

Procedure No.: PS/00402/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated June 14, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against IBERIA LÍNEAS AÉREAS DE ESPAÑA, S.A.

UNIPERSONAL OPERATOR with NIF A85850394 (hereinafter, the claimed party).

The reasons on which the claim is based are that having been a customer with a card
Iberia loyalty program (Iberia Plus), requested to be removed from the loyalty program and
deletion of your personal data with that company.

Subsequently, he received written confirmation of the withdrawal and the
cancellation of your data. However, he continued to receive emails

electronics. Given these facts, he filed a claim with this Agency in August
2018, from which sanctioning procedure PS/00370/2018 was derived.

Thus, he has returned to receive emails from the claimed party to the
same email address in which it is clearly seen that this company has not
canceled your data and continues to appear as linked to the loyalty program
IberiaPlus.

The following documentation is provided, among others:

- Copy of the email received in your mailbox. It is reported in it that
you can authenticate in your Iberia Plus personal space not only with your
Iberia Plus number, but with your email and password.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

In addition, the following extremes are noted:

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1.-

As a result of the query made to the application of the AEPD that manages history of sanctions and previous warnings in terms of protection of data, which IBERIA LÍNEAS AÉREAS DE ESPAÑA, S.A. OPERATOR UNIPERSONAL with NIF A85850394, it is stated that on August 1, 2018 it had entry in the Spanish Data Protection Agency another claim directed against the party claimed, in which the claimant stated that he continued receiving commercial communications from IBERIA after said entity confirmed, on October 20, 2017, the cancellation of your data in response to your request, dated October 3, 2017, to withdraw from the “Iberia Plus Loyalty Card” and cancellation of your personal data. Said facts gave rise to sanctioning procedure PS/00370/2018.

two.-

The respondent party, states in response to this

claim: "Despite the fact that the claimant was discharged from the Iberia Plus program

on 10/09/2017, due to a new change implemented at the

to provide more security access to the private area of customers in the

web portal, a mass communication was sent with the requirements for the new access

to the accounts and the actions that each user had to carry out. However, in the

moment of designing the "mailing" for sending communication, which is carried out

manually, due to an involuntary error the email was erroneously included

email from this former program member."

They state that: "after analyzing the case, they have created a new project to

review the unsubscribe processes of all commercial communications of the

company, and they are going to incorporate exclusion lists and automate their application, to

avoid possible human errors in carrying out the manual processes of

preparation of distribution list. They will accompany you through a training process

the people in charge of selecting the target audience".

THIRD: On November 19, 2019, the director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE against IBERIA LÍNEAS AÉREAS

SPAIN, S.A. UNIPERSONAL OPERATOR, with NIF A85850394, for the alleged

infringement of article 6.1 of the RGPD typified in article 83.5 a) of the aforementioned RGPD".

opting for a penalty that could correspond to 20,000 euros (twenty

thousand euros), being notified on November 21, 2019.

FOURTH: Of the actions carried out in this proceeding, they have been

accredited the following proven facts:

1.-

As a result of the query made to the application of the AEPD that manages

history of sanctions and previous warnings in terms of protection

of data, which IBERIA LÍNEAS AÉREAS DE ESPAÑA, S.A. OPERATOR UNIPERSONAL with NIF A85850394, it is stated that on August 1, 2018 it had entry in the Spanish Data Protection Agency another claim directed against the party claimed, in which the claimant stated that he continued receiving commercial communications from IBERIA after said entity confirmed, on October 20, 2017, the cancellation of your data in response to your request, dated October 3, 2017, to withdraw from C/ Jorge Juan, 6

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the “Iberia Plus Loyalty Card” and cancellation of your personal data.

Said facts gave rise to sanctioning procedure PS/00370/2018.

two.-

The respondent party, states in response to this claim: “Despite the fact that the claimant was discharged from the Iberia Plus program on 10/09/2017, due to a new change implemented at the to provide more security access to the private area of customers in the web portal, a mass communication was sent with the requirements for the new access to the accounts and the actions that each user had to carry out. However, in the moment of designing the "mailing" for sending communication, which is carried out manually, due to an involuntary error the email was erroneously included email from this former program member.”

They state that: “after analyzing the case, they have created a new project to review the unsubscribe processes of all commercial communications of the

company, and they are going to incorporate exclusion lists and automate their application, to avoid possible human errors in carrying out the manual processes of preparation of distribution list. They will accompany you through a training process the people in charge of selecting the target audience”.

The respondent has not submitted arguments to the initial agreement of this process.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

II

In the present case, based on the claim and documentation presented, It is verified that the claimant has continued to receive emails from the party claimed. As recognized by the latter, in its reply to the transfer of the claim.

Consequently, given that in the case at hand there is recidivism due to commission of infractions of the same nature, given that the claimant continued receiving emails from the claimed party, even after if the resolution of the sanctioning procedure PS/00370/2018 is issued.

Therefore, the known facts constitute an infraction, attributable to the claimed, for violation of article 6.1, of the RGPD, which establishes that: “of In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, consent of the affected party means any manifestation of free will, specific, informed and unequivocal by which it accepts, either through a

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declaration or a clear affirmative action, the treatment of personal data that concern".

For its part, section b) of article 72.1 of the LOPDGDD classifies as

"very serious", the: "the processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the RGPD".

III

This infraction can be sanctioned with a fine of €20,000,000 maximum.

or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the RGPD.

In accordance with the precepts indicated for the purposes of setting the amount of the sanction to be imposed in this case, it is considered appropriate to graduate the sanction to impose in accordance with the following criteria established in article 83.2 of the GDPR:

As aggravating criteria:

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The intent or negligence in the infringement (section b).

- For other previous infractions committed by the person in charge or the person in charge of the treatment (section e).

The balance of the circumstances contemplated in article 83.2 of the RGPD,

With respect to the infraction committed by violating the provisions of article 6, it allows set a penalty of 20,000 euros (twenty thousand euros), typified as "very serious", to

prescription effects thereof, in article 72.1.b) of the LOPDGDD.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE IBERIA LÍNEAS AÉREAS DE ESPAÑA, S.A. OPERATOR

UNIPERSONAL, with NIF A85850394, for an infringement of Article 6.1 of the RGD, typified in Article 83.5 of the RGD, a fine of €20,000 (twenty thousand euros).

SECOND: NOTIFY this resolution to IBERIA LÍNEAS AÉREAS DE SPAIN, S.A. UNIPERSONAL OPERATOR.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

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of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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 procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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

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

Contentious-administrative jurisdiction, within a period of two months from the

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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