 Procedure No.: PS/00473/2020

RESOLUTION R/00247/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00473/2020, instructed by the Spanish Agency for

Data Protection to KUTXABANK, S.A., given the complaint filed by A.A.A., and

based on the following,

BACKGROUND

FIRST: On March 23, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against KUTXABANK, S.A.

(hereinafter, the claimed party), through the Agreement that is transcribed:

<<

Procedure No.: PS/00473/2020

AGREEMENT TO START A SANCTION PROCEDURE

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

based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) on 01/31/2020 filed

claim before the Spanish Data Protection Agency. The claim is

directed against KUTXABANK, S.A. with CIF A95653077 (hereinafter, the claimed one). The

The reasons on which the claim is based are that he applied on 12/9/2019 and obtained the following day.

Follow the response to the deletion of your personal data. I have tried to open a

account and in said office they tell me that “it is not possible since I have the data inaccessible.

bles”. “I contacted the indicated Department and they told me that for

my data was unlocked and it was possible to open my new account I had to fill in

a document that they provided, along with a copy of the DNI”.

Provides:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/17

1. Document form "exercise of the right of deletion" by the completed, signed

received on 12/9/2019 and a response on 12/10/2019 indicating that “the addition of

pressure in relation to your personal data, without prejudice to the provisions

in article 17.3 of the GDPR”

2. Writing indicating the reason why “my data is not accessible and the so-

solution”, containing the literal in which they inform you: “in response to your request, we inform you

We found that, once analyzed in our information system, the character data

ter personnel who were subject to treatment by the organization are ac-

currently blocked after request exercise of the right of deletion, made by

your part on December 9, 2019.” “If you want your data to be unlocked

and can be used again by the entity, you must complete the document

that we provide attached to this email and send it to the address…”

3. Form with the logo of the claimed party, without name or title on the model, in which

the undersigned declares and certifies:

a. “That I have been duly informed of the possibility of exercising the right

right to delete personal data.

b. That said right of suppression was exercised by me before KUTXA-

BANK, S.A. as data controller, in accordance with the provisions of art.

Article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27

of April 2016, regarding the protection of natural persons with regard to

treatment of personal data and the free circulation of these data and that was attended

delivered correctly in a timely manner.

c. That with the signing of this document I revoke the right of suppression that I exercise-

be unlocked-

quoted in the past and I authorize my personal data

two and can be used by the entity for the maintenance and development of

the relationship established between the parties

. “

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/17

SECOND: In view of the facts denounced in the claim and the documents

data provided by the claimant, the Subdirectorate General for Data Inspection pro-

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

da, of the Organic Law 3/2018, of 5 /12, of Protection of Personal Data and guarantee

of digital rights (hereinafter LOPDGDD) to transfer the claim to the

claimed on 06/19/2020.

On 07-09-2020, your response was entered in which it indicates:

1. He sent the claimant, on July 7, 2020, a letter, “in which it was resolved

see each of the controversial aspects in relation to the revocation of the exercise

right of suppression exercised by the claimant in the past in order to

register as a customer. Accompany delivery document to the claimant. What

DOCUMENT 1 provides a copy of the answer. In it, it is stated that "he put himself in

The comprehensive contingency plan is underway and a process of analysis and

investigation of the facts, which together with the measures implemented allow guaranteeing

guarantee total security in the procedure for exercising corporate rights,

in such a way that it is impossible for a misinterpretation of the document to occur

to which he alludes in his complaint".

2.Indicates that, on December 9, 2019, it received a request to exercise the right

deletion by the claimant in the enabled email box

to that effect. A copy of the application is sent as DOCUMENT 2.

On 12/10/2019, the request of the interested party was made effective, communicated

giving you the result of the suppression carried out by means of a communication referral

certified to the address of the claimant, as well as by email. They are attached to

present written as DOCUMENT 3.

-On 01/30/2020 two new applications are received in the mailbox of the Delegate of

Corporate data protection, ***EMAIL.1 by the claimant:

-In the letter received at 01/30/2020 at 2:36 p.m., I requested the exercise of the right

of access in accordance with the provisions of art. 15 of the GDPR.

-In the letter received at 7:48 p.m. on 01/30/2020, it stated that, when trying to open

an account at KUTXABANK, S.A., repeatedly, was informed that

was not possible, alluding to reasons related to the regulations in force in ma-

data protection matter.

Attached, these requests are sent as DOCUMENT 4, although it is only a

email from the claimant of 01/30/2020 to the claimed, without reading anything.

3- On 01/31/2020, the claimant was answered by email. You are informed

It was found that, once the KUTXABANK, S.A. information system had been analyzed, the data

of a personal nature that were subject to treatment by the organization were found

ban blocked after request to exercise the right of deletion made by your

part dated 09/12/2019.

Likewise, he was told that said blockade consisted of the “identification and reservation of

the data, and in the adoption of the appropriate technical and organizational measures, to

prevent its treatment, including its visualization, except for the provision

data from judges and courts, the Public Prosecutor's Office or Public Administrations.

competent public authorities, in particular the data protection authorities for the

requirement of possible responsibilities derived from the treatment and only for the term

of prescription of the same.”

Add, that “it was brought to his attention that the blocked data could not be transferred.

used for any purpose other than that stated above. Also, it is in-

invited him to send a duly completed document that was attached to the

communication, together with a copy of your D.N.I or equivalent document that proves your

identity."

The document to be completed only “is a signed statement that serves

the organization as proof of having complied with its reporting obligation.

information about the possibility of exercising the right of suppression, the effective

tivation of the aforementioned right in a timely manner upon request by you and the authorization

unlocking of your identifier to be able to proceed again to the collection of

the personal data of the interested party”

. (the underlining is from the AEPD)

On 01/31/2020, the claimant submitted the completed document together with

a copy of your D.N.I at a branch.

It states that it attaches the response given to the client, as well as the document signed-

do for his part as DOCUMENT 5, although said document is not provided.

4- On the same date, 01/31/2020, KUTXABANK, S.A., proceeded to process its registration as

new customer in accordance with the Natural Person Registration Procedure established

Statement

in the organization and the signature of the document called

of personal data

in which the basic and management data were collected again

more significant. It states that I enclose a copy of the aforementioned Declaration of Data signed

called by the claimant as DOCUMENT 6, although it does not appear.

- On 01/31/2020 it is received at the KUTXA Customer Service Department-

BANK, S.A., claim by Mr. A.A.A. in similar terms to the manifest-

do in the request addressed to the email box of the Protection Delegate of

Corporate data as of 01/30/2020.

- On 02/03/2020, from the Customer Service Department of KUTXABANK, S.A.,

The interested party was given a response. Attached it says that the claim letter is sent

tion, as well as the response given by the entity as DOCUMENT 7, when no

contained in your claim or files or associated files

5- KUTXABANK, S.A., has proceeded to supervise the policies and procedures

corporate matters regarding the exercise of rights and related to the processing of

registration of new clients.

-KUTXABANK, S.A., has developed the necessary procedures for the strict compliance with current regulations and guarantee to interested parties full respect for their rights, through the elaboration and approval before the Protection Committee of data from a corporate Exercise of Rights Policy. Said Policy indicates that, in order to guarantee compliance with the provisions of art. 32 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights, the blocking of the data will suppose the reservation of the same, adopting technical and organizational measures to prevent their processing, including its display, except for the cases provided for in the second section of di-eight article, that is, the fulfillment of normative obligations or the resolution of petitions from organizations with competence in the matter and/or analogous claims gas.

It says that the aforementioned Policy for the exercise of rights is attached as DOCUMENT 8, although it is not among what was sent.

- KUTXABANK, S.A., has developed in its corporate management program, a mar-ca called "Blocked LOPD" that is associated with the identifier of the client that has exercised the right of suppression against KUTXABANK, S.A., to ensure the correct implementation of said blockade.

In this sense, the organization has verified that at the moment in which the claim constantly goes to different branches of KUTXABANK, S.A., with the intention of opening an account, the managers when entering their D.N.I in the management program previously indicated, the notice was displayed on the screen: “Information not accessible. Client-Contract Confidential / Client Blocked LOPD ”, thus preventing access to the data. He says a screenshot is attached as evidence of the notice as DOCUMENT 9, when do not appear.

-KUTXABANK, S.A., in compliance with the principle of proactive responsibility (Ac-

accountability), in all cases in which the interested parties exercise their right of

suppression before the organization and request to return to being clients of the Entity, we

wants the completion and signature of the acceptance document previously referred to

as evidence that the applicant is aware of having exercised the right

suppression right before KUTXABANK, S.A., in the past and as proof that the

za for your identifier to be unlocked in order to be able to process a new

register as a client. It is therefore that the purpose of the document is none other than the interest

sado authorizes the data provided at the time of formalization of the registration of

client are incorporated into the information system of KUTXABANK, S.A., and, in

consequently, used for the development of the relationship established between the parties.

In no case are the blocked data reused as a result of the exercise of the right of su-

pressure exerted by stakeholders.

- KUTXABANK, S.A., has duly documented the specific procedure for

registration of natural person. Said procedure indicates that, if the reason for discharge from the

person is a contract, a new person will be registered, informing all their

Main data. Once the data has been completed, from the management program

corporate, the Personal Data Protection Policy document will be printed

Personal, document detailing the treatment carried out at KUTXA-

BANK, S.A., of the personal data of the clients, the delivery of which is mandatory and

Next, the document called Declaration of Danger will be signed.

Personal Data of Clients, which collects their most significant basic and management data.

you.

Attachment states that an extract of the Natural Person Registration Procedure is sent

as DOCUMENT 10, although it does not provide it.

KUTXABANK, S.A. "proceeded to block the client at the same time that the

He himself exercised his right of suppression, a situation that has been maintained in relation to

with the contractual links prior to the new registration of the subject in the information systems.

corporate training, we consider that the client's request only implies

an interpretative controversy in the terms of confirmation of the procedure, without assuming

a security breach or breach of data protection regulations

."

FOURTH: The claim was admitted for processing on 12/4/2020.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to re-

solve this procedure.

II

Interested parties must have the right to have their personal data deleted and left

be processed if they are no longer necessary for the purposes for which they were collected or processed.

otherwise, if the data subjects have withdrawn their consent to the processing

ment (considering 65 of the RGPD).

The right of deletion is the right of the interested party to demand from the person responsible for the treatment that excludes from the treatment the personal data that are unnecessary necessary for the purpose that justified the treatment. The right of suppression is a reflection of the Informative self-determination of control of the data of its owner. The usual in the re-banking relationships is that it responds to the decline in contracting a product or service vice, or it can be linked to the revocation of consent if that were the legitimate basis that supported the treatment. In any case, after time, hiring a new service would mean a new treatment different from the previous one that could require again the processing of customer data.

The right of deletion is contained in article 17 of the RGPD as a right of the in-interested, or concerned with their data, and at the same time supposes an obligation of the res-responsible (of the treatment), indicating:

1. The interested party shall have the right to obtain, without undue delay, from the controller of the treatment the deletion of the personal data that concerns you, which will be obliged to delete personal data without undue delay when any of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the processing of data is based. accordance with article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), and it is not based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and other legitimate reasons for the treatment do not prevail, or the interested party opposes ga to treatment according to article 21, paragraph 2;

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of an obligation.

legal condition established in the Law of the Union or of the Member States that

apply to the data controller;

f) the personal data has been obtained in relation to the offer of services

of the information society referred to in article 8, paragraph 1.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of

data imposed by the Law of the Union or of the Member States that is applied

than to the person responsible for the treatment, or for the fulfillment of a mission carried out

in the public interest or in the exercise of public powers vested in the controller;

c) for reasons of public interest in the field of public health in accordance with

ity with article 9, section 2, letters h) and i), and section 3;

d) for archival purposes in the public interest, scientific or historical research purposes.

or statistical purposes, in accordance with Article 89, paragraph 1, to the extent

in which the right indicated in section 1 could make it impossible or hinder

seriously impede the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims.

III

The LOPDGDD states in its article 32 "Data blocking" 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 processing, including

its visualization, except for making the data available to the judges and tri-

courts, the Public Prosecutor or the competent Public Administrations, in particular

of the data protection authorities, for the demand of possible respon-

liabilities derived from the treatment and only for the prescription period of the same.

plus.

After this period, the data must be destroyed.

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

of that indicated in the previous section.

In these cases of data deletion request, these are cases in which the

treatment of data that obey reasons such as that the treatment that is being

taking effect has lost its foundation because the interested party has revoked the agreement.

feeling or has exercised the opposition, because the contractual relationship that

served as a cause, or by the extinction of any of the other causes that regulates

the art. 6.1 of the GDPR.

The document with the logo of the claimed party, without literal, which is completed as a

client declaration, contains a fatal error stating:

"That with the signing of this document I revoke the right of suppression that I exercised

in the past and I authorize my personal data to be unlocked and

may be used by the entity for the maintenance and development of the relationship

established between the parties. “(The underlining is from the AEPD.)

The RGPD does not provide that the right of deletion can be revoked. The claimed con-

merges the right of suppression with one of the effects that the suppression can produce

data, which in contractual relationships is usually suppression with blocking effects.

data retention, that is, limited at the expense of possible liabilities (for

address possible civil claims arising from the relationship maintained with the inte-

review or information requirements in tax, criminal or criminal investigations.

prevention of money laundering, for example).

In addition, the fact that these data are blocked is not an obstacle so that with

a new or different purpose or purpose from the previous one, the data is processed again, for which

that it is not necessary and much less mandatory, to rescue or revoke the data that is

had been removed from another previous relationship. When a new relationship is established

contractual with the financial entity, it is not possible to recover the deleted data and, in its

case, blocked. The set of said data responds to a prior legal relationship

with its start and end date, and with its purposes, specific legal bases and procedures.

procedures related to the development of said relationship.

If a new relationship is initiated, the purposes and legal bases of the relationship must be taken into account.

same, which may be the same or different from the previous one, even in the event that

were the same purposes and legal bases, there would be no legitimacy to deal,

through the inadequate requirement of a revocation of the right of suppression, the

training relative to all previous treatments.

IV

The RGPD defines data processing in article 4.2 of the RGPD:

“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, diffusion or

any other form of authorization of access, collation or interconnection, limitation,

suppression or destruction

The fact of considering that for a new registration after the exercise of deletion of their

data, must be previously revoked, may involve the commission by the

claimed for an infringement of article 17 of the RGPD in relation to article 32 of

the LOPDGDD.

v

Article 83.5 b) of the RGPD, considers that the infringement of "the rights of the

interested parties according to articles 12 to 22”; is punishable, "with fines

administrative fees of €20,000,000 maximum or, in the case of a company, a

amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount.”

Article 58.2 of the RGPD provides: "Each control authority will have all the

following corrective powers indicated below:

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

The infraction is typified in article 72 of the LOPDGDD, which indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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:

n) Failure to comply with the obligation to block data established in article

32 of this organic law when it is enforceable."

SAW

The determination of the sanctions that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively,

mind, have the following:

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

proceedings under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are in each individual case effective, proportionate

nothing and dissuasive."

"two. Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated in the

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

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

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

nature, scope or purpose of the processing operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate the 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,

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/17

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 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, to what extent.

gives;

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

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

same matter, compliance with said measures;

adherence to codes of conduct under article 40 or mechanisms of

i)

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.

mind, through infraction."

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio-

tions and corrective measures":

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 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

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 treatment of

personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

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

infringement, which cannot 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

alternative conflict resolution mechanisms, in those cases in which

there are disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679."

For the assessment of the sanction, the following factors are considered:

This is not an isolated case but rather forms part of the action protocol of the

entity (83.2.d) RGPD) and the deletion of data with blocking is a daily operation

target in data processing that must be known in form and legal effects

by an entity that habitually processes personal data (76.2.b) LOPDGDD), affected

inviting all interested parties who request a new product or service after the deletion.

cio (83.2.a) of the RGPD) so that the valuation of the fine for the imputed infraction

is 100,000 euros.

Therefore, in accordance with the foregoing, By the Director of the State Agency

Data Protection Panel, IT IS AGREED:

FIRST: START A SANCTION PROCEDURE against KUTXABANK, S.A., with

CIF A95653077, for the alleged infringement of article 17 of the RGPD in relation to the

32 of the LOPDGDD, in accordance with article 83.5.b) of the RGPD, and article

72.n) of the LOPDGDD.

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

that any of them may be challenged, where appropriate, in accordance with the provisions of

articles 23 and 24 of Law 40/2015, of 1/10, on the Legal Regime of the Public Sector

co (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim

information filed by the claimant and his documentation, the documents obtained and

generated by the General Subdirectorate for Data Inspection.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1/10 of the

Common Administrative Procedure of Public Administrations (LPCAP), the

sanction that could correspond would be an administrative fine, amounting to 100,000

euros (one hundred thousand euros).

FIFTH: NOTIFY this agreement to KUTXABANK, S.A., with CIF A95653077,

granting him a hearing period of ten business days to formulate the allegations.

tions and submit the evidence you deem appropriate. In his pleadings

You must provide your NIF and the procedure number that appears in the heading

of this document.

SIXTH: If within the stipulated period it does not make allegations to this initial agreement, the

same may be considered a resolution proposal, as established in article

ass 64.2.f) of the LPACAP.

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

zo granted for the formulation of allegations to this initial agreement; what

will be accompanied by a reduction of 20% of the sanction to be imposed in the

present procedure. With the application of this reduction, the sanction would be

established at 80,000 euros, resolving the procedure with the imposition of this

sanction.

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

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

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

tion would be established at 80,000 euros and its payment will imply the termination of the pro-

transfer.

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

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The 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 it were appropriate to apply both reductions, the amount of the penalty would be

set at 60,000 euros.

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

conditioned to the withdrawal or waiver of any action or resource in the administrative process.

deal against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts

previously indicated 80,000 euros or 60,000 euros, you must make it effective

upon deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name

of the Spanish Agency for Data Protection in the banking entity CAIXABANK,

S.A., indicating in the concept the reference number of the procedure that appears in

the heading of this document and the reason for the reduction of the amount to which

welcomes

Likewise, you must send proof of income to the General Subdirectorate of Ins-

request to continue with the procedure in accordance with the amount entered.

gives.

The procedure will have a maximum duration of nine months from the date of

page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapsed

that term will produce its expiration and, consequently, the filing of actions; of

in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

>>

C/ Jorge Juan, 6

28001 – Madrid

935-200320

www.aepd.es

sedeagpd.gob.es

16/17

: On March 30, 2021, the claimant has proceeded to pay the

SECOND

sanction in the amount of 60,000 euros making use of the two planned reductions

in the Startup Agreement transcribed above, which implies the recognition of the

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 resource in via

administrative action against the sanction and acknowledgment of responsibility in relation to

the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD 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 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 Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in 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 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 with each other.

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 recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations.

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00473/2020, of

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

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

In accordance with the provisions of article 50 of the LOPDGDD, 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 procedure as prescribed by

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

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

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

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

Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

936-031219

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es