 File No.: EXP202105931

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On January 30, 2023, the Director of the Spanish Agency for

Data Protection agreed to initiate sanction proceedings against BANCO BILBAO

VIZCAYA ARGENTARIA, S.A. (hereinafter, the claimed party), through the Agreement

which is transcribed:

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File No.: EXP202105931

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following:

FACTS

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated November 9

of 2021 filed a claim with the Spanish Agency for Data Protection. The

The claim is directed against BANCO BILBAO VIZCAYA ARGENTARIA, S.A. with NIF

A48265169 (hereinafter, the claimed party or BBVA). The reasons on which the

claim are as follows:

The claimant states that she was a client of the entity claimed until 2012,

year in which you canceled the account you had open with said entity.

On the other hand, it indicates that after learning that said entity had

provided your data to the Risk Information Center of the Bank of Spain, in

relation to an alleged debt, on September 21, 2021, requested the

claimed entity access to your data, specifically, access to your personal data

object of treatment, copy of all recordings made between the years 2016

and 2021, extract and liquidation of the alleged debt, proof of balance and

account movements, proof of payment requirements and a copy of the contract.

Subsequently, on October 7, 2021, he received a response, indicating that it was

an overdue and payable debt that is being legally claimed (facilitating the

Court before which the procedure is followed and the number of Order). With respect to

certificate of debt and movements, indicate that the claimant's office will contact

with her when she has them and in relation to the recordings, request more

information to locate them (number of calls and dates).

The claimant reiterates her request on several occasions, also requesting the

deletion of your data and identification of the collection companies to which they have been

provided your data-

Thus, you receive several responses facilitating access to your data object of

treatment, indicating that the suppression is not appropriate for maintaining active positions

with the entity, they also indicate that they have not been able to locate the requested contract,

reiterate that they need more information regarding the recordings and indicate that, in

relation to the Risk Information Center of the Bank of Spain, said matter

is being processed in the reference files and that you will receive a response once

are finished.

Provides exchange of emails with the claimed entity.

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

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

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

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

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on December 29, 2021 as

It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: On February 9, 2022, in accordance with article 65 of the

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

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

of previous investigative actions to clarify the facts in

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

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

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

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

LOPDGDD, having knowledge of the following extremes:

RESULT OF INVESTIGATION ACTIONS

On the exercise of the right of access and the request of the recordings.

According to the information provided in the claim, the exercise of the right of access

of the claimant against the claimed party was exercised on September 21,

2021 (although it was not until September 22, 2021 that the claimant provided a

means of identification -copy of your national identity document-). As part

of the request, the claimant requires a copy of the recordings of the conversations

telephone calls made by the BBVA Customer Service Department and by the

companies that would have subcontracted between 2016 and 2021.

The defendant responded to the claimant on October 7, 2021 requesting

more information in order to retrieve the recordings (“such as the number of calls

and their dates for their location"). The claimant, in response to the

On the same day, October 7, 2021, he reiterated the request, stating that "it is you who

They should keep control of them."

On October 21, 2021, BBVA provided the claimant with the following

information in response to the exercise of the right of access:

“Next, in accordance with the provisions of art. 15 of Regulation (EU)

of the European Parliament and of the Council of April 27, 2016 (General Regulation

of Data Protection) and article 13 of Organic Law 3/2018, of December 5,

Protection of Personal Data and guarantee of digital rights, we give course

to your right of access request:

I.- ORIGIN AND PURPOSE OF PROCESSING

The personal data that works in this entity have been provided

for you.

In addition, personal data has been generated during the contractual relationship between the

parties as a result of the management of said relationship.

Treatment purposes:

If you are a BBVA customer:

Manage the contractual relationship of the products and services that you request or contract with BBVA.

Comply with legal obligations and regulations applicable to BBVA.

Inform and consult credit information systems.

Prevent fraud.

II. CATEGORIES AND DATA SUBJECTED TO TREATMENT

At BBVA we process the data that we show you below and that comes from information that you have provided to us directly, information that we have collected or generated about you and information we have obtained from other sources.

At BBVA we process this data in relation to the products and services you have contracted with us and with respect to those products and services of which it is marketer.

[…] Data subjected to treatment:

NAME: ***NAME.1

LAST NAME1: ***LAST NAME.1

LAST NAME 2: ***LAST NAME.2

COUNTRY OF BIRTH: ***COUNTRY.1

PLACE OF BIRTH: ***LOCATION.1

DATE OF BIRTH: ***DATE.1

GENDER: ***GENDER.1

NIF: ***NIF.1

TAX ADDRESS: ***ADDRESS.1

LOCATION: ***LOCATION.1

ZIP CODE: ***C.P.

PROVINCE: ***LOCATION.1

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

COUNTRY: ***COUNTRY.1

ADDRESS: ***ADDRESS.1

LOCATION: ***LOCATION.1

ZIP CODE: ***C.P.1

PROVINCE: ***LOCATION.1

COUNTRY: ***COUNTRY.1

LANDLINE: ***PHONE.1

MOBILE PHONE: ***PHONE.2

EMAIL: ***EMAIL.1

MARITAL STATUS: ***STATUS.1

MARRIAGE REGIME: *** REGIME.1

TYPE OF OCCUPATION: ***OCCUPATION.1

accounts

[…]

[…]

Pension plans

[…]

The MIFID classification carried out by the Entity in its name is: ***CLASSIFICATION.1.

III.- RECIPIENTS OR CATEGORIES OF RECIPIENTS TO WHOM

THE PERSONAL DATA HAS BEEN COMMUNICATED OR WILL BE COMMUNICATED.

As we have previously indicated, BBVA can communicate the following

data to the following entities:

to the Risk Information Center of the Bank of Spain (CIRBE) we communicate

risk operations based on compliance with legal obligations;

[…] to Judges, Courts, the Public Prosecutor and/or Public Administrations

competent we communicate the necessary information before possible claims

when we are forced to.

[…] IV. CONSERVATION PERIOD

We will keep your personal data during the validity of the contractual relationship or

as long as they are necessary for the specific purpose of each treatment. Once

If they are deleted, we will keep blocked those that are necessary to:

Yo. compliance with legal obligations; in particular:

a) 10 years in application of the regulations for the prevention of money laundering and

terrorist financing.

b) During the maximum period of time established by the regulation in which

submitted by financial entities regarding the calculation of capital and provisions (Bank

European Central Bank, European Banking Authority and Bank of Spain).

ii. and during the legal prescription periods for the exclusive purposes of claims

or legal actions.

After these periods, we will destroy your personal data."

The claimant, on the same day, October 21, responds to the above and states that she does not

You have been provided with a copy of the recordings of the telephone conversations

requested.

BBVA, in the email addressed to the claimant on October 29, 2021, reiterates in

regarding the request for the recordings that "it is necessary that you provide us with more

information on this matter such as the number of calls and the dates on which

they produced the same ones for their localization". To this, the claimant expresses

again that "it is up to you to keep track of them and, therefore,

Therefore, you must be the ones who immediately proceed to facilitate the

requested recordings.

The claimed party, in the letter of January 26, 2022 addressed to the claimant

states that "he was required [...] to provide us with more information in this regard as the

number of calls and the dates on which they occurred, in order to

to be able to locate it, without receiving a response to date

On your part."

On the validity of the contractual relationship and the right of deletion

The claimant states in the claim that she was a client of the entity until, in

In 2012, their contractual relationship ceased. On this matter, requests were made to the

claimant the evidence that he had the termination of the relationship with the party

claimed. The latter stated that it does not have them, since more than

ten years.

According to the information provided in the claim, the exercise of the right of deletion

of the claimant against the claimed party was exercised through email

on October 7, 2021. BBVA, in the email addressed to the claimant on October 21,

October 2021, stated that the cancellation is not possible since "it keeps in the

Entity active positions". And he added that "In order to carry out the effective suppression of

your personal data, no position or commercial relationship with

our Entity, for which we ask you to go to a BBVA office, in order to

that they duly inform you about it.” On the same day, October 21, the claimant

expressed to the respondent the following objection in relation to the denial of the

exercise of suppression due to the existence of active positions: "the judicial procedure

of the [sic] that you mention is from the year 1997, so said procedure,

considering the time elapsed (more than 24 years), it is more than manifestly

archived and finished, for which I require you to proceed with the deletion of

my data for understanding that there are no active positions since you DO NOT accredit

that they are." Likewise, on November 4, 2021, he again requested the

deletion of your personal data to the defendant.

BBVA has provided two communications addressed to the claimant (dated 24

November 2021 and dated January 26, 2022) in which, in relation to the

right to delete your personal data, states that it is not possible due to

the existence of active positions. In addition, it states that, once all

contracting with the entity, your personal data will be blocked during the period

Mandatory conservation in accordance with the regulations on data protection.

On the existing active positions that prevent the deletion of the data the part

The defendant cites the existence of a current pension plan-type product

(“Contract Account” […]) whose owner is the claimant. In this regard, it facilitates

screenshot of your systems with product information. Among other

information, the capture states that the contract is “Current” and “Active”.

In addition, among the information provided in response to the exercise of the right of access

is the following: "[...] Pension plans [...]".

About CIRBE and the data of the claimant registered by the claimant

C / Jorge Juan, 6

28001 – Madrid

The Bank of Spain has explained how CIRBE works and registrations

made by the defendant in relation to the claimant.

It states that, until April 2016, by virtue of Circular 3/1995, the

entities did not declare “operations but risks”. And about the existence of data from

the claimant communicated to CIRBE by the claimant states that "since it is

operations below the minimum declaration threshold BBVA, S.A. did not declare to

the CIR information about the interested party.” On this, he has provided the reports of the

risks declared by the defendant on the claimant between April 2015 and March

of 2016, in which it is stated that the defendant has not declared operations of the

claimant.

The Bank of Spain adds that in April 2016 the entry into force of the Circular

1/2013 encouraged entities to declare their operational risks at

operation, "including in its declaration practically all the operations of

headlines". However, it qualifies that not all the operations declared were included

in the risk report that is transferred to the entities authorized to consult. To this

In this regard, it breaks down two periods:

- From April 2016 to January 2021, they were not included in the report that was

ceded operations with an entity when the accumulated risk of the holder

with said entity was less than 9,000 euros.

- Since January 2021, the accumulated risk threshold with the entity has been lowered

settling at 1,000 euros.

In relation to this period (as of April 2016) the Bank of Spain

specifies two operations declared by the defendant in relation to the claimant:

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The first one corresponds to an account overdraft for an amount of

X.XXX euros with date of origin August 19, 1999.

The second one corresponds to an overdraft in an account for an amount of

XX euros whose date of origin is April 15, 2014.

Regarding the transfer of the information of the two operations to third parties,

The Bank of Spain states that, as the accumulated risk with the claimant is lower

at 9,000 euros, these operations were not ceded until the threshold was changed to

1,000 euros in January 2021. Thus, he states that they were transferred to the Bankinter entity

Consumer Finance, E.F.C., S.A. (hereinafter Bankinter) the corresponding reports

to the periods from January 2021 to August 2021 (he cites that "the date of

The communication to this entity of the operations coincided with the closing of each of the

ceded periods.").

According to the information provided by the Bank of Spain (on September 21,

2021 the claimant requested the suppression of the operations registered with CIRBE

motivating that he had no relationship with the entity. Furthermore, the Bank of

Spain, which on October 11, 2021, notified the claimant that it was proceeding to

process your request and proceeded to forward it to the defendant. In addition, he points out

that blocked the information in CIRBE. Subsequently, according to appointment, on the 16th of

November 2021, he received a letter from the defendant in which they proceeded to

"to process the deregistration of the risks for the processes already presented and future", and on the 19th

August 2022 informed the claimant that the respondent had rectified the information subject to your request. The Bank of Spain adds that due to the request "the transfer of subsequent data was suspended and Bankinter was notified that the data that had been provided to you in the previous months were blocked by application of article 66 of Law 44/2002 and when, finally, BBVA rectified their declarations, canceling the operations declared from previous periods, these rectifications were also communicated to Bankinter".

The Bank of Spain has provided monthly reports on risks associated with the claimant declared by the respondent between April 2016 and May 2022 (retrieved in June 2022). The reports note the following:

- Between April 2016 and September 2020 there are no operations, but the Mention that there are accumulated risks for an amount of less than 9,000 euros. In relation to the reason why these data continue to appear after the management of the claimant's request, the Bank of Spain has indicated that "Said risks were not susceptible to a claim for rectification and/or cancellation, since said information was only accessible to the Bank of Spain and for the risk holder, but not for the reporting entities".

- Between October 2020 and May 2022 (last month provided) the reports that the claimant specify that the claimant has not been declared by the claimed to CIRBE. The Bank of Spain states that the reason for which no records appear "is due to the retroactive deletion of the operations previously declared by that entity"

On the existence of the claimed debt

The following information has been extracted from the information obtained:

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The first one, referred to by the contract number […] and the number of account account […], corresponds to an overdraft in an account for an amount of X.XXX euros with date of origin August 19, 1999. On this, in October 2021, the defendant states that he is being subjected to a judicial proceeding "before the Court of First Instance No. XX of Madrid with auto ***AUTO.1". In addition, at the request of the claimant, it indicates that could not locate the copy of the contract. After the claim made before the Bank of Spain, on November 16, 2021, the defendant, "after reviewing the status of the contracts", reported the deregistration of this debt in CIRBE. Likewise, in the letter addressed to the claimant on January 12, 2022 states that the debt was forgiven on November 23, 2021.

The second of them, referred to with the contract number […] and the number of account […], corresponds to an overdraft in an account amounting to XX euros whose date of origin is April 15, 2014. On this, in October 2021 The defendant declares that he has proceeded to remit and withdraw from CIRBE. In addition, it provides a list of movements made between the 14th of January and April 15, 2014 for card fees and settlements of interests. After the claim made before the Bank of Spain, on 16 November 2021, the defendant, "after reviewing the situation of the contracts", reported the deregistration of this debt with CIRBE. Likewise, in the letter addressed to the claimant on January 12, 2022 states that the debt was

waived in view of the allegations made by the claimant on

October 2021.

About debt collection

The claimant states that she received a call from Intrum on behalf of the

claimed on November 9, 2021. Attach a document to the claim

(PrintScreen) in which a call is made from the number

***PHONE.3 made at 2:44 p.m. “today”. In the claim, the claimant

Enter ***TELEPHONE as your phone number.2.

According to the information obtained, Telefónica is the operator that manages the number of

phone ***PHONE.3. This has reported that the owner of the number is Intrum.

In addition, it has confirmed that it is aware of a call made on November 9,

2021 from this number to the claimant's number.

Intrum has stated that it maintains a service provision contract with the defendant.

services for debt recovery service signed on July 2, 2021

(attached as document number 2 the clauses of the contract related to the treatment

of personal data). It indicates that the calls were made following the

instructions of the defendant in order to claim on his behalf a debt for

amount of XXXX.XX euros from a "Vista Account". Add that the

file has been "under management" by Intrum as the person in charge of

treatment between November 8 and 25, 2021. Provide in your letter a

screenshot of their systems in which the data of the claimant to the

who has had access. It states that the defendant, on November 24, told him that

stop handling the case. Thus, it adds that on November 25, 2021 the data

of the claimant were returned to the defendant and "a copy was kept in

our systems, duly blocked, which has had to be recovered to

respond to this requirement.

On the exercise of the right of rectification

In response to the receipt of personal data after exercising the right to

access mail dated October 21, 2021, the claimant (Mail of the same day

October 21, 2021) states that the data referring to the type of occupation and the

marriage regime are erroneous and requests that the origin and date on

that were obtained.

Regarding this, the communication sent by the defendant to the claimant on the 24th of

November 2021 states that "if you consider that the personal data contained in

the Entity are not correct, you can request their rectification/deletion,

specifying the inaccurate and correct data or the specific data you want

suppress". In addition, the defendant states that he has not received a request for rectification

signed in which the correct data is indicated.

CONCLUSIONS

Previous investigation actions initiated as a result of the receipt of a

claim in which the claimant states that, despite having ceased to be

client of the defendant in 2012, in September 2021 he learned that he

had two debts registered in his name at the Risk Information Center

of the Bank of Spain (CIRBE). It also states that it has exercised the rights of

access, rectification, and deletion of your data against the defendant without having obtained

their full satisfaction.

In relation to the debts registered with CIRBE, the evidence obtained during the proceedings have revealed that:

- Both debts, one originating in 1999 and the other in 2014, were classified as account overdrafts.

- Both debts have been canceled by the defendant after the claims made by the claimant in 2021 before the Bank of Spain and the AEPD. The defendant specified that the forgiveness occurred "after reviewing the contract status.

- Prior to its remission, between November 8 and 25, 2021, Intrum, as the person in charge of treatment of the defendant, performed recovery of one of the debts that involved telephone contact with the claimant. On November 24, 2021, the defendant ordered the cessation of the activities and proceeded to return the data.

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CIRBE's regulation has modified over time both the type of information that entities must register as the information that is transferred to the consultants. Therefore, until April 2016 the defendant did not registered data of the claimant. In addition, until January 2021 it will not be They gave up the recorded data. The information corresponding to the two registered debts was transferred to Bankinter between January and August 2021.

- In September 2021, the claimant requested the Bank of Spain to suppress of operations registered with CIRBE. The Bank of Spain suspended the transfer of the data, communicated the fact to Bankinter, and forwarded the request to the reclaimed. On November 16, 2021, the defendant informed the Bank of Spain to proceed to "discharge the risks for the processes already presented and future", a fact that caused the cancellation of the debts of

CIRBE and the communication of this to Bankinter.

In relation to the exercise of the right of access, the evidence obtained during the

proceedings have revealed that:

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The claimant exercised the right of access on September 21, 2021.

As part of the request, he requested a copy of the recordings of the

Telephone conversations made between 2016 and 2021.

- In relation to the recordings on October 7, the defendant requested the

claimant further information in order to recover the recordings (“such as the

number of calls and the dates of the calls for their location"). In view of

For this reason, the claimant pointed out that "it is you who must keep control of

the same".

- On October 21, 2021, the defendant provided the information

corresponding to the law. It did not include the recordings.

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The claimant has subsequently requested the recordings again, finding

the same response from the defendant requesting more information for your

location.

In relation to the validity of the contractual relationship and the exercise of the right of

suppression the evidence obtained during the proceedings has revealed that:

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The claimant has not provided evidence of termination of the relationship with the

reclaimed.

The claimant exercised the right of deletion on October 7, 2021.

- The defendant replied denying the deletion on October 21, 2021

due to the existence of active positions while indicating to the claimant

to “go to a BBVA office, in order to be duly informed

about."

- Among the information provided by the defendant to the claimant on the 21st of

October 2021 in the response to the exercise of the right of access

finds the reference to a pension plan (in addition to the two accounts

from which the alleged debts registered with CIRBE derived).

- The defendant has motivated the non-deletion of the data of the claimant against

to this AEPD during the term of the pension plan associated with the claimant.

In relation to the exercise of the right of rectification, the evidence obtained

during the proceedings they have revealed that:

- In response to the receipt of personal data after the exercise of the

right of access the claimant on October 21, 2021 informed the

claimed that the data referring to the type of occupation and the regime

matrimonial were erroneous and requested that the origin and date be indicated in

that were obtained.

- On November 24, 2021, the defendant replied to the claimant stating:

"If you consider that the personal data that is recorded in the Entity is not

correct, you can request their rectification/deletion, specifying

the inaccurate data and the correct ones or the specific data that you want to delete”.

- The defendant has stated to this AEPD that he has not received a request for

signed rectification in which the correct data is indicated.

FUNDAMENTALS OF LAW

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Competence

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

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

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

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

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

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

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

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

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

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

subsidiary, by the general rules on administrative procedures."

II

breached obligation

The defendant is accused of committing two offenses for violation of the

articles 6.1 and 15 of the GDPR.

Article 6 of the GDPR, under the heading "Lawfulness of processing", details in its section

1 the cases in which data processing is considered lawful:

"1. Processing will only be lawful if it meets at least one of the following

conditions:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the

responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment

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

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

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

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

consent of the affected any manifestation of free, specific,

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

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

For its part, the right of access of the interested party, included in article 15 of the

GDPR, establishes that:

"1. The interested party shall have the right to obtain from the data controller

confirmation of whether or not personal data concerning you is being processed and, in such

case, right of access to personal data and the following information: a) the

purposes of the treatment; b) the categories of personal data concerned; c) the

recipients or categories of recipients to whom they were communicated or will be

communicated personal data, in particular recipients in third parties or

international organizations; d) if possible, the expected period of conservation of

the personal data or, if this is not possible, the criteria used to determine this

term; e) the existence of the right to request from the controller the rectification or

deletion of personal data or limitation of the processing of personal data

relating to the interested party, or to oppose said treatment; f) the right to submit a

claim before a control authority; g) when the personal data is not

have obtained from the interested party any available information about its origin; h) the

existence of automated decisions, including profiling, to which

referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, information

about the logic applied, as well as the importance and consequences

provisions of said treatment for the interested party.

2.When personal data is transferred to a third country or to an organization

international, the interested party shall have the right to be informed of the guarantees

appropriate under Article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data object of

treatment. The person in charge may receive for any other copy requested by the

interested party a reasonable fee based on administrative costs. when the

The interested party submits the application by electronic means, and unless he requests

otherwise provided, the information will be provided in an electronic format of

Common use.

4. The right to obtain a copy mentioned in section 3 will not negatively affect

to the rights and liberties of others."

Classification and classification of the offense

II

The infringements for which the party complained against is held responsible in the present

initiation agreement are typified in article 83 of the GDPR which, under the

heading "General conditions for the imposition of administrative fines".

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

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

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

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

amount:

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

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

b) The rights of the interested parties in accordance with articles 12 to 22".

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1 very serious infringement, in this case the limitation period is three years, "b) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

The LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 74.1 of minor infraction, being in this case the limitation period of one year, "c) No respond to requests to exercise the rights established in articles 15 to 22 of Regulation (EU) 2016/679, unless the provisions of the article 72.1.k) of this organic law".

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, it is considered that the facts exposed could suppose the violation both of the provisions of article 6.1 of the GDPR, and of article 15 of the same rule.

In the first place, in relation to article 6.1 of the GDPR, the documentation that works in the file shows that the conduct of the defendant contrary to the principle of legality has consisted of the operation registered in CIRBE of a debt of X.XXX euros. In his allegations he only mentions that there was a judicial claim in 1997, of which he does not give any information or documentation.

Second, in relation to article 15 of the GDPR, the entity did not act diligently, in the request for access to the information that the complaining party made about the treatment that was being carried out of your personal data, considers it unjustified that the party complained of in its response dated October 7 of 2021 require more information to locate them (number of calls and dates). The claimed party must keep the data of each conversation for the management of

its customers and Article 13 of the GDPR does not require this requirement.

IV.

Sanction proposal

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

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

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

administrative proceedings under this article for violations of this

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

effective,

deterrents

provided

and

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

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

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

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

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

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

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement."

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

76, "Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

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

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

of the offence.

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

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

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

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

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party."

In accordance with the transcribed precepts, and without prejudice to what results from the

instruction of the procedure, in order to set the amount of the fine to

impose on the claimed entity as responsible for a violation of the provisions

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

initial assessment, the following factors are considered concurrent in this case:

As aggravating factors:

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

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

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

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 70,000 € (seventy thousand euros) for the infringement of article 6 of the GDPR typified in article 83.5 a) GDPR and 72.1b) of the LOPDGDD

In relation to the infringement of article 15 of the GDPR, and without prejudice to what is of the instruction of the procedure, in order to set the amount of the sanction to imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR:

- The facts that are the subject of the claim are attributable to a lack of diligence on the part of the part of the claimed entity, (section b), by not having proceeded to the remission of all the information requested by the claimant.

The balance of the circumstances contemplated in article 83.2 of the GDPR, with regarding the infringement committed by violating the provisions of article 15 of the GDPR, allows an initial penalty of €70,000 (seventy thousand euros) to be set.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against BANCO BILBAO VIZCAYA ARGENTARIA, S.A. with NIF A48265169, for the alleged violation of the provisions of

Articles 6.1 and 15 of the GDPR, typified, respectively, in Articles 83.5.a) and 83.5.b) of the GDPR

SECOND: APPOINT as instructor B.B.B. and, as secretary, to C.C.C.,

indicating that any of them may be challenged, if applicable, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Sub-directorate General of Inspection of

Data in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of Public Administrations,

sanctions that may correspond, without prejudice to what results from the

instruction would be:

 For non-compliance with the provisions of article 6.1 of the GDPR: €70,000

(seventy thousand euros).

 For non-compliance with the provisions of article 15 of the GDPR: €70,000

(seventy thousand euros).

Thus, the total amount of the sanctions included in this initiation agreement would be

€140,000 (ONE HUNDRED FORTY THOUSAND EUROS).

NOTIFY this agreement to BANCO BILBAO VIZCAYA

FIFTH:

ARGENTARIA, S.A. with NIF A48265169, granting a hearing period of ten

business days for him to formulate the allegations and present the evidence he deems

convenient. In your statement of allegations you must provide your NIF and the number of

procedure that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the period granted for the formulation of allegations to the

present initiation agreement; which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at €112,000 (one hundred and twelve thousand euros),

resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of its amount. With the application of this reduction,

the sanction would be established at €112,000 (one hundred and twelve thousand euros) euros and its payment

will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding

apply for acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

allegations at the opening of the procedure. Voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain

established at €84,000 (eighty-four thousand euros).

In any case, the effectiveness of any of the two aforementioned reductions will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €112,000 (one hundred twelve thousand euros) or €84,000 (eighty-four thousand euros), you must make it effective by depositing it into account number ES00 0000 0000 0000 0000 0000 open in the name of the Spanish Agency for the Protection of Information in the bank CAIXABANK, S.A., indicating in the concept the number of reference of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it benefits.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement. After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On February 16, 2023, the claimed party has proceeded to pay of the sanction in the amount of 84,000 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via

against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

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

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

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

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

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

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

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

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

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

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

subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202105931, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to BANCO BILBAO VIZCAYA

ARGENTARIA, S.A.

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

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

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation Chamber of the

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

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

Contentious-Administrative Jurisdiction, within a period of two months from the

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

referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency