the processing of personal data as well as the way to assert their rights in

relation to treatment. In particular, the specific purposes of the processing of personal data

they must be explicit and legitimate, and must be determined at the time of collection. The data

must be adequate, relevant and limited to what is necessary for the purposes for which

be treated. This requires, in particular, to ensure that their period of

conservation. Personal data should only be processed if the purpose of the processing could not be

reasonably be achieved by other means. To ensure that personal data is not retained

longer than necessary, the data controller must establish deadlines for its deletion or

Periodic revision. All reasonable steps must be taken to ensure that they are corrected or

Delete personal data that is inaccurate. Personal data must be processed in a manner

that guarantees adequate security and confidentiality of personal data, including for

prevent unauthorized access or use of said data and of the equipment used in the treatment".

SAW

Article 4 of the RGPD, under the heading "Definitions", provides the following:

"2) «treatment»: any operation or set of operations carried out on personal data or

sets of personal data, whether by automated procedures or not, such as the collection,

registration, organization, structuring, conservation, adaptation or modification, extraction, consultation,

use, communication by transmission, broadcast or any other form of authorization of access,

collation or interconnection, limitation, suppression or destruction".

In accordance with these definitions, the collection of personal data through

of forms enabled for this purpose constitutes data processing, in respect of which the

The data controller must comply with the principle of transparency, established in article 5.1 of the RGPD, according to which personal data will be "treated in a lawful, loyal and transparent in relation to the interested party (legality, loyalty and transparency)"; Y developed in Chapter III, Section 1, of the same Regulation (articles 12 and following).

Article 12.1 of the aforementioned Regulation establishes the obligation of the person responsible for treatment to take the appropriate measures to "provide the interested party with all information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 related to the treatment, in a concise, transparent, intelligible and easily access, in clear and simple language, in particular any information addressed to a little boy".

In the same sense, article 7 of the RGPD is expressed for cases in which the consent of the data subject is given in the context of a written statement, such as occurs in the present case. According to this article, said request for consent "is presented in such a way as to be clearly distinguishable from other matters, in an intelligible manner and easily accessible and using clear and simple language". It is added to this provision that no part of the declaration that constitutes an infringement of these Regulations will be binding.

Article 13 of the aforementioned legal text details the "information that must be provided when the personal data is obtained from the interested party" and article 14 mentioned is refers to the "information that must be provided when the personal data has not been obtained from the interested party.

In the first case, when the personal data is collected directly from the interested party, the information must be provided at the very moment in which that data Collect. Article 13 of the RGPD details this information in the following terms:

1. When personal data relating to him or her is obtained from an interested party, the data controller,

at the time these are obtained, it will provide you with all the information indicated below:

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

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

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

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the

responsible or a third party;

e) the recipients or categories of recipients of the personal data, if applicable;

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

international organization and the existence or absence of an adequacy decision by the Commission, or,

in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, paragraph

second, reference to adequate or appropriate safeguards and means of obtaining a copy of

these or the fact that they have been lent.

2. In addition to the information mentioned in section 1, the data controller shall provide the

interested, at the time the personal data is obtained, the following information

necessary to guarantee fair and transparent data processing:

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

used to determine this term;

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

related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the

treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2,

letter a), the existence of the right to withdraw consent at any time, without affecting

to the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement

to sign a contract, and if the interested party is obliged to provide personal data and is

informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to in article

22, sections 1 and 4, and, at least in such cases, significant information on the applied logic, as well

as the importance and expected consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data for a

purpose other than that for which they were collected, will provide the interested party, prior to said

further processing, information about that other purpose and any additional information relevant to the

of section 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the

interested party already has the information".

Article 14 regulates the information that must be provided in relation to the data that

are not collected directly from the interested party:

"1. When the personal data has not been obtained from the interested party, the data controller

will provide you with the following information:

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

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

c) the purposes of the processing for which the personal data is intended, as well as the legal basis for the processing.

treatment;

d) the categories of personal data in question;

e) the recipients or categories of recipients of the personal data, if any;

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

country or international organization and the existence or absence of a decision on the adequacy of the

Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49,

section 1, second paragraph, reference to the adequate or appropriate guarantees and the means to

obtain a copy of them or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the data controller shall provide the

interested party the following information necessary to guarantee a fair treatment of data and

transparent with respect to the interested party:

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

criteria used to determine this term;

b) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the

data controller or a third party;

c) the existence of the right to request access to personal data from the data controller

related to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the

treatment, as well as the right to data portability;

d) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2,

letter a), the existence of the right to withdraw consent at any time, without affecting

to the legality of the treatment based on the consent before its withdrawal;

e) the right to file a claim with a supervisory authority;

f) the source from which the personal data comes and, where appropriate, if they come from access sources

public;

g) the existence of automated decisions, including profiling, referred to in

article 22, paragraphs 1 and 4, and, at least in such cases, significant information on the logic

applied, as well as the importance and the anticipated consequences of said treatment for the interested.

3. The controller will provide the information indicated in sections 1 and 2:

a) within a reasonable period of time, once the personal data has been obtained, and at the latest within a month, taking into account the specific circumstances in which said data is processed;

b) if the personal data is to be used for communication with the interested party, no later than the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time the data personal data are communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the personal data for a purpose other than that for which they were obtained, will provide the interested party, before said further treatment, information about that other purpose and any other relevant information indicated in the paragraph 2.

5. The provisions of sections 1 to 4 shall not apply when and to the extent that:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific research purposes or historical or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation referred to in paragraph 1 of this article may prevent or seriously impede the achievement of the objectives of such treatment. in such cases, the person in charge will adopt adequate measures to protect the rights, freedoms and interests legitimate rights of the interested party, including making the information public;

c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the data controller and lays down appropriate measures to protect the legitimate interests of the data subject, or

d) when the personal data must remain confidential on the basis of a

obligation of professional secrecy regulated by the Law of the Union or of the Member States,

including an obligation of secrecy of a statutory nature".

For its part, article 11.1 and 2 of the LOPDGDD provides the following:

"Article 11. Transparency and information to the affected

1. When the personal data is obtained from the affected party, the data controller may give

compliance with the duty of information established in article 13 of Regulation (EU) 2016/679

providing the affected party with the basic information referred to in the following section and indicating a

electronic address or other means that allows easy and immediate access to the remaining

information.

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

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU)

2016/679.

If the data obtained from the affected party were to be processed for profiling, the information

basic will also include this circumstance. In this case, the affected party must be informed of

your right to oppose the adoption of automated individual decisions that produce effects

legal rights over him or significantly affect him in a similar way, when this right of

in accordance with the provisions of article 22 of Regulation (EU) 2016/679".

In relation to this principle of transparency, it is also taken into account

expressed in Considerations 32, 39, reproduced in the Basis of previous Right,

42, 47, 58, 60, 61 and 72 of the GDPR. Part of the content of these is reproduced below.

Considerations:

(32) Consent must be given through a clear affirmative act that reflects a manifestation of
Free, specific, informed, and unequivocal will of the interested party to accept the processing of personal data.
personal character that concern him… Therefore, silence, boxes already checked or inaction do not
must constitute consent. Consent must be given for all activities of
treatment carried out with the same or the same purposes. When the treatment has several purposes, you must
consent to all of them…

(42) …In particular in the context of a written statement made on another matter, you must
There must be guarantees that the interested party is aware of the fact that he gives his consent and of the
extent to which it does. In accordance with Council Directive 93/13/CEE (LCEur 1993, 1071), you must
provide a model declaration of consent previously prepared by the person in charge
treatment with an intelligible and easily accessible formulation that uses clear language and
simple, and that does not contain abusive clauses. For consent to be informed, the
The interested party must know at least the identity of the data controller and the purposes of the processing.
treatment to which the personal data is intended. The consent must not
be considered freely provided when the interested party does not enjoy a true or free choice or does not
You can withhold or withdraw your consent without prejudice.

(47) The legitimate interest of a data controller, including that of a data controller
may communicate personal data, or of a third party, may constitute a legal basis for the
treatment, provided that the interests or the rights and freedoms of the interested party do not prevail,
taking into account the reasonable expectations of the interested parties based on their relationship with the
responsible. Such legitimate interest could exist, for example, where there is a relevant relationship and
between the data subject and the controller, such as in situations where the data subject is a customer
or is at the service of the person in charge. In any case, the existence of a legitimate interest would require a
thorough evaluation, even if a data subject can reasonably foresee, at the time and in the

the context of the collection of personal data, that the treatment may occur for this purpose. In
In particular, the interests and fundamental rights of the interested party may prevail over the
interests of the person in charge of the treatment when proceeding to the treatment of the personal data in
circumstances in which the interested party does not reasonably expect that a treatment will be carried out
subsequent… The processing of personal data strictly necessary for the prevention of

fraud also constitutes a legitimate interest of the data controller concerned. The
Processing of personal data for direct marketing purposes can be considered carried out by
legitimate interest.
(58) The principle of transparency requires that all information addressed to the public or the interested party be
concise, easily accessible and easy to understand, and that clear and simple language is used, and,
In addition, in your case, it is displayed...
(60) The principles of fair and transparent processing require that the data subject be informed of the
existence of the processing operation and its purposes. The data controller must provide the
interested as much additional information as necessary to guarantee a fair treatment and
transparent, taking into account the specific circumstances and context in which the data is processed
personal. The interested party must also be informed of the existence of profiling and
the consequences of such elaboration. If personal data is obtained from data subjects,
they must also be informed of whether they are obliged to provide them and of the consequences in case they
they didn't do it...
(61) Data subjects should be provided with information on the processing of their personal data in
the time they are obtained from them or, if obtained from another source, within a reasonable time,

depending on the circumstances of the case...

(72) Profiling is subject to the rules of this Regulation that govern the

processing of personal data, such as the legal grounds for processing or the principles of

Data Protection…

BBVA, according to proven facts, processes personal data

obtained from customers, directly or "indirectly", as well as personal data

obtained from sources other than those interested or inferred by the entity itself. Comes

therefore, obliged to provide information on all the aspects included in the aforementioned

articles 13 and 14 of the RGPD.

After analyzing the information offered by BBVA, it is verified that it is

incomplete or inadequate in relation to the provisions of articles 13 and 14 of the RGPD.

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Use of imprecise terminology and vague formulations

In accordance with the foregoing, at the time of collecting personal data, the

Responsible for the treatment must provide the interested parties with the information established in

the aforementioned standards, “in a concise, transparent, intelligible and easily accessible form, with a

clear and simple language.

BBVA does not report clearly and systematically on data processing

personal nor the purposes for which they will be used; and neither does it define the nature of

the information submitted to treatment and its subsequent use.

When referring to these issues, he uses imprecise terminology and

vague formulations, outside the strict compliance with the principle of transparency, preventing

interested parties to know the meaning and real meaning of the indications provided and the

real scope of the consents that can be given.

The analyzed privacy policy contains formulas and imprecise expressions and

you wander throughout the text:

. “Get to know you better and improve your experience”.

. “Offer you products and services… personalized for you”.

. “Improving the quality of products and services”.

. “Your data is yours and you control it”.

. "... make your experience more personalized."

. “Products and prices more adjusted to you”.

. “I do NOT want BBVA to process my data to offer me products and services… personalized for me”.

. “I do NOT want BBVA to communicate my data to BBVA Group companies so that they can

offer our own products and services personalized for me”.

. “I do NOT want BBVA to process my data to improve the quality of new products and services and

existing”.

. “Properly manage the products and services that you request and contract from us”.

. “Follow the relationship we have with you and your financial evolution”.

. “At BBVA we process your personal data to always serve you with the same level of quality, and thus

to be able to offer you better treatment and service appropriate to your condition as a client”.

. “If you want to streamline the application process, we will need to.”

. “At BBVA we want your experience as a customer to be as satisfactory as possible, through a

personalized relationship that is most adapted to your customer profile and your needs. To make it

we need to get to know you better…”

. “Thanks to this analysis we will be able to get to know you better, evaluate new functionalities for you… as well as

personalized offers with more adjusted prices for you”.

. “We would like to keep you up to date on new BBVA products and services, as well as give you

advice recommendations to better manage your financial situation.

We can also send you information about BBVA products and services with lower prices.

adjusted to your profile, informing you of what may interest you as a client”.

. “If you want the BBVA Group companies… to be able to offer you products and services

personalized in characteristics and price, we need your authorization to communicate data

related to your customer profile... This information will be processed to try to improve the features and

prices of the supply of products and services.

. “… so that BBVA can better meet your expectations and increase your degree

of satisfaction".

. “… to be a bank close to you as a customer and to be able to accompany you during our relationship

contract, we could congratulate you on your anniversary, wish you a good day or happy holidays”.

. “At BBVA we believe that, as a customer, you have a reasonable expectation that your

data so that we can improve products and services and you can enjoy a better experience

as a customer”.

. "In addition, we estimate that you also have a reasonable expectation to receive congratulations on the occasion of

of your anniversary. wish you a good day or happy holidays”.

. “In order to provide you with an adequate service and manage the relationship we have with you as

client…".

It follows that the data protection policy is shown as a

benefit for the client, implying that its non-acceptance will mean the loss of

benefits as a customer.

According to the records, BBVA has contributed to the actions

documentation related to the process of adaptation to the new RGPD, including, specifically, the

definitive plan for the elaboration of the new “LOPD Clause”, which included carrying out

investigations with clients on the draft text of said clause. The entity itself has

stated that the first research was to optimize the effectiveness of communication

to clients and that the clause allowed to capture the attention of the clients to achieve the

acceptance of treatments based on consent.

In relation to this first investigation, in the document provided by BBVA,

corresponding to the extract of the presentation made in October 2017 on the

conclusions of these works, the following is said:

“Objective: Optimize communication to clients (email and signature page) to achieve a greater number

acceptance of the purposes of data processing.

“General results: almost 90% of the interviewees accept all the conditions, either of

expressly or by default; two thirds of the interviewees accepted the GDPR conditions of

instantly, without reading; non-acceptance focuses exclusively on receiving

commercial communications, especially from third parties”.

“Conclusions: the current model would be valid (after the modifications), it is efficient to stimulate the

acceptance of the data protection policy (nearly 9 out of 100 respondents accept all the

clauses); …the customer benefit is missing: it is difficult to identify the benefit on a day-to-day basis

accept the use of your data, the acceptance or rejection of the conditions will not have any

repercussion…".

A second investigation was carried out with the following objective:

“Objective: to adapt the messages so that the client accepts the conditions aware of the loss that

It would mean not doing it."

In addition, the information is indeterminate, considering those generic expressions and

unclear that it uses, from which it follows that the privacy policy is not easy to

understood by any interested party, regardless of their qualifications, and shows up to

to what extent it is necessary to be an expert to understand such information and its scope. It

implies understanding the right to personal data protection violated, understood as

the affected person's ability to decide on treatment.

Information on key aspects such as the categories of personal data

treaties, the purposes or the legal basis that enables the treatment uses expressions that are not very

clear and imprecise, with ambiguous meanings in some cases, whose true scope is not

it develops; expressions that are repeated throughout the text, as indicated, and

that BBVA uses to substantiate different actions, treatments, purposes or

legitimations. Expressions such as “meet you

better” “personalize your experience”, “offer you personalized products and services”,

“improve the quality of products”, “relationship adapted to your profile”, “prices adjusted to your

profile”, “developing our business models”, “analyzing the uses of the products,

BBVA services and channels”, “we will apply statistical and classification methods to

correctly adjust your profile” or “perform statistics, surveys, actuarial calculations,

media and/or market studies that may be of interest to BBVA or third parties”.

Nor can the interested party clearly deduce the meaning of these expressions

from the context in which the information is offered and the expression of will is obtained

of the interested party, or from the very context of the contractual relationship that binds the

concerned with the responsible entity. On this contextual basis or factual context, the

client is not capable of understanding the meaning of the purposes pursued by BBVA with the

treatment of your personal data, such as "getting to know you better", "preparing our

business models” or “improve the quality of products and services”.

The expressions so repeated by BBVA throughout the entire document “Declaration

of Economic Activity and Personal Data Protection Policy” are included as

examples of bad practices in the document of the Working Group on Article 29

“Guidelines on transparency under Regulation 2016/679”, adopted on

11/29/2017 and revised on 04/11/2018.

These Guidelines discuss the scope to be attributed to the elements of

transparency established in article 12 of the RGPD, according to which the person in charge of the

treatment will take the appropriate measures to “provide the interested party with all information

indicated in articles 13 and 14, as well as any communication pursuant to articles

15 to 22 and 34 related to the treatment, in a concise, transparent, intelligible and easily

access, with clear and simple language”, which must be related to what is expressed in

Considering 39 of the aforementioned Regulation. From what is stated in these Guidelines, it is

highlight the following at this time:

“The requirement that the information be “intelligible” means that it must be understandable to the user.

average member of the target audience. Intelligibility is closely linked to the requirement of

Use clear and simple language. A data controller acting responsibly

proactively you will know the people about whom you collect information and you can use this

knowledge to determine what said audience is capable of understanding…”.

<<Clear and simple language

In the case of "written" information (and where written information is communicated verbally, or

by auditory or audiovisual methods, also for those with vision problems), have

of following the best practices for writing clearly. The EU legislator has already used

previously a similar linguistic requirement (appealing to the use of “clear and understandable terms”) and

it is also explicitly mentioned in the context of consent in recital 42

of the GDPR. The obligation to use clear and simple language implies that the information must be

be provided in the simplest way possible, avoiding complex sentences and linguistic structures. The

information must be concrete and categorical; should not be formulated in abstract or ambivalent terms

nor leave room for different interpretations. In particular, the purposes and legal basis of the treatment

of personal data must be clear.

Examples of poor practice

The following statements are not sufficiently clear regarding the purpose of the treatment:

. “We may use your personal data to develop new services” (since it is not clear from

what “services” are involved and how the data will help develop them);

. “We may use your personal data for research purposes” (since it is not clear to what type

"research" refers to); Y

. "We may use your personal data to offer you personalized services" (since there is no

clear what this “personalization” implies).

Examples of good practices

. “We will keep your purchase history and use details of the products you have purchased

above to suggest other products we think you might be interested in as well" (it's clear what

types of data will be processed, that the interested party will be subject to personalized product advertising and

that your data will be used in this sense);

. “We will retain and evaluate information about your recent visits to our website and how

navigate through the different sections of the same in order to analyze and understand the use that the

people make our website and to be able to make it more intuitive” (it is clear what type of data is

they will treat and the type of analysis that the person in charge is going to carry out); Y

. “We will keep a record of the articles on our website that you have clicked on and we will use

that information to personalize, based on the articles you have read, the advertising that we show you

on this website to suit your interests” (it is clear what personalization and

how the interests attributed to the interested party have been identified)>>.

The foregoing must be interpreted, in any case, taking into account the principles established in article 5 of the RGPD, especially the principle of loyalty. Recital 42 of the same text also refers that the form in which the information is offered in matter of protection of personal data must not contain unfair terms.

BBVA alleges that the "Guide for compliance with the duty to inform", edited by this Agency, contains some examples when referring to the information on the purpose (“to facilitate the interested offers of products and services of interest”; “to be able to offer you products and services according to your interests”; “improve your user experience”) that can be considered similar to the expressions used in the Privacy Policy. Nevertheless, this circumstance does not have sufficient potentiality to overcome the important reservations that here They describe.

In this regard, it should be noted that, while it is true that such expressions are similar to those used in some specific examples of the aforementioned guide, BBVA does not reference nor has it taken into account other statements in said guide that are essential for frame and interpret the meaning of those that the entity reproduces.

Thus, it omits that these examples are included in the rubric “What information should be included in each heading?”; rubric that begins by establishing a criterion that conditions the application of the examples included in it (such as the quoted by BBVA) when pointing out that “the length and level of detail of each heading will depend on the complexity of your particular circumstances” (emphasis added).

AEPD).

Then adding another important nuance, such as the fact that the examples

practical ones that are included in the guide are “related to the previous hypothetical cases

(“Warren&Brandeis S.A. editions”)” (Page 9).

On the other hand, the reference expressions are found in the example included in

section 7.2 “purpose” of the guide, which links the purpose of “…facilitating interested parties

offers of products and services of your interest…” and “…according to your interests…”

exclusively to "the information provided by the interested parties" (the underlining is from the AEPD).

Finally, the Guide completes the aforementioned epigraph with a new warning by pointing out

that “practices such as including purposes that are too generic or

non-specific, which may lead to subsequent treatments that exceed expectations

reasonable interests of the interested party”.

The framework of the Guide, which has been described in its entirety and not with partial citation and

selective as in the allegations of BBVA, presents substantial differences with that of the

informative clauses of this entity, such as the following: the variety of data

object of treatment; the diversity of the sources from which they are obtained, which go beyond

the data provided by the interested party, including even those obtained in their condition of

mere data processor; as well as the variety and complexity of the purposes

processing of personal data in its capacity as a financial institution that occupies a

relevant position in the market, unlike the more schematic of a publisher,

which is the example cited in the Guide (the detail of such data and processing is described

in different sections of the resolution, being omitted here to avoid repetition).

In addition, it must be taken into account that the guidelines of the guide do not

can be taken as definitive, since the aforementioned guide expressly warns that the

The only specific objective it covers is guidance on best practices and it adds that it should

be completed with other guides that the Data Protection Authorities may issue, in

in relation to the application of the RGPD.

The above argument about the terminology used in the Privacy Policy

it is not taken into account by BBVA when formulating its allegations. This entity is limited to

affirmations such as qualifying the arguments of this Agency as appraisals

subjective; affirm that the terms used are clear and precise; who uses those

expressions with the intention of providing its clients with a service adapted to their

specific circumstances, for which it is essential to “know them”; and that the context in

which the information is provided, which is determined by the contractual relationship, as well as the

system of the document in two layers, allow a better understanding of the

expressions used.

It has been previously denied that the context in which the information is offered and

collects the expression of will allows the interested party to know the meaning and scope of the

expressions that have been indicated. And, on the other hand, it cannot be said that the end cited by

BBVA (getting to know the customer better) justifies the use of unclear expressions and

indeterminate.

It also tries to explain two of the many that have been referred to

above, which, obviously, does not solve the deficiencies appreciated in the entire text of

the Privacy Policy.

Specifically, BBVA refers to the expression "we will apply statistical methods and

classification to correctly adjust your profile”, which he tries to explain without success, highlighting

that with that expression two of the techniques used to better understand the

client.

Secondly, it refers to the indication "analyzing the uses of the products,

BBVA services and channels", which according to BBVA is explained by this Agency in the

motion for a resolution indicating that "[a]ll of this refers to the data processed for reasons of

the contracted products and services.

This Agency does not share the idea put forward by BBVA. In the first case, the simple

reference to the techniques used does not help the interested party the scope of the information when

indicates that the profile will be adjusted. In relation to the second expression, it was already indicated in the

opening of the procedure and in the proposed resolution, the interested party has no opportunity

to know the true scope of that expression, starting with the specific information to

the one referred to.

He adds that some of the expressions explained above are similar to

expressions offered as examples in the "Guide on the use of cookies" (in the opinion of

BBVA, "perform statistics, surveys, actuarial calculations, measurements and/or studies of

market that may be of interest to BBVA or third parties", is similar to the expression

"for analytical purposes"; and "analyzing the uses of BBVA products, services and channels"

is similar to the expression "show you personalized advertising based on a profile

made from your browsing habits").

Concerning the quotes that have been transcribed literally and in quotation marks, it is worth noting,

firstly, that at the time of carrying out by BBVA the process of

adaptation to the RGPD, including the informative clauses, the Guide on cookies published by

the Agency at that time was the one presented on April 29, 2013 and it did not include

the literalness of these expressions.

The only example of an informative clause included in said Guide literally indicated

that “we use our own and third-party cookies to improve our services and show you

advertising related to your preferences by analyzing your browsing habits

navigation".

Therefore, BBVA could not, in any way, take this text into account as a reference

when preparing their informative clauses.

The examples referred to by BBVA literally reproduce the wording contained in

the "Guide on the use of cookies" published in November 2019 (both the one related to the

analytical purposes such as that relating to personalized advertising based on the habits of

navigation in example number 2 on page 20).

However, his allegation by taking such legends as a reference in order to

justifying the informative clauses of the entity is again partial, since it is limited to

collect only two limited items from the examples in the Guide.

But without taking into account other substantive considerations included in the Guide that

allow to substantiate an assessment contrary to the exculpatory effect intended by the

entity. And, in particular, those that refer to the requirement to "use clear language

and simple, avoiding the use of phrases that lead to confusion or distort the clarity of the

message".

In this sense, the Guide specifically indicates in section 3.1.2.b) the following

(page 18):

<<b) Clear and simple language must be used, avoiding the use of phrases that lead to confusion or

distort the clarity of the message.

For example, phrases such as "we use cookies to personalize your content and create

a better experience for you” or “to improve your browsing”, or phrases such as “we can use your

personal data to offer personalized services” to refer to advertising cookies

behavioral. Terms such as “may”, “could”, “some”, “often”, and

“possible”>>.

Expressions that come to confirm the foundations for the declaration of the

informative clauses of BBVA as unlawful in this procedure.

Based on the foregoing, BBVA's allegation regarding the application of the

principle of legitimate expectations.

Regarding the above issues, BBVA also adds in its allegations that it acted

with proactive responsibility, as evidenced by the investigations carried out by

expert third parties to assess the content and format of the text; and that offer an image of

courtesy is a business decision, a "marketing action", on its own terms,

for which it is entitled by virtue of its right to freedom of enterprise.

Regarding the external works commissioned by BBVA, it has already been explained before that its

The object was not to facilitate the understanding of the text of the Privacy Policy so that it would serve

suitably for the purposes corresponding to an informative clause in matters of

protection of personal data, but favor the acceptance of it in its entirety.

On the other hand, it is clear and indisputable that the Privacy Policy cannot

used as a "marketing action". This is how BBVA has rated it and the result is

which has been described in the previous paragraphs.

-

Information on the categories of personal data subject to treatment;

and on the specific categories of personal data that will be processed for each

one of the specific purposes.

On the other hand, it is verified that the information offered is incomplete in relation to

with key aspects established in the repeated articles, such as the categories of the data

personal treated.

In accordance with the criteria stated by the European Committee for the Protection of

Data, information on the type of personal data would be necessary in relation to

those data treatments whose legal basis is determined by the consent of the

interested. This was understood by the Article 29 Working Group in its document “Guidelines

on consent under Regulation 2016/679”, adopted on 11/28/2017,

revised and approved on 04/10/2018 (these Guidelines have been updated by the Committee

European Data Protection on 05/04/2020 through the document "Guidelines 05/2020

on consent in accordance with Regulation 2016/679”, which literally maintains

the parts transcribed below are identical).

The Article 29 Working Group draws its conclusions from the definition

of the "consent" contained in article 4 of the RGPD, which is expressed in the terms

following:

“11) «consent of the interested party»: any manifestation of free, specific, informed and

unequivocal by which the interested party accepts, either through a declaration or a clear action

affirmative, the treatment of personal data that concerns you”.

From this definition, they are specified as necessary elements for the validity of the

consent the following:

. Manifestation of free will

. specific

. informed and

. unequivocal by which the interested party accepts, either through a declaration or a clear

affirmative action, the treatment of personal data that concerns you.

In relation to the element "specific manifestation of will" it is said:

“3.2. Specific declaration of will

(…)

Ad. ii) Consent mechanisms should not only be separated in order to fulfill the

requirement of "free" consent, but must also comply with the consent

"specific". This means that a data controller seeking consent to

several different purposes, you must facilitate the possibility of opting for each purpose, so that users

may give specific consent for specific purposes.

Ad. iii) Finally, data controllers must provide, with each data request,

separate consent, specific information on the data that will be processed for each purpose, with the

in order that the interested parties know the repercussion of the different options that they have. of this

In this way, data subjects are allowed to give specific consent. This issue overlaps with the

requirement that those responsible provide clear information”.

In addition, consent, to be valid, must be informed. This item is

analyzes in the aforementioned “guidelines” as follows:

3.3. Manifestation of informed will

The GDPR reinforces the requirement that consent must be informed. In accordance with the

article 5 of the RGPD, the requirement of transparency is one of the fundamental principles,

closely related to the principles of loyalty and legality. Provide information to stakeholders

before obtaining your consent is essential so that they can make informed decisions,

understand what they are authorizing and, for example, exercise their right to withdraw their

consent. If the person in charge does not provide accessible information, the control of the user will be

illusory and consent will not constitute a valid basis for data processing.

If the requirements regarding informed consent are not met, the consent will not be valid.

and the person in charge may be in breach of article 6 of the RGPD.

3.3.1. Minimum content requirements for consent to be “informed”

In order for the consent to be informed, it is necessary to communicate to the interested party certain elements that

are crucial to be able to choose. Therefore, the WG29 is of the opinion that at least the information

following to obtain valid consent:

i) the identity of the data controller,

ii) the purpose of each of the treatment operations for which consent is requested,

iii) what (type of) data will be collected and used,

iv) the existence of the right to withdraw consent,

v) information on the use of data for automated decisions pursuant to article

22, paragraph 2, letter c), when applicable, and

vi) information on the possible risks of data transfer due to the absence of a

decision of adequacy and adequate guarantees, as described in article 46>>.

In view of the interpretive criteria on the notion of "informed consent"

offered by the European Data Protection Committee, it is considered that BBVA does not

provides sufficient information on the type of data that will be submitted to

treatment in relation to all those treatments whose legal basis is the

consent of the interested parties.

This insufficiency is observed in relation to the purpose "Improve the quality of

products and services”, where it is indicated again that: “This information is obtained from

from the use of BBVA products, services and channels”). All this refers to the data

treated by reason of the contracted products and services, so that, although these are

known to the user, it cannot know which ones will be selected from the use of such

products and services. The same can be said regarding the use of BBVA channels.

In relation to the category of personal data that may be processed, BBVA

warns the interested party, in a generic way, that they may process “Economic and solvency data

patrimonial (including those related to all the products and services that you have contracted

with BBVA or of which BBVA is a marketer); Transactional data (income, payments,

transfers, debits, receipts, as well as any other operation and movement associated with

any products and services that you have contracted with BBVA or of which BBVA is

marketer); Sociodemographic data (such as age, family situation, residences,

studies and occupation).

In view of this information, it is not clear whether BBVA will process economic data

unrelated to the products contracted with the entity or marketed by it, what data

records for each transaction (will you record the concept and corresponding issuer

to the payment of a union dues?); o what sociodemographic data will be processed, in addition to those

cite as an example. It could even happen that the information collected by the entity

responsible “from the use of BBVA products, services and channels” was integrated

for sensitive data or special categories of personal data, for example, the fee

already mentioned trade union or dues paid to political parties, or to entities of a

religious, or for the use of services provided by health or religious entities.

It is not concluded that BBVA processes personal data such as those

indicated in the previous paragraph. It is said here, simply, in a foundation that analyzes the

information offered by BBVA to its customers, that this information is defective in the

to the extent that it does not allow the recipient of the information to know with certainty all the

categories of personal data that will be used by that entity and that, even, the

repeated information, due to its lack of specificity, could be covering a collection

and unacceptable processing of personal data.

Also when referring to the personal data that will be used to carry out

data processing based on the legitimate interest of the entity, reference is made

again to the "uses of BBVA products, services and channels", as well as to

information regarding the "financial evolution and that of the products and services you have

contracted with us or through BBVA as a marketer, your operations - payments.

income, transfers, debts, receipts". In this case, insufficient information about the

categories of data to be processed is not related to the need for consent

be informed, given that these are treatments based on the legitimate interest of the entity.

However, in these treatments data not provided by the interested parties will be used,

so that the obligation contained in article 14.1.d) of the RGPD would apply.

All this without prejudice to the existing relationship between data processing based on the

consent of the interested parties to which reference is made later.

To conclude the deficient information contained in the privacy policy on the

economic data and financial solvency, transactional and product use data,

services and channels, just compare the details set out above with those collected

in the Weighting report of the legitimate interest provided by BBVA at the request of the

instructor. This is the detail on the data subjected to treatment contained in this regard in

said report:

"ii. Economic and financial solvency data, such as monthly net income, average balance in

accounts, asset balance, direct debit receipts, direct debit payroll, income and expenses, as well as the

related to the client's financial qualification.

iii. Transactional data in a categorized way, such as average balances, average income, number of direct debits, number of receipts referring to the provision of basic services, type of movements of accounts and cards. The data referring to the texts of the receipts by inference from the detail of account and card movements (such as origin, destination, concept and third party related to the transaction).

“v. Data of contracted products and services, such as contract number, limit associated with the contracted products, type of contracted products and services, contract data (attributes associated with the contract), risk with BBVA, as well as any documentation associated with any of the these contracts."

In relation to the treatments based on legitimate interest, the documentation corresponding to the "Customer Data Cube" project reviews, among others, the variables following:

. Linkage and general business (customer seniority, category, amount and evolution of liabilities and active...)

. Asset variables:

. Balances, holdings and seniority (amount, evolution, quarterly average, amortized percentage, last maturity in consumer or mortgage loan).

. Cirbe (risk, percentage of guarantees, portfolio or leasing; long-term, short-term risk; direct or indirect…).

. Of resources (amount, evolution and quarterly average in pension plan, funds, variable or fixed income, savings insurance…).

. Of transactionality

. Cards (amounts and quarterly average with credit or debit card in shops, ATMs...).

. Income (amount, tenure or number of months of payroll, pension...).

. Accounts (monthly average, evolution of liquids, overdrafts...).

. Receipts (total amount in a year of basic and non-basic receipts, number of receipts in a year,

receipts returned, monthly average…).

. Insurance (premium, tenure, number of months of home insurance, life...).

. Companies (amount, evolution and average of guarantees; portfolio; transfer of payroll; foreign trade;

factoring; leasing; certified payments; lease…).

. Digitization and customer interaction

. General (bbvanet; banca_mvl, multichannel)

. Use of channels (days in which there are contracting, operation or consultation events, according to channel

-including office and telephone).

In another vein, at this time, it is interesting to note that the use of data

based on legitimate interest gives rise to the creation of profiles, which are

subsequently used to offer products and services (purpose 3) to customers who

give their consent for it, and that said profile is communicated to the companies of the

BBVA Group, also based on the consent of the interested party. Thus, the defects in the

information in relation to data processing based on legitimate interest affected by

equal to the validity of consent.

It is also interesting to note, furthermore, that the information offered on the data

submitted to treatment by BBVA to which reference has been made includes "those related to

all the products and services… of which BBVA is a marketer". This Agency

questions the use of these data by the aforementioned entity and with the purposes that

are indicated, considering that they are not own products, but products of third parties

marketed by it. BBVA intervenes in the marketing of these products under

the condition of data processor, which limits the possibility of using the information

in question for their own purposes.

Likewise, failure to comply with the obligation to report on the category of

data that will be submitted to treatment is also breached in relation to data that is not

are provided to the person in charge by the interested party, but are obtained by the latter from sources

external or are inferred by the entity itself. As has been stated, in these cases,

Article 14 of the RGPD requires the provision of this information.

Among this information from third parties is that obtained from the

products and services marketed by BBVA, but which are not owned by BBVA, to the

which has already been referenced.

It follows that BBVA processes personal data that it does not obtain

directly from the interested parties under the condition of data controller. I know

consider personal data from third parties that BBVA uses for the purposes

expressed in the Privacy Policy.

Responsibility for these personal data corresponds to the entity that owns the

product purchased by the interested party or provider of the service contracted by the same. BBVA

accesses such data under the condition of treatment manager, by their intervention

mediator in the commercialization of the product.

In the Privacy Policy, in the section “What personal data of yours does

BBVA?”, the following are mentioned:

“. Economic data and financial solvency (including those relating to all products and

services that you have contracted with BBVA or of which BBVA is a marketer);

. Transactional data (income, payments, transfers, debits, receipts, as well as

any other operation and movement associated with any products and services that

have contracted with BBVA or of which BBVA is a marketer).

As stated above, in relation to data processing based on

The legitimate interest also mentions the information related to the "financial evolution and

that of the products and services you have contracted... through BBVA as

marketer,

With the information provided, as indicated above, it is not clear what

Personal economic and solvency data are processed or what data BBVA will record for

each transaction.

We reiterate here what was previously indicated about the detail of the data categories

information contained in the legitimate interest weighting report and in the documentation

corresponding to the “Customer Data Cube” project, in reference to the economic data and

capital solvency, transactional and product use; this information that BBVA

does not facilitate the interested party.

The use by BBVA of personal data from products and services of

third parties requires that the interested parties be provided with adequate information and have a

legal basis that protects the treatment.

Likewise, in the aforementioned Report on the weighting of legitimate interest, it is stated that,

Under this legal basis, the following data is processed:

“ix. Sociodemographic statistical data from the National Institute of Statistics (in

hereinafter, "INE"), obtained in accordance with the provisions of article 21.1 of Law 12/1989, of May 9,

regulator of the Public Statistical Function (hereinafter, "LFEP").

x. Data obtained from the Risk Information Center of the Bank of Spain (hereinafter,

"CIRBE"), regulated by Chapter VI of Law 44/2002, of November 22, on Reform Measures

of the Financial System (hereinafter, "LMRSF").

xi. Data obtained from asset and credit solvency files, currently regulated by article

29 of Organic Law 15/1999, of December 13, on the Protection of Personal Data”.

Also in the Impact Assessments on the protection of personal data of the

treatments related to the realization of commercial and risk profiling consists of the

use of information from the Risk Information Center of the Banco de

Spain and external solvency and credit files, without informing the

respect in the privacy policy. And between the "identification and contact data" refers

the “use of directions to make deductions or inferences such as, p.g. estimate that

a person who lives in a more expensive area is more likely to have more resources

economic”.

The aforementioned "Customer Data Cube" project also refers to the use of

“variables” from the CIRBE: “Cirbe (risk, percentage of guarantees, portfolio or leasing;

long, short risk; direct or indirect risk…)”.

The only reference to information from asset solvency files and

credit and the CIRBE in this privacy policy is contained in the information regarding the

use of personal data to manage contracted products and services,

legitimized because it is necessary for the execution of the contract.

Even so, the query of customer data in solvency and credit files is

submits to the consent of the interested party “to analyze the economic viability of your

applications and operations”; and in the second case, it is indicated “We can consult the data that

may appear on you in the CIRBE to assess your solvency, if you request or maintain

financing products or services with us".

Nothing is indicated in the privacy policy about this personal data and its

use in the preparation of profiles based on legitimate interest.

In its written arguments for the proposed resolution, BBVA does not make any

mention of personal data obtained from third-party products and services

marketed by BBVA. It only states that the obligation to inform about the

categories of sociodemographic data, obtained from the CIRBE and from files of

solvency is not applicable in this case, by virtue of the provisions of section 5 c) of said

provision, taking into account that such personal data is obtained by BBVA from

in accordance with the standards indicated.

The collection of such data by BBVA is not questioned in this case. as has been said

above, the use of personal data from

capital and credit solvency files and CIRBE files to manage the products and

contracted services, provided that it is necessary for the execution of the contract. This is the

basis that determines access to information provided in the rules that are

they invoke.

However, the use of these personal data by BBVA is not limited to

verify the situation of the interested party for the formalization of a risk operation, but

also for other purposes based on legitimate interest, as well as for the preparation of

profiles that are used for commercial purposes, to offer products and services.

In addition, in relation to data from solvency and credit files,

The Privacy Policy informs that they will only be consulted with the consent of the interested party.

and that the rule invoked by BBVA refers exclusively to the duty to consult the

information in a specific type of operations, such as the granting of loans with

real guarantee or whose purpose is to acquire or preserve property rights over land

and real estate; Not just any risk trade.

In relation to sociodemographic information, BBVA warns that it refers

only to statistical data that do not constitute personal data or reveal information

on identified or identifiable natural persons. However, it does not take into account that this

Statistical information is combined with other personal customer data to obtain

other categories of data about which they are not informed (for example, the "use of

directions for making deductions or inferences such as, p.g. estimate that a person

who lives in a more expensive area is more likely to have more resources

economic").

And not only does it not specify what data will be processed, but it is also not

duly informs about the specific categories of personal data that will be processed to

each of the specified purposes.

The need to complete the information offered to customers in the sense

expressed is especially relevant when it comes to data not provided by the

customer, but inferred by the entity itself from the use of products, services and channels.

It is not possible to admit that all information is destined for all uses, that all data

collected or inferred can be used for all purposes, without limiting. this works

the same in relation to the personal data that will be communicated to third parties.

In this regard, the Opinion of the aforementioned Article 29 Working Group,

"Guidelines on consent under Regulation 2016/679", adopted on

11/28/2017, revised and approved on 04/10/2018, and revised again in May 2020,

When referring to the obligation to inform about the data that will be collected and used, it refers to the

Opinion 15/2011 on the definition of consent, as a "manifestation of

specific will":

"To be valid, consent must be specific. In other words, the consent

indiscriminate without specifying the exact purpose of the treatment is not admissible.

To be specific, the consent must be understandable: refer clearly and precisely to the

scope and consequences of data processing. cannot refer to an indefinite set of

treatment activities. This means, in other words, that the consent applies in a

limited context.

Consent must be given in relation to the various aspects of the treatment, clearly

identified. This implies knowing what the data is and the reasons for the treatment. this knowledge

it should be based on the reasonable expectations of the parties. Therefore, the "specific consent"

it is intrinsically related to the fact that consent must be informed. Exists

a requirement of precision of consent with respect to the different elements of data processing

data: it cannot be claimed to cover "all legitimate purposes" pursued by the controller

of the treatment. Consent must refer to processing that is reasonable and necessary in

relation to the purpose.

In general, as has been said, the principle of transparency must be understood as a

fundamental aspect of the principles of lawful and fair treatment. It is interesting to reiterate

expressed in Recitals 39 and 60 and the references they contain to the need to

Provide information to ensure fair and transparent processing:

“39. All processing of personal data must be lawful and fair. For natural persons, it must be completely clear that data is being collected, used, consulted or otherwise processed that concern them, as well as the extent to which said data is or will be processed... Said principle refers in particular to the information of the interested parties on the identity of the person in charge of the treatment and the purposes of the same and to the added information to guarantee a fair treatment and transparent with respect to the affected natural persons and their right to obtain confirmation and communication of personal data concerning them that are subject to treatment. The natural persons must be aware of the risks, standards, safeguards and rights relating to the processing of personal data”.

“60. The principles of fair and transparent processing require that the interested party be informed of the existence of the processing operation and its purposes. The data controller must provide the interested as much additional information as necessary to guarantee a fair treatment and transparent, taking into account the specific circumstances and context in which the data is processed personal”.

And in the also cited document of the Working Group of Article 29 “Guidelines on transparency under Regulation 2016/679”, adopted on 11/29/2017 and revised on 04/11/2018, which analyzes the scope that should be attributed to the principle of transparency, it is indicated:

“A fundamental consideration of the principle of transparency outlined in these provisions is that the interested party must be able to determine in advance the scope and the consequences derived from the treatment, and that he should not be surprised at a later time by the use that has been made of your personal information. It is also an important aspect of the principle of loyalty under of article 5, paragraph 1, of the RGPD and, indeed, is related to recital 39, which establishes that “individuals must be aware of the risks, standards, safeguards and rights relating to the processing of personal data [...]”. Specifically, the posture of WG29 regarding complex, technical or unforeseen data processing is that, in addition to facilitating

the information prescribed in articles 13 and 14 (an aspect that will be dealt with later in these guidelines), data controllers should also detail separately and in plain language ambiguities what will be the most important “consequences” of the treatment: in other words, What kind of repercussions will the specific treatment described in a privacy statement/notice? In accordance with the principle of proactive responsibility, and in In line with recital 39, data controllers must assess whether this type of treatment poses some specific risk for natural persons that must be taken into account. knowledge of stakeholders. This can help to get an overview of the types of treatment that could have a greater impact on the fundamental rights and freedoms of interested parties in relation to the protection of their personal data”.

In short, personal data is collected and processed without the owners of the same are aware that BBVA is accessing them to register them in their

information systems, submits them to treatments about which the client is not informed clearly, precisely and simply, and for non-explicit and indeterminate purposes, against of the principles related to the treatment established in article 5 of the RGPD (loyalty, limitation of the purpose and minimization of data), because, based on the information provided, considering its inconcretion, the interested party cannot know, as indicated in the Constitutional Court, “to what use is it being put and, on the other hand, the power to oppose that possession and uses”. This lack of precision renders the information provided ineffective. about the data processing that is intended.

The same concern must be expressed in relation to the communication of data

personal data to BBVA Group companies. With the information provided it is not possible

that the interested party has a clear idea about the information that will be transferred to the entities that

make up the Group ("… communicate data related to your customer profile - amount of income and

expenses, balance and use of our channels"; "…your identification, contact and

transactional data").

The BBVA entity considers in its allegations that the incorporation of all that

information regarding the typology of data to an already excessively long document would be

likely to cause information fatigue in the interested parties. The WG29 Guidelines

recommend avoiding that consequence, but such a purpose cannot be taken as a

justification for omitting necessary information. Forces to structure the information

adequately, but not to limit it.

On the other hand, BBVA has stated that it cannot be required to report on the

personal data subjected to treatment and that this information is broken down for each one

of the purposes based on the guidelines that have been mentioned, which do not have

normative character. However, it should be noted that the Working Group of the

Article 29 was established by Directive 95/46/EC on a consultative and

independent, and whose opinions and recommendations serve as an interpretative element

in the matter that occupies us, admitted by the jurisprudence. It is currently the Committee

European Data Protection the body with competence to issue guidelines,

recommendations and good practices in order to promote the consistent application of the GDPR.

On the foregoing issues, it alleges again that the conclusions set forth

modify what is stated in the "Guide on compliance with the duty to inform" and that they do not

the establishment of interpretative criteria in a procedure can be admitted

sanctioning

Both questions have been answered previously, pointing out, on the one hand, the

terms in which the expressions of the "Guides" edited by this Agency should be considered

and, on the other hand, that this resolution is based on well-established criteria

for a long time, as has been well exposed.

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Information on the purposes to which the personal data of the users will be used.

clients and the legal basis of the treatment

Regarding the purposes to which the personal data of the clients will be used and

the legal basis of the treatment of the treatment, the BBVA entity, in the document through the

that provides information on the protection of personal data, refers to treatments

similar in relation to different purposes, protected by legitimate interest in some cases

and in consent in another. This may mean that an average citizen understands that a

treatment without consent is finally carried out under the legitimate interest of the

responsible, and feel distorted their ability to decide on the destination of their data

personal.

Specifically, BBVA reports on the making of personalized offers and the

use of the data for the improvement of its products and services such as treatment of

data with a legal basis in the consent of the interested party and, at the same time, such

treatments are also mentioned among those that can be performed to know

better customer and improve your experience, based on legitimate interest.

About the treatments based on legitimate interest, information is provided in the

following terms:

. “Get to know you better and personalize your experience”

. “May your experience be as satisfactory as possible”

. "Getting to know yourself better by analyzing your financial evolution... the uses of products, services and channels."

. “Assess new functionalities…, products and services”

. "Assess... personalized offers with more adjusted prices for you"

. "Meet your expectations better and we can increase your degree of satisfaction as a customer"

. “Improving the quality of products and services”

. “Carry out statistics, surveys or market studies that may be of interest”.

Information about treatments based on consent is provided in the

following terms:

. “Offer you products and services from BBVA, the BBVA Group and others, personalized for you”

. “Give you advice and recommendations to better manage your financial situation”

. “Improving the quality of products and services”

. “Increase your level of satisfaction as a customer”.

. “Meet your expectations”.

. “Improving the quality of existing products and services”.

. Develop new products and services.

. “Perform statistics, surveys, actuarial calculations, averages and/or market studies that may

be of interest to BBVA or third parties.

. “This information is obtained from the use of BBVA products, services and channels”.

It is not concluded that they are similar treatment operations, but that the

information offered may cause confusion, to an average citizen, on the legal basis

that justifies the treatment, in the sense expressed.

Information about purposes, in general, is closely linked to the principle of limitation of

the purpose, regulated in article 5.1 b) of the RGPD, which establishes the following:

"1. The personal data will be:

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

manner incompatible with those purposes; according to article 89, paragraph 1, further processing

of personal data for archiving purposes in the public interest, scientific research purposes and

historical or statistical purposes shall not be considered incompatible with the initial purposes ("limitation of the

purpose")".

The importance of this principle is determined by its object, which is none other than

establish the limits within which personal data may be processed and the

extent to which they can be used, in addition to determining the data that may be collected.

To be “explicit”, an aim must be unambiguous and clearly expressed, with the detail

enough so that the interested party, any interested party, knows in a certain way how they will be or

data not processed and favoring the exercise of their rights and the evaluation of the

regulatory compliance. To be “explicit”, the purpose must also be disclosed, which

that must take place at the time the personal data is collected

On this issue, the Article 29 Working Group ruled in its Opinion

03/2013, on purpose limitation. In this work, it was considered that they should be rejected,

unspecific, the purposes expressed with vague or too general formulas,

such as "improving the user experience", "marketing purposes" or

“future research”.

This Opinion indicates that the more complex the data processing

personal, the purposes must be specified in a more detailed and exhaustive way, “including,

among other things, the way personal data is processed. They must also

reveal the decision criteria used for the elaboration of customer profiles”.

In accordance with the foregoing, the purposes for which the data will be processed

about which BBVA informs its customers, except for the one referring to the management of

products, do not comply with the aforementioned transparency requirements, especially if

we consider the vast amount of personal data that you submit to treatment, individually or

globally considered, and the complex technical processes to which they are subjected, especially

all for the elaboration of profiles, which are used for all the purposes described in

the privacy policy:

"two. To get to know you better and personalize your experience.

3. To offer you products and services from BBVA, the BBVA Group and others, personalized for you. Nope

We are going to flood you with information.

4. To communicate your data to BBVA Group companies so that they can offer you products and

personalized services for you.

5. To improve the quality of products and services".

-

Information on the legitimate interest of the controller and third parties

Likewise, the aforementioned precepts establish the obligation of the person in charge of informing

about the legitimate interests on which the processing of personal data is based (the

Articles 13 and 14 of the RGPD establishes the obligation to inform about "the legitimate interests

of the person in charge or of a third party"). However, the information offered by BBVA is

indefinite as to the basis of the treatment, so that it does not duly substantiate this

authorization for the processing of data, resulting, therefore, contrary to the principle of

transparency. For these purposes, the definition of "legitimate interest" that BBVA

includes in the "Glossary of terms": "The legitimate interest is one of the legal bases that

authorize BBVA to process your data. This means that BBVA can process your data because

has an interest in doing so, provided that such interest does not prejudice your rights".

Recital 47 of Regulation (EU) 2016/679 is particularly clarifying

in the task of specifying the content and scope of this legitimizing basis of the treatment,

described in letter f) of article 6.1 of the RGPD. From what is stated in this Recital,

It is interesting to highlight as an interpretive criterion, that the application of this legitimizing basis has

to be predictable for its recipients, taking into account their reasonable expectations.

The Article 29 Working Group prepared Opinion 6/2014 on the “Concept of

Legitimate interest of the data controller under article 7 of the

Directive 95/46/CE”, dated 04/09/2014. Although Opinion 6/2014 was issued to

favor a uniform interpretation of Directive 95/46 then in force, repealed by the

RGPD, given the almost total identity between its article 7.f) and article 6.1.f) of the RGPD, and given

realize that the reflections that the Opinion offers are an exponent and application of principles

that also inspire the RGPD -such as the principle of proportionality- or principles

principles of community law – the principle of fairness and respect for the law and the

Law- many of his reflections can be extrapolated to the application of current regulations,

Regulation (EU) 2016/679.

The mentioned Opinion refers to the "Concept of interest" in the following Terms:

“The concept of “interest” is closely related to the concept of “purpose” mentioned in

Article 6 of the Directive, although they are different concepts. In terms of protection of

data, “purpose” is the specific reason why the data is processed: the objective or intention of the

data processing. An interest, on the other hand, refers to a greater involvement than the

data controller may have in the processing, or to the benefit that the data controller

treatment obtains -or that society may obtain- from the treatment.

For example, a company may have an interest in ensuring the health and safety of its personnel.
Work at your nuclear power plant. Therefore, the company may have as its purpose the application of
Specific access control procedures that justify the processing of certain data
specific personnel in order to ensure the health and safety of personnel.
An interest must be articulated clearly enough to allow the balancing test
is carried out contrary to the interests and fundamental rights of the interested party.
In addition, the interest at stake must also be "pursued by the data controller". This
requires a real and current interest, which corresponds to present activities or benefits to be
look forward to the very near future. In other words, interests that are too vague or
Speculative will not suffice.
The nature of the interest may vary. Some interests may be compelling and beneficial to
society in general, such as the interest of the press in publishing information on corruption
government or interest in conducting scientific research (subject to appropriate safeguards).
Other interests may be less compelling for society as a whole or, in any case,
the impact of their search on society may be more disparate or controversial. This can, for
example, apply to a company's economic interest in learning as much as possible about its
potential customers in order to better target advertising on their products and services.
In the conclusions section of this Opinion, the following is added:
“The concept of “interest” is the broadest implication that the data controller may have
in the treatment, or the benefit that he obtains, or that society may obtain, from the treatment.
This can be pressing, clear or controversial. The situations referred to in the article
7, letter f), may therefore vary from the exercise of fundamental rights or the protection of
important personal or social interests to other less obvious or even problematic contexts.

…It must also be articulated clearly enough and must be specific enough to

allow the balancing test to be performed against the interests and rights

fundamentals of the interested party. It must also represent a real and current interest, that is, it must not be

speculative".

The "interest" goes beyond the "purpose". in terms of the GT29 represents “a greater

involvement that the data controller may have in the processing, or the benefit

that the data controller obtains”; while “purpose”, in terms of

data protection, “is the specific reason why the data is processed: the objective or the

intention of data processing.

In this case the “interest” is not expressed. The entity does not inform in its policy of

privacy on any specific interest when referring to the data processing you have

planned to be carried out under this legal basis. It is limited to pointing out purposes and objectives

intended with these data treatments, but no interest in the sense expressed.

BBVA has stated in its statement of allegations that the information on the

specific legitimate interests on which it is based for these treatments is included in the

section “Why do we use your personal data?” of the "Extended information", in

which details the bases that legitimize the treatment ("... so that from BBVA we can

meet your expectations better and we can increase your degree of satisfaction as a customer

when developing and improving the quality of own products and services or those of third parties, as well as

carry out statistics, surveys or market studies that may be of interest... to

be a bank close to you as a customer…"). This is also indicated in the “Basic information”

of the privacy policy when it states “for what reason do we use your personal data

(legal base)? Get to know you better and make your experience more personalized. legitimate interest

of BBVA is explained in the "Extended information" section.

It can easily be verified that this information about "interest" is similar to the

expressed when describing the purposes:

The basic information indicates:

For what purposes will we use them?

2. To get to know you better and personalize your experience.

And in the extended information:

What do we use your personal data for?

2. Get to know you better and personalize your experience

At BBVA we want your experience as a customer to be as satisfactory as possible, through a

personalized relationship that is most adapted to your customer profile and your needs.

To achieve this we have to get to know you better, analyzing not only the data that allows us to identify you

as a customer, but also your financial evolution and that of the products and services you have

contracted with us or through BBVA as a marketer, your operations - payments. income,

transfers, debits, receipts- as well as the uses of BBVA products, services and channels.

Additionally, we will apply statistical and classification methods to correctly adjust your

profile. Based on the above, we managed to develop our business models.

Thanks to this analysis we will be able to get to know you better, assess new functionalities for you, products and

services that we consider appropriate to your profile (own or marketed by BBVA), as well as offers

customized with more adjusted prices for you. As we get to know you better, we can congratulate you

for your anniversary, wish you a good day or happy holidays".

The same defect can be seen even by going to the Weighting Report of the

prevalence of legitimate interest in the treatments referred to in the numbered purpose

as 2, contributed to the actions by BBVA, which is outlined in the Background

Eighth.

"two. Description of the processing activity”

“2.2. Purpose pursued by the treatment

The purpose of the treatment activity analyzed in this Report is to configure by

BBVA of analytical models to, through propensity models, have a better understanding of

its customers, thus being able to optimize its business model, offer more personalized attention to

those and determine their preferences, in order to improve the quality of products and services

offered and make the best suggestions about them... These suggestions may not

refer only to financial products but, for example, to the way of interacting with the

entity…

In this way, the aforementioned treatment has as its object the analysis of the behavior of the

customers and their interaction with BBVA in relation to the channels, products and services offered by

the Entity, which will also require knowing its level of financial risk. From said

information, BBVA will be able to obtain different indicators that will allow it to adequately adjust its

business model, determining propensity models of its customers towards a certain type of

products and services or towards the use of different channels of interrelation with the Bank,

offering them a more personalized treatment through the application of the model”.

"3. Description of the legitimate interest to which the treatment responds

In general, the legitimate interest pursued by the treatment consists of achieving a better

knowledge of customers and improve the portfolio of BBVA products and services, through models

profiling analytics…

In this regard, BBVA's privacy policy and the information clause provided to customers

point out that this treatment will aim to "better meet (the) expectations" of the client and

"increase (your) degree of satisfaction as a customer by developing and improving the quality of products and

own or third-party services, as well as carry out statistics, surveys or market studies that

may be of interest."

In this way, through the aforementioned treatment it is intended to satisfy the legitimate interest of BBVA

consisting of carrying out the study of the interaction of the Entity's customers with its products

and services, which will allow to determine:

. How to optimize BBVA's business model.

. How to improve the quality of the products and services offered by BBVA.

. How to improve internal management and the personalized relationship with the client.

. What is the propensity model of customers towards a particular product or service.

. What are their preferences regarding the channels through which they relate to

BBVA.

. To which groups of users who have given their consent to do so could

offer certain specific products or services from the BBVA portfolio.

(…)

…determining the client's risk level…".

In any case, the use of personal data for the purpose of "knowing" better

to the client, as stated, can be understood as a follow-up of the interested party

without a justifiable reason, which cannot be covered by legitimate interest. this tracking

involves an exhaustive analysis of the information about the client, which is intended to be justified with

the mention of a generic and simple purpose ("getting to know you better"), whose consequences

can be much more serious than those mentioned as examples (congratulations on the

birthday).

The same can be said about the use of customer data to "improve

the products and services" of BBVA, which this entity also bases on the interest

legitimate, considering, as indicated by it, that the interested party has an expectation

reasonable expectation of your personal data being used for that purpose.

This Agency considers that this data processing, as it appears

based on BBVA's privacy policy, cannot rely on the legal basis

legitimate interest, which requires an assessment to determine the interests or rights that

prevail. This weighting must take into account, effectively, "the expectations

of the interested parties based on their relationship with the person in charge", but understood

as what the interested party can perceive or deduce as reasonable for himself based on

the specific circumstances that occur in each case, what could be foreseen at the time of

reasonable data collection. Not what the responsible entity understands as a

"reasonable expectation" of the client, nor what it informs the client about

meet those expectations.

The concept of "reasonable expectation" should always be used sparingly.

taking into account the position held by the person responsible and interested and the legal nature of

the relationship or service that links them, which could give rise to the subsequent use of the data

his personal. The context is taken into account, to which reference has already been made

above, in order to define, based on all this, the further processing of the data

that the interested party can expect to be carried out. This "reasonable expectation" of the customer is

has to deduce by itself, without it being necessary that the information offered by the

responsible for the interested party or client to define or specify said expectation, since this

supposes that the Bank supplants the client, trying to clarify the expectation that can

expect, precisely because it does not come off by itself from the information it offers or from

the relationship that unites responsible and interested. This is intended to convey an appearance

of reasonable expectation and displace the interested party in this deduction.

Therefore, the information offered by the

BBVA on uses of data based on the expectation that the recipient of the information

information you have as a customer.

The specific determination of BBVA's interest, articulated with sufficient clarity,

It will allow the interested party to oppose their own interests. It also enables a better

analysis of the reality and topicality of said interest.

On the legitimate interest of the person in charge and the weighting test, the document

of the Article 29 Working Group “Guidelines on Transparency under the

Regulation 2016/679”, adopted on 11/29/2017 and revised on 04/11/2018, offers the

following criteria:

“The specific interest in question must be identified for the benefit of the data subject. As a matter of

good practice, the data controller may also provide the data subject with the information

resulting from the “weighting test” that must be carried out in order to benefit from the provisions

in article 6, paragraph 1, letter f), as a lawful basis for the treatment, prior to any

collection of the personal data of the interested parties. To avoid information fatigue, this can

be included within a privacy statement/notice structured in levels (see section 35).

In any case, the position of the WG29 is that the information addressed to the interested party must make it clear

that he can obtain information about the weighting test upon request. This turns out

essential for transparency to be effective when stakeholders doubt whether the examination of

weighting has been carried out loyally or wish to file a claim with the authority of

control".

In this brief of allegations, it indicates that the legitimate interest that it intends to fulfill is the

to continuously improve the relationship with its customers and the portfolio of products and services

that it offers, and thus anticipate their needs in case they require them; that

This interest is aimed at the continuous improvement of the business model and achieving satisfaction

of the client with the service provided; provide the best service to its customers and be able to offer them

products that may best fit your profile; get to know your customers as well as possible

to be able to provide them with their services with the highest degree of excellence possible.

It adds that this description is also the one made in the Report of

Weighting, in which reference is not made to obtaining a benefit, but to the improvement

of quality, the relationship with the client and attention to their needs.

As can be seen, the legitimate interest is not clearly described, but

the purposes about which customers are informed in the Privacy Policy are reiterated again.

Privacy. According to the above, and contrary to what BBVA stated in its allegations to

the resolution proposal, the legitimate interest is not the purpose for which the data is processed

personal.

All this without forgetting what has already been indicated in relation to the use of imprecise terms

and vague formulations in the information provided, in particular as regards the definition of

the purposes.

In relation to the previous indications regarding the reasonable expectation of the

concerned about the subsequent use of their personal data, BBVA has stated that the

references to this expectation contained in the Privacy Policy are a consequence of the

compliance with the obligations imposed by article 13 of the RGPD on the information

about treatment based on prevailing legitimate interest; and wonders if the AEPD

it intends to say that treatments based on legitimate interest do not have to be reported.

The interpretation made by BBVA regarding the legitimate interest and expectations

reasonable costs of customers cannot be shared by the AEPD, for the reasons already

exposed. What this Agency has questioned is that the Privacy Policy defines or

try to define to the interested party what his reasonable expectation is.

-

Profiling Information

Another important aspect related to the matter analyzed has to do with the use of

personal data for the preparation of customer profiles, understood as any

form of treatment of personal data that evaluates personal aspects related to a

Physical person. According to art. 13.1.c) of the RGPD, the person in charge must inform the interested party of

the purposes of the treatment, as well as its legal basis, which means that you must inform

on the elaboration of profiles when the person in charge has foreseen such purpose and specify the

legal basis that protects the treatment for that purpose.

Article 11 of the LOPDGDD establishes the minimum content of the basic information

that must be provided to the interested party:

"two. The basic information referred to in the previous section must contain, at least:

(…)

If the data obtained from the affected party were to be processed for profiling, the information

Basic will also include this circumstance.

Recital 60 of the RGPD also refers to the obligation to “inform the

concerned about the existence of profiling and the consequences of such

elaboration".

On the principles relating to the processing of personal data, when these

consist of profiling, the Guidelines of the Article 29 Working Group

on automated individual decisions and profiling for the purposes of

Regulation 2016/679, adopted on 10/03/2017 and revised on 02/06/2018, indicate the

Next:

“Transparency of processing is a fundamental requirement of the GDPR.

The profiling process is often invisible to the data subject. It works by creating data

derived or inferred about individuals ("new" personal data that has not been directly

provided by the interested parties themselves). People have different levels of understanding and

it can be difficult to understand the complex techniques of the profiling processes and

automated decisions.

“Taking into account the basic principle of transparency that underpins the GDPR, those responsible for the

treatment must guarantee that they explain to people in a clear and simple way the operation

of profiling or automated decisions.

In particular, when the processing involves decision-making based on the preparation of

profiles (regardless of whether they fall within the scope of the provisions of Article 22), you must

clarify to the user the fact that the treatment has the purpose of both a) profiling and

of b) adoption of a decision on the basis of the generated profile

Recital 60 states that providing information about profiling is part of

of the transparency obligations of the controller according to article 5, paragraph 1,

letter a). The interested party has the right to be informed by the data controller, in

certain circumstances, about your right to object to "profiling"

regardless of whether there have been individual decisions based solely on the

automated processing based on profiling”.

“The person responsible for the treatment must explicitly mention to the interested party details about the right

of opposition according to article 21, paragraphs 1 and 2, and present them clearly and apart from any

other information (article 21, paragraph 4).

According to article 21, paragraph 1, the interested party can oppose the treatment (including the elaboration profiles) for reasons related to your particular situation. Those responsible for the treatment are specifically obliged to offer this right in all cases in which the treatment is

based on article 6, paragraph 1, letters e) or f).

BBVA's privacy policy, which is the object of these actions, refers to the profiling on numerous occasions when describing the purposes for which they are will use the data, or indications are included that lead to the conclusion that it will carry out operations of profiling. This can be understood in relation to making product offers and personalized services or price offers adjusted to the client's profile; or when informs about the communication to the companies of the BBVA Group of personal data related to the customer profile.

Excluding those carried out for the execution of the contract between the client and responsible, the following are cited:

b) Get to know you better and personalize your experience.

. “At BBVA we want your experience as a customer to be as satisfactory as possible, through a personalized relationship that best suits your customer profile and your needs.

To achieve this we have to get to know you better, analyzing not only the data that allows us to identify you as a customer, but also your financial evolution and that of the products and services you have contracted with us or through BBVA as a marketer, your operations - payments. income, transfers, debits, receipts- as well as the uses of BBVA products, services and channels.

Additionally, we will apply statistical and classification methods to correctly adjust your

profile. Based on the above, we managed to develop our business models.

Thanks to this analysis we will be able to get to know you better, assess new functionalities for you, products and

services that we consider appropriate to your profile (own or marketed by BBVA), as well as offers

customized with more adjusted prices for you…".

c) Offer products and services of BBVA, the BBVA Group and others, personalized for the customer:

"… we can send you information about BBVA products and services with prices more adjusted to your

profile, informing you of what may interest you as a client";

"We can send you information, according to your customer profile, about products, services and offers

financial and non-financial companies of the BBVA Group and third parties…".

do you want to

d) To communicate customer data to BBVA Group companies so that they can offer

own products and services personalized for it.

"Yes

included in this address

https://www.bbva.es/estaticos/mult/Sociedades-grupo.pdf can offer you products and services

personalized in characteristics and price, we need your authorization to communicate data

relating to your customer profile (amount of income and expenses, balances and use of our channels).

This information will be processed to try to improve the characteristics and prices of the product offer and

services. The BBVA Group companies will only process your data for that purpose".

the societies of

BBVA Group

Therefore, BBVA processes the personal data of its customers to

proceed to its profiling, which is subsequently used for the stated purposes. In all

the assumptions in which it refers to the elaboration of profiles or the use of data that

are the result of profiling activities, the rationale for their action is based,

according to the information provided to the interested parties-clients, with the consent of

these; except with regard to the use of data for the purpose of knowing better

to the customer and improve their experience, which BBVA protects in the legitimate interest.

For the reasons already expressed in relation to the lack of justification of the interest

legitimate, treatment operations that include the preparation of data must be rejected.

profiles or that are based on these profiles and that have a legal basis in the legitimate interest

of the person in charge.

In addition, in this case, in the opinion of this Agency, the requirements of

information described above. BBVA limits itself to reporting on actions that may

develop adapted to the "customer profile" or "personalized", but does not offer information

about the type of profiles that are going to be made, the specific uses to which they are going to be destined

these profiles or the possibility that the interested party may exercise the right of opposition in

application of article 21.2 RGPD, when the profiling is related to activities of

direct marketing.

In the terms of GT29, they do not “explain to people in a clear and simple way the

profiling operation” nor are they warned about the adoption of

decisions “based on the generated profile”, regardless of whether they fall within the scope

of the provisions of article 22.

The concept of profiling is not dealt with systematically in the privacy policy

of BBVA. In fact, the first layer only talks about "getting to know you better and personalizing your

experience”, omitting the preparation of profiles, despite the fact that this purpose, according to

appears stated, it is necessary to make a preliminary profile of each and every one of the clients.

This implies a breach of the provisions of article 11 of the LOPDGDD.

In the second layer or “extended information”, when describing the purpose “Meet you

better and personalize your experience”, the profile concept is only mentioned twice, once

them nuanced with the expression "client profile" and another when it is indicated that "it will be adjusted

correctly” the profile with the application of statistical and classification methods, without

describe what those methods will consist of and the consequences of their application, and

presenting this type of action as if it were something foreign to the activity of the

responsible whose result is, precisely, that profile. In this case, moreover, the

Processing operations based on customer profiling referred to in the section

a) above go beyond improving the experience of the latter, to the point that said

profiling is used by BBVA to develop its business model, assess new

functionalities and products and make personalized offers.

BBVA dedicates a section of its pleadings brief to the proposed resolution to

this profiling issue, but without offering any explanation as to

the deficiencies appreciated, to which it does not refer. It is simply limited to trying to justify

the use of personal data for the design of its business model and to point out that

informs the interested parties about the treatment carried out (analyzing and evaluating the data), the

type of data and purpose.

On this same issue, he reiterates that within the framework of purpose 2 “Getting to know you better

and personalize your experience” offers or commercial communications are not sent and that the

Agency confuses both purposes. However, the above does not

does not produce any confusion in the sense expressed by BBVA. What stands out in

previous paragraphs are those parts of the text that refer to data processing

that entail the preparation of profiling operations, about which no information is given

properly, as has been said.

Finally, it is interesting to highlight that the Privacy Policy does not warn in

in no case if those profiling operations correspond to the decisions

automated individual regulated in article 22 of the RGPD, if said profiles are going to

serve to make automated decisions with legal effects for the interested party or that

are going to affect significantly in a similar way, in which case the interested party would have

right to be informed by virtue of the provisions of article 13.2.f) of the RGPD,

including in that information all the issues that letter mentions (the logic

applied, the importance and the anticipated consequences of said treatment for the

concerned, also warning about the possibility of opposing the adoption of these

automated individual decisions), and the right to have all the guarantees

foreseen (in addition to the specific information to the interested party, the right to obtain

human intervention, to express their point of view, to receive an explanation of the decision

taken after such assessment and to challenge the decision). Although it is not said

contrary, that is, it is not said that any interested party will be the subject of an individual decision

automated of this nature, it should be understood that this type of action is not carried out

cape.

No imputation is made for regulated automated individual decisions

in article 22 cited (as well as on the treatment of data of categories

special). This comment is included as a mere warning, considering that the policy of

Privacy informs about data processing that entails the use of user profiles.

that could result in discriminatory effects for the interested parties (such as, for example, credits

pre-granted, prices adjusted to the client's profile).

In accordance with the foregoing, the exposed facts suppose a violation of the

principle of transparency regulated in articles 13 and 14 of the RGPD, which gives rise to the

application of the corrective powers that article 58 of the aforementioned Regulation grants to the

Spanish Data Protection Agency.

7th

On the other hand, articles 6 and 7 of the same RGPD refer, respectively, to the

“Legality of treatment” and the “Conditions for consent”:

Article 6 of the RGPD.

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

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 a party or for

the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person in charge of the

treatment;

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest 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 said interests do not prevail the interests or

fundamental rights and freedoms of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by the

public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions in order to adapt
the application of the rules of this Regulation with respect to the treatment in compliance with the
section 1, letters c) and e), establishing more precisely specific treatment requirements and other
measures that guarantee lawful and equitable treatment, including other specific situations
of treatment under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, in relation to the
treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission
carried out in the public interest or in the exercise of public powers conferred on the person responsible for the
treatment. This legal basis may contain specific provisions to adapt the application of
rules of this Regulation, among others: the general conditions that govern the legality of the
treatment by the controller; the types of data object of treatment; the interested
affected; the entities to which personal data can be communicated and the purposes of such
communication; purpose limitation; the terms of conservation of the data, as well as the
processing operations and procedures, including measures to ensure proper processing
lawful and fair, such as those relating to other specific situations of treatment under the chapter
IX. The law of the Union or of the Member States will fulfill an objective of public interest and will be
proportional to the legitimate aim pursued.

4. When processing for a purpose other than that for which the personal data was collected
is not based on the consent of the interested party or on the Law of the Union or of the States

members that constitutes a necessary and proportionate measure in a democratic society to

safeguard the objectives indicated in article 23, paragraph 1, the controller, with

in order to determine if the treatment for another purpose is compatible with the purpose for which they were collected

initially the personal data, will take into account, among other things:

a) any relationship between the purposes for which the personal data were collected and the purposes

of the envisaged further treatment;

b) the context in which the personal data were collected, in particular as regards the

relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when special categories of data are processed

personal, in accordance with article 9, or personal data relating to convictions and offenses

criminal, in accordance with article 10;

d) the possible consequences for data subjects of the envisaged further processing;

e) the existence of adequate guarantees, which may include encryption or pseudonymization".

Article 7 of the RGPD.

"1. When the treatment is based on the consent of the interested party, the person in charge must be

able to demonstrate that he consented to the processing of his personal data.

2. If the data subject's consent is given in the context of a written statement that is also

refers to other matters, the request for consent will be presented in such a way that it is distinguished

clearly from the other matters, in an intelligible and easily accessible manner and using clear and

easy. Any part of the declaration that constitutes an infringement of this document will not be binding.

Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The withdrawal of

consent will not affect the legality of the treatment based on the consent prior to its withdrawal.

Before giving their consent, the interested party will be informed of it. It will be so easy to remove the

consent how to give it.

4. In assessing whether consent has been freely given, account shall be taken to the greatest extent

possible whether, among other things, the performance of a contract, including the provision of a

service, is subject to consent to the processing of personal data that is not necessary for

the execution of said contract.

Taking into account what is expressed in recitals 32, 40 to 44 and 47 (already cited in the

Legal Basis VI) of the RGPD in relation to the provisions of articles 6 and 7

previously reviewed. From what is expressed in these recitals, the following should be highlighted:

(32) Consent must be given through a clear affirmative act that reflects a manifestation of

Free, specific, informed, and unequivocal will of the interested party to accept the processing of personal data.

personal character that concern him… Therefore, silence, boxes already checked or inaction do not

must constitute consent. Consent must be given for all activities of

treatment carried out with the same or the same purposes. When the treatment has several purposes, you must

consent to all of them…

(42) When the treatment is carried out with the consent of the interested party, the data controller

treatment must be able to demonstrate that he has given his consent to the operation of

treatment. In particular in the context of a written statement made on another matter,

there must be guarantees that the interested party is aware of the fact that he gives his consent and that

the extent to which it does. In accordance with Council Directive 93/13/CEE (LCEur 1993, 1071),

A model declaration of consent previously prepared by the user must be provided.

responsible for the treatment with an intelligible and easily accessible formulation that uses a language

clear and simple, and that does not contain abusive clauses. For consent to be informed, the

The interested party must know at least the identity of the data controller and the purposes of the processing.

treatment to which the personal data is intended. The consent must not

be considered freely provided when the interested party does not enjoy a true or free choice or does not

You can withhold or withdraw your consent without prejudice.

(43) (...) It is presumed that consent has not been given freely when it does not allow authorization by

separate the different personal data processing operations despite being appropriate in the case

concrete, or when the performance of a contract, including the provision of a service, is

dependent on consent, even when consent is not necessary for such compliance.

It is also appropriate to take into account the provisions of article 6 of the LOPDGDD:

“Article 6. Treatment based on the consent of the affected party

1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, it is understood as

consent of the affected party any manifestation of free, specific, informed and unequivocal will

by which he accepts, either by means of a declaration or a clear affirmative action, the treatment

of personal data concerning you.

2. When it is intended to base the processing of the data on the consent of the affected party for a

plurality of purposes, it will be necessary to state specifically and unequivocally that said

Consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the treatment of the data.

personal data for purposes that are not related to the maintenance, development or control

of the contractual relationship.

-

Processing of personal data based on the consent of the interested parties

In accordance with what has been expressed, data processing requires the existence of a

legal basis that legitimizes it, such as the consent of the interested party validly provided,

necessary when there is no other legal basis mentioned in article 6.1

of the RGPD or the treatment pursues a purpose compatible with that for which the data were collected.

data.

Article 4 of the GDPR) defines “consent” as follows:

“11) «consent of the interested party»: any manifestation of free, specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear action affirmative, the treatment of personal data that concerns you”.

Consent is understood as a clear affirmative act that reflects a manifestation of free, specific, informed and unequivocal will of the interested party to accept the processing of personal data that concerns you, provided with guarantees enough so that the person in charge can prove that the interested party is aware of the fact that you give your consent and the extent to which you do so. And it should be given to all the treatment activities carried out with the same or the same purposes, so that, when the treatment has several purposes, consent must be given for all of them in a specific and unequivocal, without the execution of the contract being subject to the fact that the affected party consent to the processing of your personal data for purposes that are unrelated with the maintenance, development or control of the business relationship. In this regard, the law of the treatment requires that the interested party be informed about the purposes for which they are intended data (informed consent).

Consent must be given freely. It is understood that consent is free when the interested party does not enjoy a true or free choice or cannot refuse or withdraw your consent without prejudice; or when you are not allowed to authorize by separate the different personal data processing operations despite being adequate in the specific case, or when the fulfillment of a contract or provision of service is

dependent on consent, even when consent is not necessary for such compliance.

This occurs when consent is included as a non-negotiable part of the

general conditions or when the obligation to agree to the use of

additional personal data to those strictly necessary.

Without these conditions, the provision of consent would not offer the data subject a

true control over your personal data and their destination, and this would make it illegal to

treatment activity.

The Article 29 Working Group analyzed these issues in its document

“Guidelines on consent under Regulation 2016/679”, adopted on

11/28/2017, revised and approved on 04/10/2018.

These Guidelines have been updated by the European Committee for Data Protection

on 05/04/2020 through the document "Guidelines 05/2020 on consent with

under Regulation 2016/679” (keeps the parts that are transcribed literally identical

next). In this document 5/2020 it is expressly stated that the opinions of the

Article 29 Working Party (WP29) on consent remain relevant,

as long as they are consistent with the new legal framework, stating that these guidelines do not

they replace the previous opinions, but rather expand and complete them.

From what is indicated in the aforementioned WG29 document, it is now of interest

highlight some of the criteria related to the validity of consent, specifically

on the elements “specific”, “reported” and “unequivocal”:

“3.2. Specific declaration of will

Article 6, paragraph 1, letter a), confirms that the consent of the interested party for the treatment of your data must be given "for one or more specific purposes" and that an interested party can choose with for each of these purposes. The requirement that consent must be "specific" has in order to guarantee a level of control and transparency for the interested party. This requirement has not been modified by the GDPR and remains closely linked to the consent requirement "informed". At the same time, it must be interpreted in line with the 'decoupling' requirement for obtain “free” consent. In short, to comply with the character of "specific" the data controller must apply:

i) specification of the purpose as a guarantee against deviation from use,

ii) dissociation in consent requests, and

iii) a clear separation between the information related to obtaining consent for the data processing activities and information relating to other matters.

Ad. i): In accordance with article 5, paragraph 1, letter b), of the RGPD, obtaining consent valid is always preceded by the determination of a specific, explicit and legitimate purpose for the planned treatment activity. The need for specific consent in combination with the notion of purpose limitation in Article 5(1)(b) functions as guarantee against the gradual extension or blurring of the purposes for which the treatment is carried out of the data once an interested party has given their authorization to the initial collection of the data. This phenomenon, also known as diversion of use, poses a risk to stakeholders already which may lead to unforeseen use of personal data by the data controller. treatment or third parties and the loss of control by the interested party.

If the data controller relies on Article 6(1)(a), data subjects must always give your consent for a specific purpose for data processing. in line with the concept of purpose limitation, with article 5, paragraph 1, letter b), and with the recital 32, the consent may cover different operations, provided that said operations have the same purpose. It goes without saying that specific consent can only be obtained

when the interested parties are expressly informed about the intended purposes for the use of the data

that concern them.

Without prejudice to the provisions on the compatibility of purposes, the consent must be

specific for each purpose. The interested parties will give their consent on the understanding that they have control

about your data and that these will only be treated for those specific purposes. If a person in charge treats

data based on consent and, in addition, you want to process said data for another purpose, you must

obtain consent for that other purpose, unless there is another legal basis that better reflects the

situation…

Ad. ii) Consent mechanisms should not only be separated in order to fulfill the

requirement of "free" consent, but must also comply with the consent

"specific". This means that a data controller seeking consent to

several different purposes, you must facilitate the possibility of opting for each purpose, so that users

may give specific consent for specific purposes.

Ad. iii) Finally, data controllers must provide, with each data request,

separate consent, specific information on the data that will be processed for each purpose, with the

in order that the interested parties know the repercussion of the different options that they have. of this

In this way, data subjects are allowed to give specific consent. This issue overlaps with the

requirement that controllers provide clear information, as set out above

in section 3.3".

"3.3. Manifestation of informed will…" (this section 3.3 already outlined in the Basis of

prior right).

"3.4. Unequivocal manifestation of will

The RGPD clearly establishes that consent requires a declaration of the interested party or a

clear affirmative action, which means that consent must always be given through an action

or statement. It must be evident that the interested party has given his consent to an operation

specific data processing...

A "clear affirmative action" means that the data subject must have acted deliberately to

consent to that particular treatment. Recital 32 provides additional guidance

about this point...

The use of pre-ticked acceptance boxes is not valid under the GDPR. The silence or

inactivity of the interested party, or simply continuing with a service, cannot be considered as a

active indication of having made a choice…

A controller must also bear in mind that consent cannot be

obtained through the same action by which the user agrees to a contract or accepts the terms and

general conditions of a service. The global acceptance of the general terms and conditions does not

can be considered a clear affirmative action aimed at giving consent to the use of data

personal. The GDPR does not allow data controllers to offer checked boxes

previously or voluntary exclusion mechanisms that require the intervention of the interested party to

avoid the agreement (for example, “opt-out boxes”)…”.

Data controllers should design consent mechanisms in such a way that

be clear to stakeholders. They must avoid ambiguity and ensure that action through

which consent is given is distinguished from other actions…”.

This document cites Opinion 15/2011 of WG29, on the definition of the

consent. Regarding consent as an unequivocal manifestation of will, in this

Last Opinion indicates:

“In order for consent to be granted unequivocally, the procedure for obtaining it and

granting does not have to leave any doubt about the intention of the interested party when giving his

consent. In other words, the statement by which the interested party consents must not

leave no room for misunderstanding about its intention. If there is reasonable doubt about the intent of the

person, an ambiguous situation will arise.

As described below, this requirement requires data controllers to create

rigorous procedures for people to give their consent…".

"This example illustrates the case of the person who remains passive (for example, inaction or "silent").

Unambiguous consent does not fit well with procedures for obtaining consent to

from the inaction or silence of people: the silence or inaction of a party is

intrinsically equivocal (the data subject's intention could be assent or simply not

perform the action).

"…individual behavior (or rather, lack of action), raises serious questions about the will

according to the person. The fact that the person does not perform a positive action does not allow

conclude that you have given your consent. Therefore, it does not meet the consent requirement

unequivocal". Furthermore, as illustrated below, it will also be very difficult for the controller to

data processing provide proof that shows that the person has consented".

In the present case, BBVA contemplates in its privacy policy the use of the

personal data of its clients for purposes other than the mere fulfillment of the

business relationship. Specifically, the aforementioned entity mentions the following purposes, excluding

that relating to the management of contracted products and services:

"2) To get to know you better and personalize your experience.

3) To offer you products and services of BBVA, the BBVA Group and others, personalized for you.

We are not going to flood you with information.

4) To communicate your data to BBVA Group companies so that they can offer you products and

personalized services for you.

5) To improve the quality of products and services".

In relation to these purposes, BBVA refers to legitimate interest as the basis

legitimizing for the use of the data with the purpose indicated in section 2) above and to the

consent in relation to the other purposes indicated.

The responsible entity did not design a specific mechanism to collect the

consent of its clients in order to the use of personal data with the

purposes 3), 4) and 5), having considered BBVA that the acceptance without further ado of the policy of

privacy, through the signing by the client of the repeated form, entails the provision of

that consent.

BBVA limits the options of the interested party to marking a box through which

It records its opposition to the indicated data processing. the form of

Data collection and provision of consent reads as follows:

"We inform you that if you do not agree with the acceptance of any of the following purposes,

you can select them below.

. Products and prices more adjusted to you

[ ] I DO NOT want BBVA to process my data to offer me products and services of BBVA, of the Grupo

BBVA and others personalized for me.

[ ] I DO NOT want BBVA to communicate my data to BBVA Group companies so that they can

offer own products and services personalized for me.

quality improvement

[ ] I do NOT want BBVA to process my data to improve the quality of new products and services and

existing. We want to remind you that you can always easily change or delete the use that

we make of your data.

We remind you that when you enter the password requested in the signing process, you will be giving your

in accordance with this Declaration of Economic Activity and Personal Data Protection Policy.

SIGNATURE OF THE DOCUMENT "DECLARATION OF ECONOMIC AND POLITICAL ACTIVITY OF

PROTECTION OF PERSONAL DATA", including your Extended Information (LOPD model NORMAL

PERSONAL DATA / DAE, version 13 09-23-2018)".

Contrary to what is established in the RGPD, with this mechanism there is no option to

that the client gives his consent to the treatments in question, but that the

consent is intended to be obtained through the inaction of the interested party (do not mark the

boxes indicating "I DO NOT want…"). It is not an affirmative action, but a

pure inaction that does not ensure that the data subject unequivocally grants consent

(normally when you mark something it is because you want it, not because you don't want it; you may not

having understood the double negative; may not have paid due attention when reading

the indications in question quickly).

It is, ultimately, a consent that is intended to be deduced from inaction and,

therefore, contrary to the RGPD. The requirement that "consent must

given through a clear affirmative act that reflects a manifestation of free will,

specific, informed, and unequivocal of the interested party to accept the processing of data of

personal character that concern him", it being understood that "inaction should not constitute

consent" (Recital 32).

With the designed mechanism, BBVA understands consent to all processing

detailed with the signature of the Privacy Policy. This acceptance by action

unique of all the treatments, which results from the acceptance of the privacy policy (it says expressly the repeated document: "We remind you that when you enter the code that is requested in the signing process, you will be giving your agreement to this Declaration of Economic Activity and Personal Data Protection Policy"), also becomes invalid the consent given by the interested party, regarding the use of the data for purposes other than the execution of the contract or business relationship maintained by the interested party and the responsible entity or, what is the same, with respect to all those treatments that require differentiated and granular consent.

Consent must be given for all processing activities carried out with the same purpose or purposes and, when the treatment has several purposes, the consent for all of them, although through a manifestation of will expressed for each of the purposes separately or differentiated, allowing the interested party to choose to choose all, a part or none of them. As stated in Recital 43, no consent can be freely understood as having not been allowed to "authorize separate the different operations of processing personal data despite being appropriate in the particular case. Recital 32 states that "consent must cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent must be given for all of them".

"When data processing is carried out for various purposes, the solution to comply with with the conditions of valid consent lies in the granularity, that is, the separation of these purposes and obtaining consent for each purpose" (Guidelines of the GT29). Understand that signing the form enabled by BBVA for data collection personal and for the provision of consent implies the acceptance of all of them not meets this requirement to separately authorize the various options. Accept as valid signing the document as the only action would be the same as accepting the provision of a global consent for all processing operations regardless of whether your

purposes are diverse or not, which is contrary to all the foundations expressed

about this issue.

In addition, as has been pointed out, the formula used is not articulated as a

authorization or consent, but in the opposite direction. With this formula, which only

allows the interested party to “not authorize”, BBVA understands that consent has been given when it is not

mark the option offered. In these cases, that is, when the interested party does not mark the

options “I do not want…”, it cannot be concluded with absolute certainty if the interested party acted

deliberately leaving those boxes unchecked. For the same reason, the responsible never

will be in a position to demonstrate that it acted with the consent of the holders of the

personal information.

This formula responds to what the Article 29 Working Group calls

“opt-out mechanisms”: <<The RGPD does not allow those responsible for the

processing offer pre-ticked boxes or opt-out mechanisms

that require the intervention of the interested party to avoid the agreement (for example, boxes of

opt-out”)>>.

Likewise, it should be noted that the mechanism enabled by BBVA responds to a

conscious design, prepared by the entity with the purpose of favoring the provision of

consent by most customers. BBVA was aware, according to the conclusions

reflected in their own preparatory work, that a very high percentage of people

subscribe the form without even reading the information of the Privacy Policy and without repairing

in the options offered. Therefore, when he established the “exclusion mechanism

voluntary", instead of an acceptance mechanism for each treatment operation, since

he knew that it would have an outcome favorable to his own interests.

In this regard, in the document provided by BBVA on the result of the

investigations carried out on the draft informative clause, it is said:

"General results: almost 90% of the interviewees accept all the conditions, either of

expressly or by default; two thirds of the interviewees accepted the GDPR conditions of

instantly, without reading; non-acceptance focuses exclusively on receiving

commercial communications, especially from third parties".

"Conclusions: (…) less attention is paid on mobile: it is linked to an update and less is read

(it is accepted directly)".

"General considerations: in general, customers do not stop at the screen and those who do

read diagonally. They accept without reading since trust in BBVA is high and encourages an analysis

less exhaustive of the clause.

The consent given, moreover, is not considered informed. already said here

the importance of providing information to data subjects before obtaining their consent,

essential so that they can make decisions having understood what they are authorizing. Yes

the person in charge does not provide clear and accessible information, the control of the user will be

illusory and consent will not constitute a valid basis for data processing.

What is stated in the Foundation of Law VI, on the objections observed in the

information that BBVA provides regarding the protection of personal data, affect

equal to the consent that could have been given, making it invalid as it is not

an informed consent, in relation to data collection operations or

data processing with respect to which those defects were appreciated in the

information, including the processing of data that has not been provided directly by the

interested or that are not necessary for the fulfillment of the contractual relationship that

link to the entity.

It is not necessary to reiterate here the circumstances already expressed in relation to the

language used in the privacy policy or the lack of a clear and intelligible formulation

of the purposes and processing operations.

All these deficiencies prevent the interested parties from knowing the meaning and real meaning

of the indications provided and the real scope of the consents that could be given.

Therefore, all the detailed treatments whose legal basis comes from

determined, as expressed by the BBVA entity itself, by the consent of

the interested parties, among which are the following personal data processing, with the

detail that in each case is included in the information offered by BBVA, already detailed:

. The use of the personal data of clients to offer them products and services of

BBVA, the BBVA Group and third parties.

. The communication of personal data to companies of the BBVA Group.

. The use of personal data to improve the quality of products and services.

BBVA, in its pleadings brief, has made a considerable effort to

justify the mechanism designed, that is, to justify that the signing of the document of

privacy policy is an affirmative action. However, no argument provided by

the entity is valid to save the need to provide consent separately

through an affirmative action (not the consent that BBVA understands given to

from a box left unchecked by the interested party). This earlier conclusion is so sharp

that what was stated above to substantiate it is considered sufficient to dismiss

these allegations.

Contrary to what is indicated in the brief of allegations prepared by BBVA, it is not
offers the interested party the possibility of opting and choosing their preferences, but the possibility of
reject or oppose; It is not true that control over the data is guaranteed by the user.
client; and neither is it that BBVA has opted for a clear affirmative action, referring to
the signing of the "Declaration".

Regarding the formulas for obtaining consent, BBVA warns that the
Recital 32 admits many different ones. This is true, but the same Recital 32
requires for all these formulas that consent be given through an affirmative act
that reflects a free, specific, informed and unequivocal manifestation of the will of the
interested in accepting the processing of personal data that concerns him. Already
has previously explained the scope of these requirements.

BBVA cites examples of consent that it says are valid, although none of them
can be estimated similar to the mechanism designed by this entity in the repeated form of
data Collect.

One of the examples he cites is the case numbered “example 17” in the
WG29 Consent Guidelines. BBVA understands that it can be assimilated to what it is
object of this file, by admitting a scenario that contains the dialing options of
a “yes” and a “no”:

“A data controller may also obtain explicit consent from a person who
visits your website by offering an explicit consent screen containing Yes and No boxes,
provided that the text clearly indicates the consent, for example, “I, give my consent to the
processing of my data” and not, for example, “I am clear that my data will be processed”. Strike
say that the conditions of informed consent must be met, as well as the rest of the
conditions necessary to obtain valid consent.

In the opinion of this Agency, this example cannot be assimilated to the present case. In that
example, the marking of the box is validated, giving or denying consent,

while the mechanism of BBVA's Privacy Policy is taken as borrowed from the

consent without taking any action. It would be different if in the example

shown, the consent will be considered given in case of not marking any of the two

boxes provided, in which case, that presumed "expression of will" would not be

acceptable.

Likewise, in his brief of arguments to the proposed resolution, he insists on the

same reasoning already contained in his brief of arguments at the opening and indicates that

The Agency has not argued anything in this regard.

This Agency, however, estimates the opposite. The standards outlined and

arguments set forth in this Legal Basis are considered sufficient to give

answer and distort the allegations presented by BBVA, and it is these allegations that

that have not taken into consideration what is established in the norms and the arguments of the

Agency.

Regarding the considerations formulated by this Agency on the “design

conscious” made by BBVA with the purpose of favoring the provision of consent

of the majority of its clients, it limits itself to pointing out that they are not legally relevant. Is

Agency does not share this criterion.

It adds that it is lawful and legitimate to process a large amount of personal data and that this

fact cannot be punished. And this is so, as long as the principles and

guarantees provided and any applicable regulations.

- Other processing of personal data without legal basis

On the other hand, this Agency considers that there are other data treatments that

are stated in the privacy policy that are carried out without any basis of legitimacy:

. Purpose 4 refers to the communication of customer data to Group companies

BBVA so that they can offer you personalized products and services. However, in the

privacy policy is added that the information communicated "will be treated to try to

improve the characteristics and prices of the offer of products and services". The use of

data by BBVA Group companies for this purpose is not covered by the

consent given by the client in relation to this purpose.

. There is also no legal basis that legitimizes the use of personal data "related to

all the products and services... of which BBVA is a marketer" for the purposes that

are indicated in the privacy policy. BBVA is not the entity responsible for this data

obtained from third-party products marketed by it, which limits the possibility

to use the information in question for their own purposes, as stated above.

The allegations to the proposed resolution formulated by the entity BBVA do not

contain no observations on these matters.

-

Treatment of personal data based on the legitimate interest of the person in charge or

from third parties

It is considered, on the other hand, that there is no sufficient legal basis for the treatment of

personal data that BBVA bases on its legitimate interest, carried out with the purpose of

understand the customer better and improve their experience, including profiling, as

the terms used in the form under analysis.

In this regard, the legitimate interest in the

processing of customer data in order to develop the business model of the

entity, assess new functionalities or send congratulations to customers.

It should also be noted that in the description of the data processing that BBVA

intends to perform on the basis of legitimate interest, includes making offers

customized or the development and improvement of the quality of products and services; being these

treatment of data similar to those outlined when citing other purposes based on the

consent (offer personalized products and services and improve the quality of

products and services), motivating that the description of the purposes and enumeration of

data processing contained in the information offered causes confusion to the

interested. Thus, interest-based data processing cannot be accepted.

similar to others carried out on the basis of the client's consent, which,

moreover, it is not rendered in a valid way.

Next, the information included in the "Declaration

economic activity and personal data protection policy" on these treatments

of data based on the legitimate interest of BBVA:

What do we use your personal data for?

2. Get to know you better and personalize your experience

At BBVA we want your experience as a customer to be as satisfactory as possible, through a

personalized relationship that is most adapted to your customer profile and your needs.

To achieve this we have to get to know you better, analyzing not only the data that allows us to identify you

as a customer, but also your financial evolution and that of the products and services you have

contracted with us or through BBVA as a marketer, your operations - payments. income,

transfers, debits, receipts- as well as the uses of BBVA products, services and channels.

Additionally, we will apply statistical and classification methods to correctly adjust your

profile. Based on the above, we managed to develop our business models.

Thanks to this analysis we will be able to get to know you better, assess new functionalities for you, products and services that we consider appropriate to your profile (own or marketed by BBVA), as well as offers customized with more adjusted prices for you. As we get to know you better, we can congratulate you for your anniversary, wish you a good day or happy holidays.

If you do not agree, you can object by sending an email to: derechoprotecciondatos@bbva.com or at any of our offices.

This section is only applicable to BBVA customers.

For what reason do we use your personal data?

2. Get to know you better and personalize your experience: for the legitimate interest of BBVA.

For the legitimate interest of BBVA, so that BBVA can better meet your expectations and we can increase your degree of satisfaction as a customer by developing and improving the quality of own products and services or those of third parties, as well as carry out statistics, surveys or studies of market that may be of interest.

Likewise, due to the legitimate interest of BBVA to be a bank close to you as a customer and to be able to accompany you during our contractual relationship, we could congratulate you on your anniversary, wish you a good day or happy holidays.

These legitimate interests respect your right to personal data protection, honor and personal and family intimacy. At BBVA we believe that, as a customer, you have an expectation

reasonable for your data to be used so that we can improve products and services and you can Enjoy a better customer experience. In addition, we estimate that you also have a

reasonable expectation to receive congratulations on your anniversary. wish you a good day or

Happy Holidays. But remember that in both cases based on legitimate interest, you can always exercise

you consider it appropriate in

your right to object if

the following address:

rightsprotecciondatos@bbva.com or at any of our offices.

With this information, it is difficult for the interested party to have a clear idea about the

data processing to be carried out. Just look at the treatments that are

cited in the Report on the weighting of the prevalence of legitimate interest in the processing of

those referred to in purpose 2 of the section “For what purposes will we use them?” for

Check that difficulty. These are the treatments indicated in said report:

“. Allocation of pre-granted limits

. Profile Application

. Propensity Models

. Contact Center - Offers module

. Relevant facts and insights

. Analysis and proposals for the profitability of the card portfolio”.

As stated in the aforementioned Weighting Report, the personal data submitted to

treatment are as follows:

Yo. Identification and contact data, such as name, surname, photograph, DNI, passport or NIE,

nationality, postal addresses, electronic addresses, fixed telephone, mobile telephone, voice and image.

ii. Economic and financial solvency data, such as monthly net income, average balance in

accounts, asset balance, direct debit receipts, direct debit payroll, income and expenses, as well as the

related to the client's financial qualification.

iii. Transactional data in a categorized way, such as average balances, average income, number

of direct debits, number of receipts referring to the provision of basic services, type of

movements of accounts and cards. The data referring to the texts of the receipts by

inference from the detail of account and card movements (such as origin, destination,

concept and third party related to the transaction).

IV. Sociodemographic data, such as age, marital status, family situation, residence, studies and

occupation (type of contract, length of employment) or membership of groups.

v. Data of contracted products and services, such as contract number, limit associated with the

contracted products, type of contracted products and services, contract data (attributes

associated with the contract), risk with BBVA, as well as any documentation associated with any of the

these contracts.

saw. Data of communications and the use of the channels that BBVA makes available to the client for the

management of products and services.

vii. Data on the use of BBVA digital channels,

viii. Data resulting from statistics and market studies carried out by BBVA.

ix. Sociodemographic statistical data from the National Institute of Statistics (in

hereinafter, "INE"), obtained in accordance with the provisions of article 21.1 of Law 12/1989, of May 9,

regulator of the Public Statistical Function (hereinafter, "LFEP").

x. Data obtained from the Risk Information Center of the Bank of Spain (hereinafter,

"CIRBE"), regulated by Chapter VI of Law 44/2002, of November 22, on Reform Measures

of the Financial System (hereinafter, "LMRSF").

xi. Data obtained from asset and credit solvency files, currently regulated by article

29 of Organic Law 15/1999, of December 13, on the Protection of Personal Data.

Information inferred by BBVA based on legitimate interest, including profiles

elaborated, is also used, based on the consent of the interested party, to offer

products and services of BBVA, the BBVA Group and personalized third parties; and with the same legal basis is communicated to the companies of the BBVA Group so that they can also offer personalized products and services and “try to improve the characteristics and prices of the offer of products and services.

The analysis of the issue raised must initially take into account the provisions of Article 1.2 of the RGPD, according to which "This Regulation protects the rights and fundamental freedoms of natural persons and, in particular, their right to protection of personal data”. For this, all the circumstances must be taken into account. surround the collection and processing of data and the way in which they are fulfilled or reinforced the principles, rights and obligations required by the data protection regulations of personal character.

Article 6 of the RGPD requires that the processing of personal data, in order to be lawful, can rely on any of the bases of legitimacy that it establishes and that the responsible for the treatment is able to demonstrate that, in fact, it concurred in the processing operation the legal basis invoked (article 5.2, principle of proactive responsibility).

The legal bases of the treatment that are detailed in article 6.1 RGPD are related to the broader principle of legality of article 5.1.a) of the RGPD, precept which provides that personal data will be treated in a "lawful, loyal and transparent manner in relationship with the interested party.

In relation to the legal basis of legitimate interest, invoked by BBVA for the treatments described in the previous sections, the cited article 6 establishes:

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

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 said interests do not prevail the interests or

fundamental rights and freedoms of the interested party that require the protection of personal data,

in particular when the interested party is a child...".

Recital 47 of the RGPD specifies the content and scope of this base

legitimizer of the treatment.

The interpretative criteria that are extracted from this Considering are, among others, (i)

that the legitimate interest of the person in charge prevails over the interests or rights and freedoms

of the owner of the data, in view of the reasonable expectations that the latter

has, based on the relationship it maintains with the data controller; (ii) will be

It is essential that a "meticulous evaluation" of the rights and interests at stake be carried out,

also in those cases in which the interested party can reasonably foresee, in

the moment and in the context of the data collection, that the treatment with

such purpose; (iii) the interests and fundamental rights of the owner of the personal data could

prevail over the legitimate interests of the person in charge when the processing of the data

is carried out in such circumstances in which the interested party "does not reasonably expect" that

further processing of your personal data is carried out.

It should be added that the interested party, in all cases, can exercise the right to

opposition, which also involves a new assessment of the interests of the controller and owner

of the data, except in cases of commercial prospecting, in which the exercise of the right

forces to interrupt the treatments without any evaluation (article 21.3 of the RGPD).

It is interesting to highlight some aspects included in Opinion 6/2014 prepared by the

Working Group of Article 29 related to the "Concept of legitimate interest of the person responsible for the processing of data under article 7 of Directive 95/46/EC", dated 04/09/2014, especially the factors that can be assessed when the mandatory weighting of the rights and interests at stake. Although Opinion 6/2014 is issued to favor a uniform interpretation of Directive 95/46 then in force, repealed by the RGPD, given the almost total identity between its article 7.f) and article 6.1.f) of the RGPD, and that the reflections offered are an exponent and application of principles that inspire also the RGPD, such as the principle of proportionality, or general principles of the Community law, such as the principles of fairness and respect for the law and the law, Many of his reflections can be extrapolated to the application of current regulations.

As indicated, so that section f) of article 6.1. GDPR may constitute the legitimizing basis of the processing of personal data that is carried out, mandatory, and prior to treatment, a consideration must be made, an "evaluation meticulous", of the rights and interests at stake: the legitimate interest of the person responsible for the treatment, on the one hand, and on the other, both the interests and the rights and freedoms essential to those affected. Consideration that is essential, because only when, as As a result, the legitimate interest of the data controller prevails over the rights or interests of the owners of the data may operate as a legal basis for the treatment of said interest.

Regarding the weighting test, the repeated Opinion states the following:

"The legitimate interest of the data controller, when it is minor and not very pressing, in general, it only overrides the interests and rights of data subjects in cases where the impact on these rights and interests even more trivial. On the other hand, an important and compelling legitimate interest may, in some cases and subject to guarantees and measures, justify even a significant intrusion into privacy or any other important repercussion on the interests or rights of the interested parties.

Here it is important to highlight the special role that guarantees can play in reducing a

undue impact on data subjects and thus to change the balance of rights and interests

to the extent that the legitimate interest of the data controller prevails. By

Of course, the use of guarantees alone is not sufficient to justify any type of

treatment in any context. In addition, the guarantees in question must be adequate and

sufficient, and must unquestionably and significantly reduce the impact on stakeholders".

The aforementioned Opinion refers to the multiple factors that can operate

in weighing the interests at stake and groups them into these categories:

(a) the evaluation of the legitimate interest of the data controller, the nature and source

of legitimate interest and if the data processing is necessary for the exercise of a right

fundamental, is otherwise in the public interest, or benefits from recognition of

affected community;

(b) the impact or repercussion on the interested parties and their reasonable expectations about what

will happen to your data ("what a person considers reasonably acceptable under

of the circumstances"), as well as the nature of the data and the way in which they are

processed; emphasizing that the claim is not that the data processing carried out by the

responsible does not have any negative impact on the interested parties but prevents the

impact is "disproportionate";

(c) the provisional balance and

(d) the additional guarantees that could limit an undue impact on the interested party, such

such as data minimization, privacy protection technologies, increased

of transparency, the general and unconditional right of voluntary exclusion and the

data portability.

In the first place, the Opinion underlines that the implication that the person in charge of the treatment may have in the data processing carried out is that of "interest", which is already referred to in the previous Legal Basis to point out that it is related to purpose, but it is a broader concept (“purpose is the specific reason why process the data: the purpose or intention of the data processing. One interest, for another On the other hand, it refers to a greater involvement that the data controller may have in the treatment, or to the benefit that the person in charge of the treatment obtains from the treatment”). It is also broader than that of fundamental rights and freedoms, hence with respect to those affected are weighed not only their fundamental rights and freedoms, but also their "interests".

According to WG29, “an interest must be clearly articulated enough to allow the balancing test to be carried out against the interests and fundamental rights of the interested party. Furthermore, the interest at stake must also be pursued by the data controller. This requires a real and current interest, which is corresponds to present activities or benefits that are expected in the very future. next. In other words, interests that are too vague or speculative are not will be enough."

In addition, the "interest" of the data controller, as established in article 6.1.f) of the RGPD and before article 7.f) of the Directive, it must be “legitimate”, which means, says the Opinion, which must be "lawful" (respectful of applicable national and EU legislation).

However, WG29 adds that "The legitimacy of the interest of the data controller it is only a starting point, one of the elements to be analyzed under the article 7, letter f). Whether Article 7(f) can be used as a legal basis or not will depend of the result of the following weighing test”; “If the interest pursued by the data controller is not compelling, it is more likely that the interests and rights

of the interested party prevail over the legitimate interest —but less important— of the

responsible for the treatment. Similarly, this does not mean that less interest

compelling of the person in charge of the treatment cannot sometimes prevail over the interests

and rights of the interested parties: this normally happens when the impact of the treatment

on stakeholders is also less important".

And it shows the following example:

"To serve as an example: data controllers may have a legitimate interest in knowing the

preferences of their customers in a way that allows them to better personalize their offers and ultimately

term, offer products and services that best meet the needs and desires of their

customers. In light of this, Article 7(f) may constitute an appropriate legal basis in

some types of market activities, online and offline, as long as the

adequate guarantees (including, among others, a viable mechanism that allows to oppose the treatment

under article 14, letter b), as will be explained in section III.3.6 The right to object and

beyond).

However, this does not mean that data controllers can refer to Article 7,

letter f), as a legal basis to improperly monitor online and offline activities

of your customers, combine huge amounts of data about them, coming from different

sources, which were initially collected in other contexts and for different purposes, and create -and, therefore,

example, with the intermediation of data brokers, also trade with them - complex profiles

of the personalities and preferences of the clients without their knowledge, without a viable mechanism of

opposition, not to mention the absence of informed consent. It is likely that said

profiling activity represents a significant intrusion into customer privacy and,

when this happens, the interests and rights of the interested party will prevail over the interest of the

data controller”.

In short, the concurrence of said interest in the data controller does not

necessarily means that article 6.1 f) RGPD can be used as a basis

legal treatment. Whether or not it can be used as a legal basis

will depend on the result of the weighing test.

In addition, the treatment must be necessary for the satisfaction of the legitimate interest

pursued by the person responsible, so that less invasive means are always preferred

to serve the same purpose. Necessity implies here that the treatment is essential

for the satisfaction of said interest, so that, if said objective can be achieved

reasonably in another way that produces less impact or is less intrusive, the interest

legitimate cannot be invoked.

The term “necessity” used in article 6.1 f) of the RGPD has, in the opinion of the CJEU, a

own and independent meaning in Community law. It is a "concept

Autonomous Community Law” (STJUE of 12/16/2008, case C-524/2006, section

52). On the other hand, the European Court of Human Rights (ECHR) has also offered

guidelines for interpreting the concept of necessity. In section 97 of his Judgment of

03/25/1983 states that the “necessary adjective is not synonymous with “indispensable” nor does it have the

flexibility of the expressions “admissible, “ordinary”, “useful”, “reasonable” or “desirable”.

About the impact or repercussion that data processing has on the interests or

fundamental rights and freedoms of the interested parties, indicates that the more “negative” or

“uncertain” the impact of the treatment may be, it is more unlikely that the treatment itself

set can be considered legitimate.

“The Working Group makes it clear that it is crucial to understand that relevant 'impact' is a

a much broader concept than damage or harm to one or more interested parties in particular. The term

“impact” as used in this Opinion covers any possible consequences (potential or actual)

of data processing. For the sake of clarity, we also stress that the concept is not

related to the notion of violation of personal data and is much broader than the

repercussions that may arise from said violation. On the contrary, the notion of impact, as

used here, encompasses the various ways in which an individual may be affected, positively or

negatively, for the treatment of your personal data”.

“In general, the more negative and uncertain the impact of treatment may be, the more unlikely it is

that the treatment is considered, as a whole, legitimate. The availability of methods

alternatives to achieve the objectives pursued by the data controller, with

least negative impact on the data subject, should certainly be a consideration

relevant in this context”.

As sources of potential repercussions for the interested parties, he cites the probability

that the risk may materialize and the seriousness of the consequences, noting that

this concept of "gravity can take into account the number of individuals potentially

affected".

This includes the assessment of the nature of the personal data that has been

object of treatment), if the data have been made available to the public by the interested party or

by a third party, a fact -says the Opinion- that can be an evaluation factor especially

whether the publication was carried out with a reasonable expectation of reuse of the data

for certain purposes:

“…does not mean that data that appears in and of itself innocuous can be treated

freely… even such data, depending on the way it is processed, may have an impact

meaningful about people.

The way in which the person in charge treats the data; whether they have been disclosed to the public or

have been made available to a large number of people or if large amounts of data are

process or combine with other data ("for example, in the case of profiling, with

commercial, law enforcement or other purposes"). On this question it is said:

"Apparently innocuous data, when processed on a large scale and combined with other data,

can lead to interference with more sensitive data, as demonstrated in scenario 3 above,

exemplifying the relationship between pizza consumption patterns and insurance premiums for

healthcare.

In addition to potentially giving rise to the processing of more sensitive data, such analysis may

also lead to strange, unexpected and sometimes inaccurate predictions, for example, regarding the

behavior or personality of the affected persons. Depending on the nature and

impact of these predictions, this can be highly intrusive in the intimacy of the person".

All this, without forgetting the reasonable expectations of the interested parties:

"…it is important to consider whether the position of the data controller, the nature of the relationship or

of the service provided, or the applicable legal or contractual obligations (or other promises made

at the time of data collection) could give rise to reasonable expectations of a

stricter confidentiality and stricter limitations on further use. Usually,

the more specific and restrictive the context of data collection, the more limitations it is

are likely to be used. In this case, again, it is necessary to take into account the factual context and not

be based simply on the small print of the text".

The Opinion also considers it pertinent when evaluating the impact of the treatment to analyze the

position of the person in charge of the treatment and of the interested party; your position can be more or less

dominant with respect to the interested party depending on whether the data controller is a

person, a small organization or a large company, even a multinational company:

“A multinational company may, for example, have more resources and bargaining power than the individual data subject and may therefore be in a better position to impose on the data subject what you think is in your "legitimate interest". This can occur all the more reason if the company has a dominant position in the market.

When considering the interests and rights at stake, the WG29 understands that the compliance with the general obligations imposed by the regulations, including the principles of proportionality and transparency, help to ensure that the requirements are met of legitimate interest. Although it clarifies that this does not mean that compliance with those horizontal requirements, by itself, is always sufficient.

If, finally, after the evaluation, it is not clear how to reach the balance, the adopting additional safeguards can help reduce the undue impact and ensure that the processing may be based on legitimate interest. As additional measures, contemplates, for example, the facilitation of voluntary and unconditional exclusion mechanisms, or increased transparency:

“The concept of responsibility is closely linked to the concept of transparency. With the purpose of allow data subjects to exercise their rights and allow for broader public scrutiny by part of data subjects, the Working Group recommends that data controllers explain to stakeholders in a clear and easy way the reasons why they believe their interests prevail over the interests or fundamental rights and freedoms of the data subjects, and also explain to them the guarantees they have adopted to protect their personal data, including, where appropriate, the right to opt-out of treatment”.

“As explained on page 46 of Opinion 3/2013 of the Working Group on the limitation of the purpose (cited in footnote 9 above), in the case of profiling and taking automated decisions, interested parties or consumers must be given access to their profiles to ensure transparency, as well as the logic of the decision-making process (algorithm) that gave lead to the development of these profiles. In other words: organizations must disclose their criteria for decision making. This is a fundamental guarantee and it is especially important in the world of big data. Whether or not an organization offers this Transparency is a very pertinent factor that should also be considered in the proof of weighing”.

When referring to the right of opposition and the mechanism of voluntary exclusion or right of unconditional opposition, the GT29 reflects on advertising based on profiles of the client, which requires a follow-up of the activities and personal data of the stakeholders, which are analyzed with sophisticated automatic methods. Conclude the following:

“In this sense, it is useful to recall the Opinion of the Working Group on the limitation of the purpose, where it was specifically stated that when an organization wants to analyze or predict specifically the personal preferences, behavior and attitudes of customers individuals that will subsequently motivate the "decisions or measures" adopted in relation to such clients... Free, specific, informed and informed consent should almost always be required. unequivocal sign of "opt-in", otherwise the re-use of the data cannot be be considered compatible. And what is more important, such consent must be required, for example, for tracking and profiling for prospecting, advertising behavioral, data marketing, location-based advertising, or digital research monitoring-based market.

In this case, the existence of a prevailing legitimate interest of the responsible that legitimizes the data processing that BBVA intends to base on this database legal.

It should be noted first of all, the defects expressed in the Basis of

Prior right in relation to compliance with the principle of transparency, due to the

limitations and difficulties, if not impediment, that they suppose when carrying out a

true evaluation of the concurrence of a prevailing legitimate interest, real and not

speculative.

What has already been indicated about the language used is reiterated here; the lack of definition of

purposes for which the personal data will be used ("getting to know the customer better" and "improving

products and services" or "elaborate the business model", etc.) and the exhaustive analysis of the

information related to clients that entails such purposes; or about the types of profiles

that are going to be carried out and the specific uses and applications that will be given to those profiles; Y,

especially, the lack of information on the specific interest of the person in charge, which is not

expressed with the clarity and precision required by the regulations.

Considering that it is not even possible to know clearly the aims of the

treatment can hardly be associated with legitimate interests of BBVA that

may also prevail over the rights of the interested parties, who are not informed

clearly about the extremes required by the data protection regulations.

The legitimate interest expressed, which is described in the same terms as the

purposes, is vague and speculative (details on the description of the legitimate interest

are outlined in the previous Legal Basis, and coincide with the description

contained in the Prevalence Weighting Report provided by BBVA). It has

as a consequence that the treatments that are carried out are not foreseeable for a

average citizen.

This being the case, it is impossible for the interested party, or this control authority, to

Assess whether the processing operations carried out are necessary, or whether, on the contrary,

the same result could be obtained by less invasive means; cannot be completed either

even less, that the interest invoked is prevailing.

Rather it seems that the “interests” expressed by BBVA, whether in the Privacy Policy

Privacy or in the Weighting Report respond to economic interests of the entity,

that are not expressed. Obtaining an economic benefit through the activity

business that BBVA develops is still a legitimate interest, but in no case

may prevail over the fundamental right to personal data protection

affected. With total clarity, the STS of

06/20/2020 (R. cassation 1074/2019). In the sixth Legal Basis it says, with regard to

one of the questions of appeal raised in the Order admitting the appeal,

“The commercial interests of a company responsible for a data file must cede

before the legitimate interest of the owner of the data to protect them”. these interests

financial cannot be qualified as pressing.

It is not said, as BBVA seems to indicate in its arguments to the proposal, that the

interest pursued responds to economic interests and that, based on this, the

processing of personal data based on legitimate interest. What stands out here is

that if that is the legitimate interest, considered in itself and without taking into account the rest of the

factors that may operate in weighing the interests at stake, it is not estimated

enough to accept the existence of a legitimate interest that protects the treatment of the data.

data in accordance with the provisions of article 6.1 f) of the RGPD.

However, even accepting BBVA's thesis, which qualifies as a legal interest of the

responsible or third parties what we consider to be nothing more than the purpose of the treatment, that

claimed interest in no case could be qualified as necessary.

Regarding the suitability of data processing, the Report on the weighting of

interests only refers to the generation of analytical models of propensity, which declares

adequate to know the preferences of the clients, despite the fact that the use of the

data is much broader, and without any argument in this regard that justifies the use of

all information relating to the client or the impossibility of achieving the same purpose by another

less invasive means.

The same can be said about the need for treatment. In the repeated report

it is only declared that the processing of the data is essential for the management

adequate of resources. In the opinion of this Agency, this assessment, which is reduced to qualifying

As "essential" the processing of personal data is not enough to appreciate the

"need" for this treatment, in the sense that the concept of necessity is interpreted

by the European Court of Human Rights (ECHR). Notwithstanding that the treatment of

the data of the claimants is "useful", "desirable" or "reasonable", as specified by the ECHR in its

Judgment of 3/25/1983, the term “necessary” does not have the flexibility that is implicit in

those expressions.

As can be seen, what was stated above is in line with the doctrine of

Constitutional Court on the proportionality trial that must be carried out on a

restrictive measure of a fundamental right, to which BBVA refers in its allegations to

the motion for a resolution. According to this doctrine, three requirements must be verified:

suitability (whether the measure allows the proposed objective to be achieved); need (that does not exist

another more moderate measure); proportionality in the strict sense (more benefits or advantages

what harm).

Regarding these issues, what is indicated by BBVA in those allegations is not understood.

when it indicates that it has adopted the necessary measures to minimize the information

treated, and it is clear that the customer's identifying data is excluded. It has been said before that

the customer-related information used is all customer-related information, including the

identification data. You only have to see the detail of the personal data processed that

It appears in the Weighting Report provided by BBVA, already outlined.

In addition to the above, the following circumstances are taken into account:

. The manner in which the data used based on legitimate interest is collected and the scale

in data collection, which is excessive; as well as the use of personal data

collected from third parties without the knowledge of the interested party (external solvency files

assets and credits) or third-party products marketed by BBVA.

. The techniques used (data processing for the purpose of obtaining algorithms) and the lack

of transparency on the logic of the treatment consisting of profiling, which

can lead to price discrimination and have a potential financial impact

which may have the character of excessive.

. The high number of those affected, as well as the large amount of data that is processed and

combined with other data. The unlimited combination of personal data from all

products and services contracted by the client, including third-party products

marketed by BBVA and others obtained from external sources, and the lack of means that

allow the user real control of their data are enough to consider that the interest of BBVA

cannot prevail over the rights of those affected. This combination of data, due to its

massive nature and due to the lack of definition of the data to be used and the purposes,

does not respect the aforementioned proportionality nor does it allow the necessary weighing judgment

to assess the concurrence of a legitimate interest that justifies the processing of the data.

It is significant that information corresponding to two years is used, which is estimated to be a

excessive that increases intromission; and that information obtained from

in accordance with the regulations for the prevention of money laundering and financing of the terrorism (in the impact assessments, in the “Destruction” section, it is indicated “24 months (Depth of treatment)” and “Personal data used in the model 10 years x Law of Prevention of Money Laundering”).

. The dominant position of the person in charge vis-à-vis the interested party, due to his condition of great company and one of the market leaders in its sector.

BBVA makes no consideration of the above circumstances in its letter of allegations to the proposal, despite its importance, except in relation to the deadline conservation. BBVA understands that the AEPD erroneously interprets what is stated about the term of conservation of the data for the realization of the treatment. This period will be two years, not using data that is older or keeping the data for this treatment for a longer period. And clarifies that the data collected in compliance with money laundering prevention legislation are kept for the term established in this legislation, for the purposes set forth therein, but not for the controversial treatment.

As can be verified, this Agency does not misinterpret the question regarding the age of the data submitted to treatment based on legitimate interest and not questions the conservation of the data that corresponds in compliance with the legislation of money laundering. What is being questioned is precisely the use of data personal with two years of seniority, which is classified as excessive; and questions,

significantly, the use of data collected in accordance with said regulations to

the treatment operations that concern us.

Special importance must also be attached to the absence of measures or

additional guarantees. Among them, the increase in transparency and the

enabling voluntary exclusion mechanisms.

Regarding transparency, BBVA refers to what was reported in the "Declaration of

Economic Activity and Data Protection Policy", without making available to the

Interested parties the legitimate interest weighting report or the impact assessments; Y

mentions as a guarantee the exercise of the right of opposition, which is nothing more than a requirement

normative. This right requires a new weighting, in accordance with the provisions of the

article 21 of the RGPD ("the person in charge of the treatment will stop treating the personal data,

unless it proves compelling legitimate reasons for the treatment that prevail over

the interests, rights and freedoms of the interested party") and has nothing to do with the

voluntary or unconditional exclusion mechanisms that are recommended.

In the aforementioned report, the entity BBVA also mentions as guarantees other

issues that are not materially relevant to the balancing of interests, such as

are the adoption of measures to guarantee the integrity and confidentiality of the information,

which it does not explain, the appointment of a DPO and data minimization, about which this

Agency has already spoken before.

Said report dedicates one of its sections to the "weighing of the legitimate interest and the

compliance with the principle of proportionality in data processing". start this

section outlining a series of general considerations, among which he mentions the

Report of the Legal Office of the AEPD 195/2017, which will be referred to below;

and the specific obligations imposed on financial credit institutions on the

conducting risk assessment reviews (it should be recalled, in this regard, that
Treatments discussed here are not referenced in this risk assessment for the
compliance with a law, but its purposes are much broader -definition of the
business model, products and services, etc.-, of the exclusive interest of BBVA).

This section of the Weighting Report analyzes the reasonable expectation of the
interested, which BBVA describes as the expectation that the client maintains about the
possibility of the entity advising you on products and services that may
meet your needs. This idea is justified by a study carried out by the
entity, according to which 40.3% of new clients answered that they expected a deal
personalized. However, this study is based on a commercial question
("What aspects are most important to you and what do you expect to receive from BBVA in this
new relationship?"), to which the intended effect by BBVA cannot be attributed in terms of the
reasonable expectation of the interested party regarding the processing of their personal data. Any
it is said about the reasonable expectation of the data subject in relation to subsequent monitoring
that the realization of profiling supposes, nor is the interference that this entails valued.

BBVA invokes this study to justify the concurrence of the reasonable expectation
of the client and goes to the meaning that the Dictionary of the Royal Spanish Academy collects from
the terms "expectation" and "expect". But you don't take into account the circumstance before
expressed about the commercial nature of the study. The customer's response to the question
"What do you expect to receive from BBVA in this new relationship?" cannot be extrapolated to the judgment of
Weighting of legitimate interest as a basis for carrying out data processing
that concern us, whose level of intrusion is excessive, given the amount of data used
(all the data related to the clients available by BBVA) and the nature of the

treatments, which include profiling, as has been said. In this matter, it

all the factors that have been indicated come into play, which are not valued

some when responding to a commercial survey such as the one carried out by the entity.

It should be added that the issue of legitimate interest in the processing of data

data, given the implications it may represent for the client, cannot be justified,

as BBVA says, based on the "uses" that govern the legal relations established by a

financial entity with its clients or by the supposed bond of trust in which, according to

that entity builds that relationship.

Lastly, it should be noted that BBVA repeatedly, throughout its letter of

allegations, states that the processing of personal data carried out on this basis

legal redound to the benefit of the client. Considers that achieving excellence in service

through an adequate knowledge of its clients, which allows anticipating their

needs and improve BBVA's portfolio of products and services so that they adjust to the

preferences of those; as well as enabling the use of optimal channels for each client,

it is not only done for the benefit of the Bank but, in particular, of its customers.

This entity even affirms that the treatment is necessary for the fulfillment of

that legitimate interest of BBVA and the customer.

The legitimate interest of the client is considered, in the terms of article 6.1 f) of the

RGPD, such as the legitimate interest of third parties. In this case, there is no such approach, according to

which the personal data processing operations are carried out on the basis of the

legitimate interest of the client. Accepting it would be the same as admitting a supervening legitimate interest,

or a posteriori, in respect of which the requirements set forth in the regulations have not been respected

personal data protection and which is not reported in the Privacy Policy.

In short, for the reasons stated, it is not proven that the alleged legitimate interest

for the treatment of data that BBVA declares to have prevails over the interests and

fundamental rights and freedoms of customers. In addition, the guarantees offered are not

sufficient to bridge the imbalance that occurs with these treatment operations

of personal data.

Consequently, it must be concluded that the legitimate interest of BBVA does not prevail as

legitimate basis for processing.

The conclusion obtained from this examination does not contradict what was expressed in the Report of the

Legal Office of the AEPD 195/2017, to which BBVA repeatedly refers, both in the

mentioned Report on weighing of legitimate interest, as in its pleadings brief.

According to BBVA, this Report 195/2017 concludes the prevalence of the legitimate interest of the

financial entities for the analysis of transactional movements and/or ability to

customer savings, to make observations and offer recommendations on products and

services, as well as to carry out a more detailed profiling that allows specifying with

precisely the products to be offered.

However, the premises assessed in said report do not conform to the assumption

present, in which the processing of personal data has a much more

broader than those analyzed in said report, both in terms of the purposes of the

treatment as to the information or personal data used. There is nothing more to point out than

that report simply analyzes the performance of processing for marketing purposes,

provided that the offer refers to products similar to those contracted by the interested party and is

use only the information available as a result of the management of the

products.

On the other hand, the aforementioned Legal Cabinet Report also responds to the

queries raised in relation to the anonymization of transactional data for

develop new products, to analyze patterns of use of the services to develop

new ones. These uses coincide with the data processing carried out by BBVA on the basis of

to legitimate interest, but with non-anonymous information.

Regarding the anonymization of data expressed, it is concluded that they should be distinguished

two treatments. Namely, the one that gives rise to anonymous information (the anonymization

itself), subject to data protection regulations, and the treatment that is

carry out with the already anonymized data, excluded from said regulations. expose the report

that when the anonymization is complete, it being impossible to link the information

directly or indirectly with a certain affected party, and much more if the data

resulting are aggregated, the processing may be based on legitimate interest.

Based on everything stated in this report, BBVA alleges that data processing

that are carried out with purposes 3 and 5 of the "Declaration of Economic and Political Activity

of Data Protection" (3. Offer personalized products and services of BBVA, the Grupo

BBVA and others; 5. Improve the quality of products and services) could have been based

in the concurrence of the legitimate interest, so that when obtaining the consent of the

concerned has adopted by reinforced measures of active responsibility.

This Agency does not share the idea that consent constitutes a basis

strengthened legal As has been stated here, consent is subject to

specific requirements in its provision, so that its provision by itself does not guarantee

the legality of the treatments.

The same can be said about performing those treatments based on the

legitimate interest. It would be necessary, as has been seen here, an exhaustive analysis of all the

concurrent circumstances in relation to the treatments intended to assess this

relevance of legal basis.

In any case, it was the BBVA entity itself that arranged, in the design of its

treatment operations, protect in the consent those that are described in the

purposes 3 and 5.

Consequently, in accordance with the above findings, the aforementioned

facts suppose a violation of article 6 of the RGPD, in relation to article 7 of the

same legal text and article 6 of the LOPDGDD, which gives rise to the application of the powers

corrective measures that article 58 of the RGPD grants to the Spanish Data Protection Agency.

viii

In the event that there is an infringement of the provisions of the RGPD, between the

corrective powers available to the Spanish Data Protection Agency, such as

control authority, article 58.2 of said Regulation contemplates the following:

"2 Each control authority will have all the following corrective powers indicated below:

continuation:

(…)

b) sanction any person responsible or in charge of the treatment with a warning when the

treatment operations have violated the provisions of this Regulation;"

(...)

d) order the person in charge or in charge of the treatment that the treatment operations comply with

the provisions of this Regulation, where appropriate, in a certain way and within

a specified term;

(…)

i) impose an administrative fine under article 83, in addition to or instead of the measures

mentioned in this section, according to the circumstances of each particular case;

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine.

IX

In the present case, the breach of the principle of

transparency established in articles 12, 13 and 14 of the RGPD, as well as the principle of legality

of the treatment regulated in article 6 of the same Regulation, with the scope expressed in

the previous Foundations of Law, which supposes the commission of individual infractions

typified in article 83.5 of the RGPD, which under the heading "General conditions for the

imposition of administrative fines" provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with section 2, with

administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, a

amount equivalent to a maximum of 4% of the total annual global turnover for the year

previous financial statement, opting for the highest amount:

a) the basic principles for processing, including the conditions for consent under

articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22; (…)".

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of article 83

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

organic".

For the purposes of the limitation period, articles 72 and 74 of the LOPDGDD indicate:

“Article 72. Infractions considered very serious.

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, they are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(…)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679”.

“Article 74. Infractions considered minor.

They are considered minor and the remaining infractions of a merely formal nature will prescribe after a year. the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particularly the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected by not providing all the information required by articles 13 and 14 of the Regulation (EU) 2016/679”.

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with the this article for the infractions of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each individual case, to additional title or replacement of the measures referred to in article 58, paragraph 2, letters a) to h) and i). When deciding the imposition of an administrative fine and its amount in each individual case, the due account:

a) the nature, seriousness and duration of the infringement, taking into account the nature, scope or purpose of the processing operation in question as well as the number of data subjects affected

and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

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c) any measure taken by the person in charge or in charge of the treatment to mitigate the damages and

damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the

technical or organizational measures they have applied under Articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and

mitigate the potential adverse effects of the breach;

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 if the

The person responsible or the person in charge notified the infringement and, if so, to what extent;

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

against the person in charge or the person in charge in question in relation to the same matter, the fulfillment

of said measures;

j) adherence to codes of conduct under Article 40 or certification mechanisms

approved under 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".

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679 are

will be applied taking into account the graduation criteria established in section 2 of the aforementioned

Article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, they may also

be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the processing of personal data.

c) The profits obtained as a result of committing the offence.

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 infraction, which does not

can be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

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

alternative resolution of conflicts, in those cases in which there are controversies between

those and any interested.

In this case, considering the seriousness of the infractions found, the

imposition of a fine, in addition to the adoption of measures. The request cannot be accepted

formulated by BBVA to impose other corrective powers that would have allowed

the correction of the irregular situation, such as the warning, which is planned to

natural persons and when the sanction constitutes a disproportionate burden (considering

148 of the GDPR).

BBVA states that it does not understand that in the past the Agency resorted to plans sectoral and in this case disciplinary proceedings are initiated. Said entity does not consider that These plans are made ex officio for the purpose of examining a sector in general and concluding recommendations that make it easier for entities to adjust their processes in terms of protection of personal data.

Likewise, in its brief of allegations to the proposed resolution, BBVA has requested that in determining the sanction that may be imposed, the application of the principles of culpability and proportionality.

He alleges the non-concurrence of guilt in his action, considering that he has acted with utmost diligence at all times. He emphasizes that he has followed the guidelines of the AEPD included in the "Guide for compliance with the duty to inform" and that has reported on all the extremes established in article 13 of the RGPD, as well as on other Extremes that this rule does not impose and that the interpretation of the AEPD did not impose either; Y adds that he acted on the conviction, after having reported on the claims formulated, that the Agency had not noticed any element that contravened what was established in the RGPD and LOPDGDD. Based on this, it invokes the principle of legitimate expectations, having acted in the belief that his conduct was in accordance with the law, and the Judgment of the National Court of 10/15/2012 (appeal 608/2011), in which "the active participation of the Administration", which could lead the interested party to the conclusion that his action was in accordance with law; that his conduct is not protected by a reasonable legal interpretation of the applicable regulations; and the difficulties in interpretation described by the Administration".

BBVA refers to the different appreciation of some specific expressions contained in the Privacy Policy regarding the indications contained in this regard in the aforementioned Guide and what BBVA has described as "inactivity of the Administration", by the

time elapsed between the admission for processing of the claims made by the

claimants 1 and 2, which took place on 02/01/2019, and the adoption of the agreement to open the

present sanctioning procedure, dated 12/02/2019. On this basis, it invokes the principle

of legitimate trust and understands that the actions of this Agency have influenced the commission

of the infractions.

This allegation must be rejected for the reasons that have already been explained in this

resolution in dealing with these allegations.

On the one hand, it is necessary to reiterate that BBVA has partially interpreted the “Guide for the

compliance with the duty to inform”, basing its conclusions on three expressions

punctual that are cited as an example in it, but without considering the general criteria

and warnings it contains, which also cover the important caveats that

have determined the qualification of the facts as constituting an infraction, referred not

only to the language but also to the content of the Privacy Policy, in what it says and in what

that it omits, as well as all the processing operations carried out by BBVA.

It is also indicated in the Guide itself that it must be completed with others that

are related to the RGPD, as in this case in relation to the aspect to which we

we refer. Specifically, the document of the Working Group of Article 29 “Guidelines on

Transparency under Regulation 2016/679”, adopted on 11/29/2017 and revised on

04/11/2018, which must be known by an entity such as BBVA, when referring to the language that

should be used in the information on the protection of personal data cites the

expressions in question as “examples of poor practice”.

On the other hand, the actions of this Agency have not influenced in any way the
BBVA's behavior determining the analyzed infractions. The alleged "inactivity of the
Administration", for the time elapsed between the admission for processing of the first
claims made and the adoption of the agreement to open the procedure, does not influence
at all in the commission of the infractions or aggravates them, and this Agency has not carried out
any action that has allowed BBVA to conclude that this Control Authority does not
noticed in the claims made any element that contravened what was established in
the RGPD and LOPDGDD. BBVA cannot provide any pronouncement or action of this
Agency that led to this alleged confusion, simply because there is no action
something in that sense.
However, actions were taken against BBVA from which he was able to deduce that the
matter was ongoing. We refer to the procedures carried out by this Agency
during the process of admission to processing of the claims received after the
02/01/2019, prior to the agreement to admit the respective claim, consisting of
forward these claims to the BBVA entity itself so that it could proceed with their analysis and
respond to this Agency and the claimant.
As has been said in the previous Foundations of Law, BBVA was aware of the
claims made and was also aware that there was no pronouncement of this
Agency about it.
Thus, one cannot speak of "inactivity of the Administration", given that during that
time the procedures for admitting the rest of the claims were carried out. as it has been
In detail, the claims submitted by claimants 3 through 5 were entered in this
Agency on the dates 02/13/2019 (a few days after that admission to process of
02/01/2019), 05/23/2019 and 08/27/2019; and were admitted for processing through agreements of
08/06/2019, 09/13/2019 and 10/30/2019, respectively.
Prior to admission, claims made by claimants 3

5 were transferred to BBVA for the stated purpose. Transfer of these claims

BBVA was notified on 05/21/2019, 06/28/2019 and 09/19/2019. In the case of

claimant 4, BBVA requested an extension of the period enabled to respond and was granted

said extension by means of a written notification to that entity on 08/19/2019.

In short, no legal consequence can be attributed to the time elapsed

between the admission to processing of the claims and the opening of the procedure, even less

the one claimed by BBVA.

In accordance with the precepts transcribed, in order to set the amount of the penalties

fine to be imposed in this case on the defendant, as responsible for infractions

typified in article 83.5.a) and b) of the RGPD, it is appropriate to graduate the fine that would correspond

impose for each of the infractions imputed as follows:

1. Infraction due to non-compliance with the provisions of articles 13 and 14 of the RGPD, typified

in article 83.5.b) and qualified as minor for prescription purposes in article 74.a) of the

LOPDGDD.

It is estimated that the following factors concur as aggravating factors that reveal

greater unlawfulness and/or culpability in the conduct of the BBVA entity:

a) The nature, seriousness and duration of the infraction: the verified facts affect very

seriously to one of the basic principles related to data processing, such as the

of transparency, calling into question all the actions carried out by BBVA, in its

as a whole, since the infractions result from the data management procedures

personal data designed by BBVA to adapt these processes to the GDPR, which are

considered irregular from the moment the personal data is collected. Without

However, the present case does not refer to a case of total absence of information, but

that the disputed facts result from not providing the interested parties with information

sufficient in relation to the various treatments carried out.

BBVA considers that it is not acceptable in law to assess as a circumstance

aggravating an element of the offending type, such as the principle of transparency. Nevertheless,

what is taken into account here is not the offending type, even if it is mentioned in the presentation

of the argument. As has been indicated, the fact that the

Appreciated deficiencies call into question all the actions carried out by BBVA from the

same moment of the collection of the personal data of its clients.

BBVA makes no allusion to these specific circumstances.

b) The intentionality or negligence appreciated in the commission of the infraction: the actions

have proven intentional conduct in relation to the violation of the regulations of

personal data protection. It has already been said in this document how BBVA carried out

carried out studies on the design of the informative clause, with the purpose of optimizing it

way to gain acceptance by customers.

The entity concerned considers that the work carried out since 2016 for the full

adaptation to the RGPD, which included the development of a new Privacy Policy and a plan

to make it available to customers, after having tested it with the participation of the

themselves to make it clear and simple, attest to good will, proactive responsibility and

diligence regarding compliance with data protection regulations. So understand that

having developed these actions cannot result against him as an aggravating circumstance of

their responsibility, especially, having adjusted their actions to the guidelines of the

AEPD. On the contrary, it understands that such actions must be taken as a circumstance

extenuating due to lack of intentionality.

It is obvious that the responsibility for the actions referred to by BBVA is not aggravated.

What is considered, as can be seen, is not the completion of these jobs or the studies

previous.

We do not see, on the other hand, what "guidelines issued by the AEPD" has adjusted the

design of this mechanism.

c) The continuing nature of the offence, in the sense interpreted by the National High Court,

as a permanent offense.

BBVA warns in its allegations that this reproach is attributable to this Agency,

that he knew the Privacy Policy almost a year before the opening of the procedure and,

through its inaction, “it made it easier for BBVA not to adopt any measure to remedy or

modify the Privacy Policy”.

This allegation must also be dismissed. We refer to what has already been stated in

this same Legal Basis on the supposed “inactivity of the Administration”.

d) The high link between the offender's activity and the performance of data processing

personal: all the operations that constitute the business activity carried out by

BBVA involve personal data processing operations.

e) The status of a large company of the responsible entity and its volume of business: it is a

leading company in the financial sector with a strong international presence. According to

information that appears on the “bbva.com” website, the Income Statement for the year 2019, at

date 09/30/2019, reflects a "Net Margin" of 9,304 million euros. In section

"Geographical diversification" indicates the breakdown by country, corresponding to Spain

23.4%.

f) High volume of data and processing that constitutes the object of the file: the

Infractions affect all data processing carried out by BBVA that are not

necessary for the execution of the contract, for which all the information is used

relating to customers.

g) High number of interested parties: the detected defects affect all the clients

natural persons of the entity (eight million thirty-one thousand, as BBVA has declared in its

pleadings brief).

h) The imputed entity does not have adequate procedures in place for action in the

collection and processing of personal data, so that the infringement is not

consequence of an anomaly in the operation of said procedures, but a

defect of the personal data management system designed by the person in charge.

In relation to this aggravating circumstance, BBVA alleges again that it cannot

considered as such the offending type, understanding that the breach of the obligations

of information and the requirements for obtaining consent already imply that the

responsible does not have adequate procedures.

This allegation must be rejected. The circumstance expressed is taken in the sense

literal established in the norm. Furthermore, in this case, it is not taken into consideration for

justify this aggravating circumstance the information obligation. Note that the infringement

consisting of carrying out data processing operations without a legal basis is

structural and not the result of a specific breach. And this results not only from the breach

of the requirements for obtaining consent and not only affects operations carried out

with this legal basis. For this reason, there is talk of an absence of adequate procedures in the

collection and processing of personal data.

Considering the exposed factors, the valuation reached by the fine for this infringement is 2,000,000 euros.

2. Infraction due to non-compliance with the provisions of article 6 of the RGPD, typified in the article 83.5.a) and classified as very serious for prescription purposes in article 72.1.b) of the LOPDGDD:

It is estimated that they concur as aggravating factors, in addition to all the factors exposed in relation to the previous infraction indicated with the letters c), d), e), f), g) and h), the following factors that reveal greater unlawfulness and/or culpability in the conduct of the BBVA entity:

a) The nature, seriousness and duration of the infraction: the infractions result from the personal data management procedures designed by BBVA for the adequacy of those processes to the RGPD, which are considered irregular from the moment of the collection of personal data and the provision of the consents requested from the customers at the same time. The seriousness of the infractions increases according to the scope or purpose of the processing operations in question, which include the profiling using excessive information.

b) The intentionality or negligence appreciated in the commission of the infraction: the actions have proven intentional conduct in relation to the violation of the regulations of personal data protection. It has already been said in this document that BBVA was aware that the mechanism enabled to obtain consent to the processing of personal data would result in the majority accepting all purposes by flaw. The absence of specific guarantees in relation to data processing based on legitimate interest is one more circumstance to consider in this case, considering the scope of such treatments.

Previous work and studies have revealed that the aforementioned entity was aware of

the consequences of the irregular mechanism designed to obtain consent. BBVA

knew that the Privacy Policy was accepted in most cases without reading and that,

as a consequence, the designed boxes were left unchecked (which was equivalent,

according to its own design, to understand given the consent).

b) The profits obtained as a result of committing the offence: the information

relating to customers is used to improve the business of the entity and for the dissemination of

their products.

c) The nature of the damages caused to the interested persons or to third parties:

takes into account the high degree of intrusion into the privacy of BBVA customers and that

the information is communicated to third parties (BBVA Group companies) for non-legitimate purposes.

Considering the exposed factors, the valuation reached by the fine for this

infringement is 3,000,000 euros.

The allegations to the proposed resolution formulated by the entity BBVA do not

contain no observation on the circumstances indicated with letters d), e), f) and g)

of point 1 (non-compliance with articles 13 and 14 of the RGPD), and those indicated with the letters

a) and b) of point 2 above (breach of article 6 of the RGPD).

Instead, it requests that the measures taken

to regularize the situation of the claimants and the elaboration of a new version of the

BBVA Privacy Policy, in July 2020.

Regarding the actions carried out in relation to the claims made,

they basically limit themselves to marking claimants as excluded from commercial actions.

In some cases as a consequence of the exercise of the right of opposition by the interested party and,

in others, in view of the claim made. In two of the cases, the action taken

consisted in the formalization of the "Declaration of economic and political activity of

protection of personal data" in the same terms analyzed in this resolution.

These actions are not relevant enough to be considered in this

procedure for the purposes intended by BBVA. It can be said that, in some cases,

those in which the subscription by the client of the "Declaration" is formalized does not exist

no regularization; and in the others the action comes to comply with the regulations in what is referred to

to the exercise of the rights by the interested parties. It is not a true regularization of the

irregular situation that is determined in this sanctioning procedure. Therefore, it

rejects the request to consider such actions as a mitigating circumstance.

On the other hand, BBVA considers that they should be taken into account as circumstances

extenuating the diligence, proactivity and speed shown, once the opening of the

procedure, with the improvement of the information provided to the interested parties and the

establishment of a new mechanism for obtaining the consent of the interested party,

including in the first informative layer differentiated and granular cells that the

The interested party must mark if they wish to authorize BBVA to process their data with each of the

purposes indicated

It indicates that it has carried out a series of internal actions and has intensified

its activity with the purpose of reinforcing the information provided to customers, having

elaborated, in July 2020, a new version of the Privacy Policy.

However, it does not provide any details or justification for the actions it says

have developed.

Regarding the new version of the Privacy Policy, with which it intends to

correct or leave without "content all the reproaches made by the AEPD", and

modifies the mechanism enabled to obtain consent, it does not even provide the text

full of it, but only some fragments.

Nor does BBVA provide any report or evaluation, nor does it explain how it has adapted the

rest of the documents that determine the configuration of this new Privacy Policy and

their subsequent analysis (eg, the record of treatment activities, evaluation reports

of impact or weighing of legitimate interest).

This documentation is especially necessary considering that the

fragments of this new Privacy Policy included in the allegations do

reference to treatment operations and other specific aspects that do not appear in the

documentation that integrates the file.

In addition, BBVA has not justified having transferred this new

information on data protection, not even having planned this transfer.

And the same can be said in relation to the consents given and the

data processing that it performs. BBVA, in its allegations, makes no mention of the

regularization in your records of the annotations corresponding to the consents

collected to date, nor to the suspension of personal data processing

qualified as unlawful in these actions or the deletion of personal data

collected from third parties or inferred by the entity itself.

BBVA has had numerous opportunities to provide this documentation

during the processing of the procedure. In each and every one of the communications that

have been sent has been warned about the principle of permanent access regulated in the

Article 53 “Rights of the interested party in the administrative procedure” of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which recognizes those interested in the procedure the right to know, at any time, the status of the processing and to formulate allegations, use the means of defense admitted by the Legal System, and to provide documents at any stage of the procedure prior to the hearing process. So that

Consequently, it is not possible to consider the irregular situation regularized.

X

In accordance with the provisions of article 58.2.d) of the RGPD, each authority of control may “order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period…”.

In this case, considering the circumstances expressed in relation to the Appreciated breaches, from the point of view of data protection regulations personal, it is appropriate to require the BBVA entity so that, within the period indicated in the device, adapt to the personal data protection regulations the operations of treatment of personal data that it carries out, the information offered to its clients and the procedure by which they give their consent for the collection and treatment of your personal data. All this with the scope and in the sense expressed in the Law Foundations of this act.

In those cases in which the client has not been duly informed about the circumstances regulated in articles 13 and 14 of the RGPD or had not provided its valid consent, BBVA will not be able to collect and process the data personal. The same applies in relation to data processing based on the legitimate interest of BBVA or third parties.

In accordance with the above, in relation to the personal data of

customers who have given their consent through the form called

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“Declaration of economic activity and personal data protection policy”, proceeds

that BBVA, within the period indicated in the operative part, cease data processing

following personal data: processing of personal data consisting of offering customers

products and services of the BBVA entity itself, of the BBVA Group and others personalized for

the client; cessation of the processing of personal data of its clients consisting of

communicate such data to the companies of the BBVA Group so that they can offer them products

and own personalized services for the client; and cessation of data processing

of its customers to improve the quality of new and improved products and services.

existing.

Likewise, it is appropriate to require BBVA so that, within the period indicated in the

operative, notify the entities of the BBVA Group to which you have communicated data

information of clients who have given their consent through the form

called “Declaration of economic activity and data protection policy

personal” that must delete such data and stop using them for

offer its holders products and services of the entities of the Group

customized for the client and to improve the characteristics and prices of the offer of

products and services.

In the same way, it is appropriate to require BBVA so that, within the period indicated in the

operative part, cessation of the processing of personal data that the aforementioned entity

based on the legitimate interest of BBVA or third parties.

It is noted that not meeting the requirements of the AEPD may be considered

as a serious administrative infraction by "not cooperating with the Control Authority" before the

requirements made, and such conduct may be sanctioned with a pecuniary fine.

The allegations to the proposed resolution formulated by the entity BBVA do not

contain no observations on these matters.

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

sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity BANCO BILBAO VIZCAYA ARGENTARIA, S.A., with NIF

A48265169, for an infringement of articles 13 and 14 of the RGPD, typified in article

83.5.b) and classified as minor for prescription purposes in article 74.a) of the LOPDGDD,

a fine amounting to 2,000,000 euros (two million euros).

SECOND: TO IMPOSE the entity BANCO BILBAO VIZCAYA ARGENTARIA, S.A., for a

infringement of article 6 of the RGPD, typified in article 83.5.a) and classified as very serious

for prescription purposes in article 72.1.b) of the LOPDGDD, a fine amounting to

3,000,000 euros (three million euros).

THIRD: REQUEST the entity BANCO BILBAO VIZCAYA ARGENTARIA, S.A. what for,

within a period of six months, adapt to the personal data protection regulations the

treatment operations that it carries out, the information offered to its clients and the

procedure by which they must give their consent for the collection

and treatment of your personal data, with the scope expressed in the Basis of

Right X. Within the indicated period, BBVA must justify before this Spanish Agency of

Data Protection attention to this requirement.

FOURTH: NOTIFY this resolution to BANCO BILBAO VIZCAYA ARGENTARIA,

S.A.

FIFTH: Warn the sanctioned person that he must make the imposed sanction effective once

This resolution is executive, in accordance with the provisions of art. 98.1.b) of the

Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter LPACAP), within the established voluntary payment term

in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005,

of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its

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

heading of this document, in restricted account number ES00 0000 0000 0000 0000

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

CAIXABANK, S.A.. Otherwise, it will be collected during the executive period.

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

days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be until

on the 20th day of the following month or immediately after, and if it is between the 16th and

last of each month, both inclusive, the payment term will be until the 5th of the second month

next or immediately following business.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

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

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13

July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to

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

46.1 of the aforementioned Law.

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

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan 6

APPENDIX 1

“DECLARATION OF ECONOMIC ACTIVITY AND DATA PROTECTION POLICY

PERSONAL”

(…)

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