

□ File No.: EXP202104493

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 July 15, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate sanctioning proceedings against BANCO BILBAO
VIZCAYA ARGENTARIA, S.A. (hereinafter, the claimed party), through the Agreement
which is transcribed:

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File No.: EXP202104493

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: Ms. A.A.A. (hereinafter the claimant) on 09/30/2021 filed
claim before the Spanish Data Protection Agency. The claim is
directed against BANCO BILBAO VIZCAYA ARGENTARIA, S.A. with NIF A48265169 (in
later, the claimed one). The grounds on which the claim is based are as follows:
claimant states that the Department of Heirs of the claimed party sent him
a certificate of movements of a bank account, in which it was indicated that for
request clarification regarding the aforementioned movements, he should contact the
office located at ***ADDRESS.1; that on 06/05/2021, requests the claimed entity
that they provide you with the contact information of said office, referring you to a telephone number of

telephone service in which they indicate that they cannot provide the required information by said means, urging him again to request it (via e-mail) to the department of customer service, which, on 07/12/2021, requires you to provide a copy of your ID to be able to process your query. On 08/25/2021, the claimant puts the facts to the knowledge of the Data Protection Delegate, since he considers that it is disproportionate the requirement of a copy of your DNI to know the data of contact of a bank branch, as well as not indicating the treatment that is going to be made of said data, receiving a response on 09/15/2021, indicating that they cannot rule on such a general question, having asked the department that required the contribution of your DNI what was the purpose and, on the other side, indicate that they have forwarded your request to Customer Service so that provide you with the required information.

Provides exchange of e-mails with the different departments.

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2/11

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), on 11/15/2021 said claim was transferred to the party claimed in accordance with the provisions of the LPACAP, so that it proceeded to its analysis and report to this Agency within a month of the actions carried out carried out to adapt to the requirements set forth in the data protection regulations. The respondent did not respond to the request made.

THIRD: On 12/30/2021 the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 04/22/2022, the respondent responded untimely to the request of information of 11/17/2021 stating that on 03/24/2022 the Customer Service to the Client (hereinafter, "SAC") communicated in writing to the claimant the decision agreed. This communication was sent to the email address that appears in the transfer of claim that this Agency has sent us, that is,

***EMAIL.1.

Indicates that in compliance with Order ECO/734/2004, which regulates the departments Customer Service and the Customer Ombudsman of financial institutions, the The Board of Directors of the BBVA Group approved on 07/23/2004 the Regulation for the Defense of the Client in Spain of the BBVA Group, being last modified on 02/10/2009.

This regulation in its chapter 2, article 12, establishes the form, place and term of filing of complaints and claims and specifically requires the identification and signature of the holders, and where appropriate, the person who represents them, duly accredited.

In relation to the request for an identification document, related to the treatment of your data by the claimed party, and in order to be able to attend the request correctly, it is due to the obligatory fulfillment of responsibility proactive established in article 5.2 of Regulation (EU) 679/2016 of the Parliament and the General Council for Data Protection.

Regarding the request for the contact details of office 6252 located at

*** ADDRESS.1, the respondent states that it is a building where find a branch of the Bank that does not belong to the commercial branch network of BBVA, therefore not being able to attend to your request for information.

Previously on 07/14/2021 and according to the mail that is accompanied with the letter of claim, the Department of Attention to Heirs tells you that the contact channel

it is through the Mailbox.

Likewise, in a letter dated 04/25/2022, it indicates that it considers it necessary to complement the account of the above events and provide additional documentation that has been obtained

After analyzing what happened.

Attached is a communication to which the claimant refers, made from the Department of Attention to Heirs, and which is attached to this writing.

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3/11

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, insofar as they are not contradict, in the alternative, by the general rules on the

administrative procedures."

The facts denounced are specified in the requirement of the contribution of copy of the DNI to obtain contact details of the bank office in order to process a query regarding account movements, considering that such a measure it is disproportionate.

II

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in Instead of the measures mentioned in this section, according to the circumstances of each particular case;

(...)"

Article 5, Principles relating to processing, of the GDPR states that:

"1. The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

(...)"

The documentation in the file offers clear indications that

BBVA violated article 5 of the RGPD, principles related to treatment, by requiring the

III

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claimant, in order to meet your request copy of the national document of identity.

Article 5 of the RGPD refers to the general principles for the treatment of data. Section c) refers to the principle of data minimization, indicating that the data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

If we examine the definition we can deduce that only the personal data to be processed, that is, those that are strictly necessary for treatment; that can only be picked up when they are going to be treated and that can only be used for the purpose for which it was collected, but not for any other purpose, considering it excessive to require the claimant a copy of the DNI for the sole purpose of being able to obtain contact information from a bank branch. Also Recital 39 states that: "...Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treated".

IV

The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that: "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

(...)

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

(...)

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5/11

In order to establish the administrative fine to be imposed, observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which point out:

v

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

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

of each individual case, in addition to or as a substitute for 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 will 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

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction 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 put

remedying the breach and mitigating the possible adverse effects of the breach;

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

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

particular if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

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

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

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

certificates 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 realized or losses avoided, direct or indirectly, through infringement.”

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, “Sanctions and corrective measures”, establishes that:

“two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

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6/11

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

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

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

e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any

interested."

data.

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 sanction of fine to

impose in the present case for the infringement typified in article 83.5 of the RGPD of

which the defendant is held responsible, in an initial assessment, are estimated are estimated

concurrent the following factors:

As aggravating circumstances:

- The nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the treatment operation in question; the

facts revealed affect a basic principle regarding the treatment of

personal data, such as data minimization, which the standard

sanctions with the greatest severity; On the other hand, the management and purpose of the

treatment carried out (article 83.2, a) of the RGPD).

- The activity of the allegedly infringing entity is linked to the

data processing of both customers and third parties. In the activity of the entity

claimed, it is essential to process the personal data of your

customers so, given the volume of business of the same, the importance of the

conduct object of this claim is undeniable (article 76.2.b) of the

LOPDGDD in relation to article 83.2.k).

- The intentionality or negligence in the infringement since the defendant was

fully aware of the procedure implemented. Also connected with the degree

of diligence that the person in charge of the treatment is obliged to deploy in the

compliance with the obligations imposed by the data protection regulations

the SAN of 10/17/2007 can be cited. Although it was issued before the validity of the

RGPD its pronouncement is perfectly extrapolated to the assumption that we analyze.

The sentence, after alluding to the fact that the entities in which the development of its activity entails continuous processing of customer data and third parties must observe an adequate level of diligence, specified that "(...). the Supreme Court

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7/11

comes understanding that there is recklessness whenever a legal duty is neglected care, that is, when the offender does not behave with due diligence. Y

In assessing the degree of diligence, special consideration must be given to the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the activity of the appellant is of constant and abundant data handling of personal character must insist on rigor and exquisite care to adjust to the legal precautions in this regard" (article 83.2, b) of the RGPD).

As extenuating circumstances:

- Only one person has been affected (article 83.2.a) of the RGPD).

SAW

The corrective powers that the RGPD attributes to the AEPD as the authority of control are listed in article 58.2, sections a) to j). Among others, he mentions section i), impose an administrative fine in accordance with article 83 of the RGPD; in the section d), order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of the RGPD, where appropriate, of a certain way and within a specified period and in section g), order the deletion of personal data in accordance with articles 16, 17 and 18.

Article 83.5. of the RGPD establishes a sanction of an administrative fine (article 58.2.i) for the behaviors that are typified in it, without prejudice to the fact that, as provided in the article 83.2. of the RGPD, administrative fines may be imposed together with other corrective measures provided for in article 58.2 of the RGPD.

If the infraction is confirmed, it could be agreed to impose the person in charge the adoption of appropriate measures to adjust its actions to the aforementioned regulations in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...".

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined:

- Prove that you have proceeded not to request a photocopy of the DNI from clients who request contact details of an office to request clarification on bank movements, as if it were the procedure for complaints and claims, as it is excessive data.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

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Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against BANCO BILBAO VIZCAYA

ARGENTARIA, S.A. with NIF A48265169, for the alleged violation of 5.1.c),

typified in article 83.5.a) of the RGPD.

SECOND: APPOINT R.R.R. and Secretary to S.S.S., indicating that

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

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP).

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

complaint filed by the complainant and her documentation, the documents

obtained and generated by the Inspection Services during the investigation phase

prior, all documents that make up the file.

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

October, of the Common Administrative Procedure of the Public Administrations

(LPACAP), and art. 127 letter b) of the RLOPD, the penalty that may apply for

each of the offenses described would be 70,000 euros (seventy thousand euros), without

prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to BANCO BILBAO VIZCAYA

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

working days to formulate the allegations and present the evidence that it considers

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

procedure at the top of this document

Likewise, in accordance with articles 64.2.f) and 85 of the LPACAP,

informs that, if it does not make allegations within the term of this initial agreement, the

The same may be considered a resolution proposal.

You are also informed that, in accordance with the provisions of article

85.1 LPACAP, may acknowledge its responsibility within the term granted for the

formulation of allegations to this initial agreement which will entail a

reduction of 20% of the total sanction to be imposed in the present

procedure, equivalent in this case to 14,000 euros. With the application of this

reduction, the sanction would be established at 56,000 euros, resolving the

procedure with the imposition of this sanction.

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

present procedure, carry out the voluntary payment of the total proposed sanction,

in accordance with the provisions of article 85.2 LPACAP, which will mean a

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9/11

reduction of 20% of the amount of the same, equivalent in this case to 14,000

euros. With the application of this reduction, the total sanction would be established in

56,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. The pay

volunteer of the amount referred to in the preceding paragraph may be made at any

time prior to resolution. In this case, if it were appropriate to apply both

reductions, the amount of the total sanction would be established at 42,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (56,000 euros or 42,000 euros), in accordance with the provided for in article 85.2 referred to, we indicate that you must make it effective by your deposit in the restricted account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, 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 payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; 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.

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Sea Spain Marti

Director of the Spanish Data Protection Agency

SECOND: On August 2, 2022, the claimed party has proceeded to pay of the sanction in the amount of 42,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the

acknowledgment of responsibility.

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10/11

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

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

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."

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11/11

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202104493, of

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 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.

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