

□ File No.: PS/00343/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated February 8, 2021

filed a claim with the Spanish Data Protection Agency.

The claim is directed against IBERCAJA BANCO, S.A. with NIF A99319030 (in  
hereafter, the party claimed).

The reason on which the claim is based is the treatment without consent of their  
personal data since it was contracted in your name, both a securities account and  
a current account associated with it, used for the distribution of an inheritance  
in which he concurred with other heirs. You state that your signature was forged in the  
contracts.

Provide the following documentation:

- Unsigned demand deposit account contract, in which he appears as the owner together with  
with 4 other people.
- Contract for the custody and administration of securities and opening of a securities account in  
the one that appears as the sole owner and that is signed.
- Complaint filed with the Police for the signing of these two contracts without their consent.  
consent and forging your signature.
- Claim filed with UNICAJA and response obtained.
- Claim filed with the Bank of Spain.

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 March 9, 2021 said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

On April 16, 2021, this Agency received a written response indicating that in order to proceed with the distribution of shares in mutual funds investment owned by the deceased relative, an account was opened administration and custody (securities account) in the name of each heir, including the claimant.

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This account was opened in the central services, in the unit in charge of manage the wills and the contractual document was printed on paper in the Quintanar de la Serena office, being scanned into the application with the signature of its holder that could be picked up at any office where the claimant made usually their business.

In turn, it is necessary for operational reasons that said securities account has linked a savings account as support for debits and payments. That's why it opened a savings account in the name of all the heirs and that responds to the need to associate a savings account to each of the securities accounts awarded to each heir.

This Agency shows that the claimed entity has not provided a copy of the savings account contract signed by the claimant.

THIRD: On June 11, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On October 18, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 6 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, the one claimed on November 10, 2021, presented a brief of allegations in which, in summary, it stated that the claim filed by the claimant is a consequence of the opening of two accounts in the name of A.A.A. in order to process the distribution of the inheritance of his uncle, B.B.B., as a consequence of different financial products that he had in IBERCAJA BANK.

In said brief of allegations it is stated, therefore, that the facts that are the subject of this claim are subject to the distribution and adjudication of the assets of the inheritance of B.B.B., deposited in the claimed financial institution.

The causative subject, B.B.B. passed away on October 9, 2017, which is credited by death certificate

The claimant, A.A.A., requested on September 22, 2018 that the distribution be made of current accounts and investment funds, in which the deceased appears as holder, according to the provisions of the declaration of heirs granted before a notary public on 28 February 2018, noting that the percentage of the amount of the account balance current \*\*\*ACCOUNT.1 that corresponds according to said declaration of heirs will be transfer to the account \*\*\*ACCOUNT.2, as well as the percentage of the investment funds

that corresponds according to said declaration of heirs.

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Therefore, in compliance with your request on October 15, 2018, the entity claimed proceeds to transfer the corresponding amount to the account indicated by the claimant.

The respondent entity states that in order to change the ownership of the shares of the investment funds of the deceased, it is necessary to open an account administration and custody (securities account) in the name of each of the heirs, to which the shares of the investment funds awarded to each of them as a consequence of the inheritance, with the net asset value that these they had at the time of death, which is the date they are acquired.

Said action is justified based on the Complaints Report of the Commission National Securities Market for the year 2017, in relation to the change of ownership accessible through the website [www.cnmv.es](http://www.cnmv.es), specifically in <https://www.cnmv.es/portal/Publicaciones/PublicacionesGN.aspx?id=23> access is given to the different annual reports on complaints and queries, so that accessing that of the year 2017, on page 211 the following is indicated:

“(…) In this sense, it is important to highlight that for the heirs to be able to having the values acquired due to death is necessary to carry out before the change of ownership. This is the last procedure to be be completed so that the heirs can exercise all the rights linked to the ownership of the securities acquired in accordance with the provisions of the notebook

partitional Prior to the change of ownership of the financial instruments acquired mortis causa, it is necessary that the beneficiaries have open securities accounts whose holders must be the same as those who are successful bidders of the assets affected by the inheritance - owned shared in case the inheritance is maintained in undivided or owned individually in the event that each heir is awarded the property resulting from the distribution of this— so that the values awarded. These accounts may be in the same entity in which you had deposited the values the deceased or in a different one.”

For all these reasons, the defendant entity considers that article 6 of the RGPD given that the interested party gave her consent for the processing of the data in order to transfer the shares of the investment funds in your name of the deceased, since in the letter dated September 22, 2018, he requests and in consequently authorizes said change of ownership with all the operations that said This procedure entails the opening of both accounts.

SIXTH: On December 1, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, as well as the documents provided by the claimed on November 10, 2021.

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

## PROVEN FACTS

FIRST: The treatment of the personal data of the claimant, without their consent, since both a securities account and a current account associated with it, used for the distribution of an inheritance in which he concurred with other heirs.

SECOND: The claimed entity, in order to proceed with the distribution of shares in investment funds owned by a deceased relative of the claimant, proceeded to open an administration and custody account (account securities) in the name of each heir, including the claimant.

In the pleadings, the following is provided:

document dated March 26, 2018, where the claimant signs a

☐ authorization to the claimed entity to deliver the assets of the deceased subject, B.B.B., to the heirs, among whom is the claimant.

letter dated September 22, 2018, in which the claimant requests the

☐ legal department of the claimed entity that makes the distribution corresponding to current accounts and investment funds, in which the deceased was the owner, as well as the percentage of the amount of the current account \*\*\*ACCOUNT.1 and transferred to the account \*\*\*ACCOUNT.2, so that you can have of said funds and that once all these procedures are completed, proceed to the cancellation of the accounts in which the deceased appears as the owner.

## FOUNDATIONS OF LAW

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

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

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In this sense, article 6.1 of the LOPDGDD, establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood affected person, any manifestation of free, specific, informed and inappropriate will. equivocal by which he accepts, either through a statement or a clear action affirmative, the treatment of personal data that concerns you".

For its part, article 6 of the GDPR establishes the following:

"1. The processing will only be lawful if at least one of the following conditions is met: nes:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

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

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

by public authorities in the exercise of their functions.”

III

In the case analyzed here, it has been proven that the entity claimed has

proceeded to open a checking account in the name of the claimant, which

could involve a violation of article 6 of the RGD by the claimed if not

has the consent of the claimant.

From the recent investigative actions carried out by this Agency, it has been

accredited that the claimant signed on March 26, 2018 an authorization to the

entity claimed to deliver the property of the deceased subject, B.B.B., and requested on 22

September 2018, to the legal department of the entity claimed that this

make the corresponding distribution of current accounts and investment funds,

in which the deceased was the owner.

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It has also been verified that the respondent entity has acted in accordance with the guidelines set by the National Securities Market Commission, which recommends the opening of a value account in the event of a change of ownership, in assumptions of succession, specifically pointing out the following:

“Prior to the change of ownership of the financial instruments financial assets acquired mortis causa, it is necessary that the beneficiaries have open securities accounts whose holders must be the same as those resulting successful bidders of the assets affected by the inheritance —shared ownership in the event that the inheritance be maintained pro indiviso or individually owned in case of proceed to award to each heir the property resulting from the distribution of this — so that the awarded values are deposited in them. These accounts can be in the same entity in which the deceased had deposited the securities or in another different.”

Thus, it is considered that the action of the entity claimed has been adequate in law, since it acted in response to the claimant's request sent to the legal department of the entity claimed on September 22, 2018, where it required the distribution of current accounts and funds of investment, and carried out said actions following the guidelines set by the National Securities Market Commission.

#### IV

Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to the claimant and claimed.

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 to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

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

Contentious-Administrative, within two months from the day after

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

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