

968-150719

□ Procedure No.: PS/00076/2020

RESOLUTION R/00387/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00076/2020, instructed by the Agency

Spanish Data Protection Authority to BANKIA, S.A., given the claim filed

by A.A.A., and based on the following,

BACKGROUND

FIRST: On June 8, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate sanction proceedings against BANKIA, S.A.

Notification of the initiation agreement and after analyzing the arguments presented, dated 5

On August 2020, the proposed resolution was issued, as follows:

transcribe:

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Procedure no.: PS/00076/2020

Of the procedure instructed by the Spanish Agency for Data Protection and in

based on the following:

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated September 20, 2019

filed a claim with the Spanish Data Protection Agency. the claim

is directed against BANKIA, S.A. with NIF A14010342 (hereinafter, the claimed).

The reasons on which the claim is based are your personal data remained in the

files of the entity despite having ceased to be a client 16 years ago.

The claimant states that more than 16 years ago he ceased to be a client of Caja Madrid,

Bankia and for personal reasons, has had to become a client again to

resolve an inheritance issue.

When carrying out this procedure, the BANKIA branch has informed him that he is still being a client, with internal number ***CLIENT.1 with data that appeared to an address of 2002.

In order to solve the issues that led him to get in touch again with BANKIA, has proceeded to modify the data related to your person, in an office of said entity but they have not been able to explain why without having any contracted product, nor debit/credit card, checking, savings or securities account, continued to have their personal information.

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For this reason, he files a complaint with this Agency because he does not understand how it is they may have kept your data for so long, without being a customer.

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SECOND: Upon receipt of the claim, the Subdirector General for Inspection of Data proceeded to carry out the following actions:

On November 5, 2019, the claim was transferred to the entity claimed.

submitted by the claimant, for analysis, as well as to inform this

Agency as to whether the claimant had been contacted, and the decision taken in this regard to resolve the situation.

The respondent states that the data remains blocked in accordance with the regulations of data protection that allows its maintenance in this situation in which they are not accessible.

THIRD: On June 8, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter, LPACAP), by the alleged infringement of Article 5.1.b) of the RGD, typified in Article 83.5 of the RGD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in the first place, it states the defenselessness produced as consequence of setting the amount of the sanction in the initial agreement, despite the fact that has not had occasion at any time to show before the aforementioned body what could be the circumstances that could be applicable in the present case.

Secondly, it also states that it has approved, on the occasion of the full application of the RGD, a document called "Policy of conservation of the information of Bankia, S.A." (hereinafter, the "Policy"), which aims to:

- ☐ the determination of the basic internal regulations regarding the conservation of the information,
- ☐ the establishment of the obligation to keep the information during the periods required in each case, determined in said document,
- ☐ the establishment of the essential measures of conservation of the information to ensure the safety of this
- ☐ provide a basic internal regulatory framework that facilitates decision-making appropriate decisions in situations related to the conservation of information.

This Policy was updated and approved again by agreement of the Board of Directors.

Administration of March 31, 2020, and it determines the different deadlines for conservation and blocking applicable to the personal data of the interested parties.

Specifically, in accordance with the provisions of the Policy, BANKIA proceeds to blocking of the personal data of its clients once the different products or services contracted by those, through the identification and reservation of their data, adopting technical and organizational measures to prevent their treatment, including

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its visualization, except for making the data available to the judges and courts, the Public Prosecutor or the competent Public Administrations, in particular of the data protection authorities, for the demand of possible responsibilities derived from the treatment and only for the term of prescription of the same, which results fully consistent with the provisions of article 32 of the LOPDGDD.

FIFTH: On July 2, 2020, the instructor of the procedure agreed to open of a period of practical tests, taking into account the actions preliminary investigations, in file E/10272/2019, as well as the documents provided by the claimant.

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

PROVEN FACTS

FIRST: the claimant reports that their personal data has been kept by the financial entity claimed despite having ceased to be a client 16 years ago.

SECOND: on November 5, 2019, the claimed entity was notified of the

claim filed by the claimant, for analysis, as well as to inform

to this Organization as to whether it had contacted the claimant, and the

decision adopted in this regard to resolve the situation.

THIRD: December 20, 2019, the entity claimed, does not solve the situation,

alleging that the data remains blocked in accordance with the data protection regulations

data that allows their maintenance in this situation while they are not accessible.

FOURTH: on March 31, 2020, the entity claimed has proceeded to update the

the Information Retention Policy of Bankia, S.A. and solve the facts object

of this claim.

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 arts. 47 and 48.1 of the LOPDPGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the

treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

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- b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");
- c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");
- d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");
- e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");
- f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility").

Likewise, in article 32 of the LOPDGDD, the blocking of data is regulated,

establishing the following:

"1. The data controller will be obliged to block the data when

proceed to its rectification or deletion.

2. The blocking of the data consists of the identification and reservation of the same,

adopting technical and organizational measures, to prevent their treatment, including their

display, except for making data available to judges and courts, the

Prosecutor's Office or the competent Public Administrations, in particular of the

data protection authorities, for the demand of possible responsibilities

derived from the treatment and only for the term of prescription of the same. elapsed

Within this period, the data must be destroyed.

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3. Blocked data may not be processed for any purpose other than

that indicated in the previous section.

4. When for the fulfillment of this obligation, the configuration of the system of

information does not allow blocking or requires an adaptation that implies an effort

disproportionate, a secure copy of the information will be made so that

there is digital evidence, or of another nature, that allows proving the authenticity of the

same, the date of the blockade and the non-manipulation of the data during the same.

5. The Spanish Data Protection Agency and the regional authorities of

data protection, within the scope of their respective powers, may set

exceptions to the blocking obligation established in this article, in the cases in which

that, given the nature of the data or the fact that they refer to a number

particularly high number of affected, its mere conservation, even blocked, could generate a high risk for the rights of those affected, as well as in those cases in which the conservation of the blocked data could imply a cost disproportionate for the data controller.”

III

It is considered proven that the respondent entity kept in its records the personal data of the person claimed, despite the fact that 16 years have elapsed since their last commercial relationship, since he had them when the claimant went again to said financial entity to contract a new financial service in September 2019.

Therefore, the defendant is imputed the commission of an infraction for violation of article 5.1.b) of the RGPD, which regulates the principle of purpose limitation, establishing that personal data will be collected for specific, explicit purposes and legitimate, and will not be further processed in a manner incompatible with said purposes, as well. The same also establishes the proactive responsibility of the data controller to demonstrate compliance.

IV

In response to the allegations presented, it should be noted that the Agency Spanish Data Protection Agency, on November 5, 2019, transferred to the entity claimed from the claim filed by the claimant, for analysis, as well as for to inform this Agency about whether he had contacted the claimant, and the decision adopted in this regard to resolve the situation raised. Despite this, the respondent stated that the data remained blocked. in accordance with the data protection regulations that allow its maintenance in this situation while they are not accessible, not solving the problem or updating your data retention policy, until March 2020.

In this sense, it should be noted that, as indicated in the foundation

of law II, article 32.2 of the LOPDGDD, establishes that:

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“The blocking of data consists of the identification and reservation of the same, adopting technical and organizational measures, to prevent their treatment, including their display, except for making data available to judges and courts, the Prosecutor's Office or the competent Public Administrations, in particular of the data protection authorities, for the demand of possible responsibilities derived from the treatment and only for the term of prescription of the same. elapsed Within this period, the data must be destroyed. “

Therefore locked data cannot be accessible to security workers.

the offices of financial institutions, and yet it has been so in this case, as as has been verified.

When talking about blocked data in the mentioned article, it means that can only be accessible to judges and courts, the Public Prosecutor or the Competent Public Administrations, in particular the authorities for the protection of data.

On the other hand, it should be noted, in relation to his allegations of defenselessness, that In article 64 of Law 39/2015, it is established with respect to the agreements for the initiation of procedures of a sanctioning nature the following:

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified,

understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a)

Identification of the person or persons allegedly responsible.

a) The facts that motivate the initiation of the procedure, its possible qualification and the sanctions that may correspond, without prejudice to what results from the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attributes such competence, indicating the possibility that the alleged perpetrator may voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopt during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in case of not make allegations within the stipulated period on the content of the initiation agreement, it may be considered a resolution proposal when it contains a pronouncement precise about the imputed responsibility.

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3. Exceptionally, when at the time of issuing the initiation agreement there is no there are sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be made at a later stage through the preparation of a List of Charges, which must be notified to the interested."

Likewise, in order to apply article 85 of Law 39/2015, to which the cited article 64.2 d) of said legal text, before pecuniary sanctions, the offender may benefit from a reduction of 20 or 40% of the sanction, for acknowledgment of responsibility, for prompt payment, or both, so for this, it is It is essential to establish an amount, since if the amount of the sanction is not imposed, the procedural rules established in law 39/2015 could be complied with.

It should be noted, however, that this does not prevent the completion of the proceeding with a resolution that establishes a fine different from that of the settlement agreement. beginning, if evidence or documents are provided throughout the procedure that accredit that the assessment of the facts that are the object of this infringement must be different.

On the other hand, article 72.1.a) of the LOPDGDD states that "according to what established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and The infractions that suppose a substantial violation of the the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

v

The infringement allegedly committed is typified in article 83.5 a) of the RGPD, that considers that the violation of the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9; will be penalized with

administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

goes (article 83.2 b)

☐ Basic personal identifiers are affected (name, surnames,

address, telephone), according to article 83.2 g)

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

BANKIA, S.A., with NIF A14010342, for an infringement of article 5.1.b) of the RGPD,

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typified in article 83.5 of the RGPD, in relation to article 72.1 a) of the LOPDGDD,

with a fine of €50,000 (fifty thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

informs you that you may, at any time prior to the resolution of this

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

a reduction of 20% of the amount of the same. With the application of this reduction, the

sanction would be established €40,000 (FORTY THOUSAND euros) and its payment will imply the

termination of the procedure. The effectiveness of this reduction will be conditioned to the Withdrawal or waiver of any administrative action or recourse against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, must do so effective by depositing it 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., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause, by voluntary payment, of reduction in the amount of the penalty. Likewise, you must send proof of admission to the Subdirector General for Inspection to proceed to close the file.

By virtue thereof, the foregoing is notified, and the procedure so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP).

BBB

INSPECTOR/INSTRUCTOR

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: On August 20, 2020, BANKIA, S.A. has proceeded to pay the

SECOND

sanction in the amount of 40,000 euros making use of the reduction foreseen in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

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38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

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

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time 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 infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction. The reduction percentage provided for in this section may be increased regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00076/2020, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to BANKIA, S.A.

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

This Resolution will be made public once it has been notified to the interested parties.

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

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

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

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

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

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

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