

□ File No.: PS/00421/2021

## 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 April 6, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate sanction proceedings against BANKINTER, S.A.  
(hereinafter the claimed party). Once the start agreement was notified and after analyzing the  
arguments presented, on May 24, 2022, the proposal for  
resolution transcribed below:

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File No.: PS/00421/2021

## PROPOSED RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On April 12, 2021, D. A.A.A. (hereinafter, the complaining party),  
filed a claim with the Spanish Agency for Data Protection against  
BANKINTER, S.A. with NIF A28157360 (hereinafter, the claimed party). The motives  
on which the claim is based are as follows:

On October 5, 2020, he learned, after the hearing  
prior to a judicial proceeding, that her ex-partner had contributed in said act  
a document issued by the claimed party, dated April 30, 2019, in which  
he was informed of all the banking positions that he had in that banking entity.

claimant together with her mother and siblings and where she was not the owner except in a checking account (in which you are a co-holder). Do you think you should not have received this report containing sensitive and confidential account and position information which has never been authorized, disclosing this data of extreme importance, which is a flagrant violation of data protection regulations.

Provide a copy of the document, issued by Bankinter on April 30, 2019, email dated 10/13/2020 addressed to the Bankinter manager asking for explanations and response letter from customer service.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights

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2/11

(hereinafter LOPDGDD), said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations (hereinafter, LPACAP), by electronic notification, was received in dated May 7, 2021, as stated in the certificate in the file.

On June 4, 2021, this Agency received a response letter, in which the respondent shows that the access by his ex-partner to the Monthly Investment Portfolio Report that included information regarding the

claimant was due to a specific computer error, which had not occurred with previously nor has it been reiterated until that date, which was resolved as soon as they had knowledge, offering the appropriate explanations and apologizing for what occurred and that in order to prevent incidents from occurring in the future similar, have reviewed again all the technical measures implemented to make sure that an incident like this does not happen again in the future.

THIRD: On August 10, 2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On April 6, 2022, 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, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD.

The initiation agreement was sent, in accordance with the regulations established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), by electronic notification, being received on April 13, 2022, as stated in the certificate that works on the record.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), and extended the term granted for formulate allegations, the respondent filed a brief with allegations in which, in synthesis, stated that access to the Report was due to a specific computer error that affected the computer tool that restricted and blocked access to said Reports, that it was an isolated computer error, which affected the data

of a very small number of people (and limited to those who contained in the Report), which has appropriate technical and organizational measures to ensure compliance with data protection regulations and, in specifically, with the confidentiality of the information, that measures were taken additional and reactive as soon as they become aware of the incident to end the same, that all the technical measures implemented have been reviewed again to ensure that an incident like this does not happen again, and request the archive of this sanctioning procedure.

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3/11

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

#### PROVEN FACTS

FIRST: It is recorded that on April 12, 2021, the complaining party filed claim before the Spanish Agency for Data Protection, due to a violation security of personal data.

SECOND: It is verified that the respondent submitted, on April 30, 2019, to third person, a Monthly Investment Portfolio Report that included information information relating to the claimant, without said disclosure of information having been confelt for this

THIRD: The respondent states that access to the Report was due to an error punctual computer that affected the computer tool that restricted and blocked access to said Reports.

Likewise, it states that it has proceeded to implement the corrective measures

adequate to avoid the repetition of similar events in the future.

The

documentation provided is incorporated into the file.

## 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 and 48.1 of the Law

Organic 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 Data Protection Agency.

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."

In response to the allegations presented by the respondent entity, it should be noted

the next:

II

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists

processing of personal data, since BANKINTER, S.A.

is a financial entity that, in order to offer a wide range of products and services

financial services, customer advice, aggregators, product simulators and a

wide variety of value-added services, performs personal data processing.

It carries out this activity in its capacity as data controller, since it is

who determines the purposes and means of such activity, by virtue of article 4.7 of the RGPD:

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4/11

“responsible for the treatment” or “responsible”: the natural or legal person, authority public, service or other body that, alone or jointly with others, determines the ends and treatment; if the law of the Union or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the specific criteria for their appointment may be established by the Law of the Union or of the States. two members.

Article 4 section 12 of the RGPD defines, in a broad way, the "violations of security of personal data" (hereinafter security breach) as “all those violations of security that cause the destruction, loss or alteration accidental or unlawful transfer of personal data transmitted, stored or processed in otherwise, or unauthorized communication or access to such data.”

In the present case, there is a security breach in the systems of the defendant, categorized as a breach of confidentiality, which would have resulted in the making available to a third party, a Monthly Investment Portfolio Report that would have freely allowed access to data of the claimant and of some of his relatives about the global vision of the evolution of their assets, profitability and risk of the portfolio, graphs of distribution of assets by risk, currencies and geographical areas. cas, composition of the portfolio and movements of its investments and therefore in a violation of the principle of confidentiality in the processing of personal data by part of the data controller. As proof of these manifestations the

claimant provided the documents referred to in the first antecedent  
mere of this agreement.

According to GT29, a "Breach of confidentiality" occurs when there is  
unauthorized or accidental disclosure of personal data, or access to  
themselves.

As for the argument that it was an isolated computer error, which affected the  
personal data of a very small number of people (and limited to  
those that appear in the Report), is not a sufficient cause of justification or exculpation,  
since those affected have been deprived of control over their data  
personal.

In relation to this matter, article 32 of the RGPD establishes the following:

"1. Taking into account the state of the art, the application costs, and the  
nature, scope, context and purposes of the treatment, as well as risks of  
variable probability and severity for the rights and freedoms of individuals  
physical, the person in charge and the person in charge of the treatment will apply technical measures and  
appropriate organizational measures to guarantee a level of security appropriate to the risk,  
which in your case includes, among others:

a)

a)

b)

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pseudonymization and encryption of personal data;

the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

the ability to restore availability and access to personal data

promptly in the event of a physical or technical incident;

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5/11

c) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of

takes into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

The aforementioned Reports were generated in such a way that only those involved in

the products that were included in said Reports could access them,

being blocked for other people, although said block failed after a year. Is

possibility supposes an added risk that has to be assessed and that increases the demand

of the degree of protection in relation to the security and safeguarding of the integrity and

confidentiality of these data.

In relation to this aspect, the respondent entity itself acknowledges the existence of the

security breach. Proof of this is that said Report stopped being generated in May

of 2019, at which time Bankinter made improvements through its website and,

since that date, customers can directly generate their own report of

portfolio, offering them various options to configure it, such as selecting the

date range or what positions they want to be included.

Consequently, the allegations must be dismissed, meaning that the

arguments presented do not distort the essential content of the infraction that



declared to have been committed, nor do they imply sufficient cause for justification or exculpation.

III

Article 5.1.f) of the RGPD

Article 5.1.f) of the RGPD establishes the following:

“Article 5 Principles relating to processing:

1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational structures (“integrity and confidentiality”).”

In relation to this principle, Recital 39 of the aforementioned GDPR states that:

“[...]Personal data must be processed in a way that guarantees security and

appropriate confidentiality of personal data, including to prevent access

or unauthorized use of said data and of the equipment used in the treatment”.

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6/11

The documentation in the file offers clear indications that the

claimed violated article 5 of the RGPD, principles related to treatment.

In the specific case under examination, it is recorded that the respondent party sent, on the date

April 30, 2019, to a third party, a Monthly Investment Portfolio Report

that included information relating to the claimant, without such disclosure of information

I would have been consented to by him.

Indeed, as evidenced in the file, it is issued by the bank entity

caria and addressed to a third party, a document called "Monthly Report

of the Portfolio" that collected information from the claimant on the global vision of the

solution of your assets, return and risk of the portfolio, graphs of distribution of

assets by risk, currencies and geographical areas, composition of the portfolio and movement

cough of your investments.

On the other hand, the respondent party acknowledged the facts, stating to this Agency

that access by a third party outside the Monthly Investment Portfolio Report

that included information relating to the claimant was due to a one-time computer error.

Classification of the infringement of article 5.1.f) of the RGPD

IV

The aforementioned infringement of article 5.1.f) of the RGPD, supposes the commission of the

offenses typified in article 83.5 of the RGPD that under the heading "Conditions

rules for the imposition of administrative fines" provides:

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

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;"

For its part, article 71 of the LOPDGDD, under the heading "Infringements" determines what

following: "The acts and behaviors referred to in the

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that

are contrary to this organic law."

For the purposes of the limitation period for infractions, article 72 of the LOPDGDD, under the rubric of infractions considered very serious, it establishes the following: "1. In 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:

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

In the present case, the infringing circumstances provided for in article 83.5 of the GDPR, transcribed above.

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7/11

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Sanction

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGD, precepts that indicate:

"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 the 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  
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;
- 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  
given previously 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 to certification mechanisms  
approvals approved in accordance with article 42,
- 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.”

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD

has:

"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:

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8/11

- a) The continuing nature of the offence.
  - 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 precepts transcribed, in order to set the amount of the penalty for

infringement of article 5.1 f) of the RGPD, to the party claimed as responsible for the cited infraction typified in article 83.5 of the RGPD, it is appropriate to graduate the fine taking into account as an aggravating circumstance:

Article 76.2 b) LOPDGDD: "The link between the offender's activity and the personal data processing". The activity of the defendant requires continuous processing of personal data of both customers and users. third parties.

Considering the exposed factors, the valuation that reaches the amount of the fine is €70,000 for violation of article 5.1 f) of the RGPD, regarding the violation of the principle of confidentiality.

SAW

Responsibility

Establishes Law 40/2015, of October 1, on the Legal Regime of the Public Sector, in Chapter III on the "Principles of the power to impose penalties", in article 28 under the heading "Responsibility", the following:

"1. They may only be sanctioned for acts constituting an administrative infraction. natural and legal persons, as well as, when a Law recognizes their capacity to to act, the affected groups, the unions and entities without legal personality and the independent or autonomous estates, which are responsible for them title of fraud or guilt."

In the present case, from the solid evidence available in accordance with the proven facts in this sanctioning procedure, it is accredited infringement of the provisions of article 5.1 f) of the RGPD, typified in article 83.5 of the RGPD and considered very serious for prescription purposes in article 72.1.a) of the LOPDGDD.

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9/11

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

BANKINTER, S.A., with NIF A28157360, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, with a fine of SEVENTY THOUSAND EUROS (€70,000).

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

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

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

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

reduction, the sanction would be established at FIFTY-SIX THOUSAND EUROS

(€56,000), and its payment will imply the termination of the procedure. The effectiveness of this

reduction will be conditioned to the withdrawal or renunciation of any action or

administrative appeal 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 entity

banking CAIXABANK, S.A., indicating in the concept, the reference number of the

procedure that appears in the heading of this document and the cause, for

voluntary payment, reduction of the amount of the sanction. Also, you must send the

proof of entry to the General Subdirectorate of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.

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.

RRR

INSTRUCTOR

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SECOND: On May 31, 2022, the claimed party has proceeded to pay of the sanction in the amount of 56,000 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.

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10/11

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 and 48.1 of the Law

Organic 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 Data Protection Agency.

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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

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11/11

FIRST: TO DECLARE the termination of procedure PS/00421/2021, of

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

SECOND: NOTIFY this resolution to BANKINTER, 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

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