

• **File No.: EXP202202064**

RESOLUTION OF TERMINATION OF THE PAYMENT PROCEDURE
VOLUNTARY

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

BACKGROUND

~~FIRST:~~ On September 7, 2023, the Director of the Spanish Data Protection Agency agreed to initiate sanctioning proceedings against **IBERIA LÍNEAS AÉREAS DE ESPAÑA, SA OPERADORA** (hereinafter the claimed party).

Once the initiation agreement was notified and after analyzing the allegations presented, on January 30, 2024, the proposed resolution was issued, which is transcribed below:

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File No.: EXP202202064 IMI Reference:
A61VMN 369363- A60DD 513793

PROPOSED RESOLUTION OF SANCTIONING PROCEDURE

From the procedure instructed by the Spanish Data Protection Agency and based on the following:

BACKGROUND

~~FIRST:~~ **AAA** (hereinafter, the complaining party) on July 27, 2021 filed a claim with the *Data Protection Commission* (hereinafter, *DPC*), the data protection authority of Ireland. The claim is directed against **IBERIA LÍNEAS AÉREAS DE ESPAÑA, SA OPERADORA** with NIF A85850394 (hereinafter, **IBERIA**). The reasons on which the claim is based are the following:

The claimant, together with her husband, were going to take a flight from Quito (Ecuador) to Dublin (Ireland) with a stopover in Madrid on May 31, 2021. At that time, due to COVID-19 restrictions, Tourist trips were not allowed and, to justify that the trip was being made for family reasons, they were directed to the **IBERIA** offices at the Quito airport, where they requested a copy of their identity document, the identity document of their husband and the marriage certificate in order to send it to the Madrid airport police so that they could decide if that documentation was valid to make the trip.

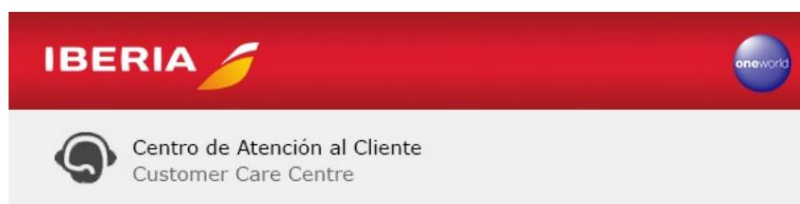
Finally, they were allowed to make the trip but they were left wondering whether they had contacted the Madrid airport police or what they had used their tickets for.



data. Since then, the complaining party indicates that it has requested information from IBERIA, without having received a response, as to why and how they were used your data on 5 occasions (the last, on July 4, 2021) via email electronic messages sent to the data protection officer (hereinafter, DPD) of IBERIA (*OficinaDPO@iberia.es*) parent company al of are (*iag.data.protection@iagroup.com*).

Along with the claim, the following is provided:

- Email dated June 2, 2021 sent by *****EMAIL.2** to *****EMAIL.1** (hereinafter, email of the complaining party) with the following header:



And the following content:

"Dear A.A.A.,

Thank you for your notification regarding flight *****VUELO.1** of *****FECHA.1**.

As Iberia employees, we strive at all times to help customers and offer solutions for all eventualities.

However, it is clear from your comments that on this occasion there was a lack of professionalism on our part. We would ask you to treat this as an exceptional occurrence, and please be assured that we have referred the incident to the person concerned so that they may take the necessary measures to avoid this type of behaviour in the future.

Regarding the payment for your extra bag, we want to inform you that baggage allowances are based on the fare paid for tickets, the cabin class in which the passenger is travelling and the degree of customer loyalty.

Before buying a ticket, you should check the baggage allowance included. This will also be stated on the receipt we provide. Once a ticket has been purchased, we offer passengers the option of adding more items of baggage, either through the vouchers available on our website www.iberia.com or through payment of the excess directly at the airport.

In this particular case, we have checked that the allowance allocated to you was correct and the process followed was therefore correct as well.

We apologise for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

Kind regards,
Customer Relations"

[Unofficial translation:

"Dear AAA,

Thank you for your notification regarding flight *****FLIGHT.1** on *****DATE.1**.

As Iberia employees, we strive at all times to help customers clients and offer solutions for all eventualities.

However, it is clear from your comments that on this occasion there was a lack of professionalism on our part. We ask that you treat this as an exceptional event, and please be assured that we have forwarded the incident to the person concerned so that they can take the necessary steps to prevent this type of behavior in the future.

Regarding payment for your extra baggage, we want to inform you that baggage allowances are based on the fare paid for the tickets, the cabin class in which the passenger travels and the degree of customer loyalty.

Before purchasing a ticket, you should check the baggage allowance included. This will also be indicated on the receipt we provide. Once a ticket has been purchased, we offer passengers the option of adding more items of luggage, either through the vouchers available on our website www.iberia.com or by paying the excess directly at the airport.

In this particular case, we have verified that the assignment assigned to you was correct and therefore the process followed was also correct.

We apologize for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

Best regards, Customer Relations"]

- Email dated June 3, 2021 sent by email *****EMAIL.1** to *****EMAIL.2**, in response to the previous one, which indicates the following:

*"Hi there,
Thank you for your reply. (...)*

As mentioned in my first communication, I would like to understand what the communication was between Iberia and The Madrid Airport Police. After we were turned away from check in and directed to the Iberia office to prove our marriage, The Iberia Quito team took our passports and marriage certificate to share with Madrid Airport police to see if they would let us fly back to Ireland. I want to know how our data was used, that this communication actually happened and what the output of this communication was. Can you please follow up internally to get this information and feed this back to us.

*Best Regards,
A.A.A.
*****PHONE.1"***

[Unofficial translation:

*"Hi,
thank you for your answer. (...)*

As I mentioned in my first communication, I would like to understand what the communication was between Iberia and the Madrid Airport Police. After we were turned away at check-in and directed to the Iberia office to prove our marriage, the Iberia Quito team took our passports and marriage certificate to share with the Madrid airport police to see if they would let us fly back to Ireland. I want to know how our data was used, that this communication really happened and what the outcome of this was.

communication. Please follow up internally to obtain this information and inform us.

Kind regards,

A.A.A.

*****PHONE.1***]**

- Email dated June 7, 2021 sent by *****EMAIL.2** to the email address of the complaining party with the following heading:

And the following content:

"Dear A.A.A.,

Thank you for contacting us about the charge for your baggage on flight *****VUELO.1** on *****FECHA.1**, from Quito to Madrid.

We appreciate that you were inconvenienced by this. Airlines are entitled to establish their own policies regarding baggage allowances based on the fare paid for tickets, the cabin class in which the passenger is travelling and the degree of customer loyalty. In this particular case, we have checked that the allowance allocated to you was correct and the process followed was therefore correct as well. Even though your bag was cabin size, if it weighs more than 10 Kgs, it will be treated and charged as a bag on hold.

We apologise for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

Kind regards,
Customer Relations"

[Unofficial translation:

Dear AAA,

Thank you for contacting us about the charge for your luggage on flight *****FLIGHT.1** of *****DATE.1**, from Quito to Madrid.

We understand that this has bothered you. Airlines have the right to establish their own policies regarding baggage allowances based on the fare paid for the tickets, the cabin class in which the passenger travels and the degree of customer loyalty.

In this particular case, we have verified that the assignment assigned to you was correct and, therefore, the process followed was also correct. Even though his bag was the size of the cabin, if it weighs more than 10 Kgs, it will be treated and charged like a bag waiting.

We apologize for this incident, and trust that you will have a great experience. satisfactory the next time you fly with us.

Best regards, Customer
Relations"

- Email dated June 18, 2021 sent by *****EMAIL.2** to the email of the complaining party with the following header:

And the following content:

"Thank you for contacting Iberia.
We apologise for any inconvenience caused.

We have received your complaint and our team will now analyse it and send you a reply within 7 business days.

Iberia Customer Services"

[Unofficial translation:

*"Thank you for contacting Iberia.
We apologize for any inconvenience caused.
We have received your complaint and our team will analyze it and send you a response within the next 7 business days.*

Iberia Customer Service"]

- Email dated June 20, 2021 sent by *****EMAIL.2** to the email of the complaining party with the following header:

And the following content:

*"Dear A.A.A.,
We are writing in relation to flight *****VUELO.1** of *****FECHA.1**.
With regard to travel documentation, airlines are not subject to the requirements of the government authorities of each country, which in certain cases may require, in addition to identification documents, a hotel reservation, a return ticket or any other specific condition. To avoid situations where you may be prevented from travelling by the immigration department in the country of departure, transit or destination, it is important to ensure that you have the necessary documentation for your complete itinerary. We*

must confirm at the airport of departure that the passengers have all the documents required by the authorities.

*Kind regards,
Iberia Customer Services"*

[Unofficial translation:

*"Dear AAA, We are
writing to you regarding your flight *****FLIGHT.1** on ***DATE.1.*

With respect to travel documentation, airlines are not subject to the requirements of the government authorities of each country, which in certain cases may require, in addition to identification documents, a hotel reservation, a return ticket or any other conditions. specific. To avoid situations where you are prevented from traveling by the immigration department in the country of departure, transit or destination, it is important to ensure that you have the necessary documentation for your entire itinerary. We must confirm at the departure airport that passengers have all the documents required by the authorities.

*Best regards, Iberia
Customer Service"*

- Printout of email dated June 22, 2021 sent from the complaining party's email to OficinaDPO@iberia.es with the subject "Use of my Personal Data and Information by Iberia Airlines" [Unofficial translation: "Uso de mis personal data and information by Aerolíneas Iberia"] and the following content:

"Hi there,

My husband and I were refused check-in on an Iberia flight from Quito to Madrid on May 31st of this year. The reason we were refused check-in was that my husband has a US passport and the check-in staff said Iberia couldn't allow an American to travel to Europe for tourism. I let the check-in staff know that we were married and that we were traveling for family matters and to relocate to Ireland vs. being a tourist in Ireland.

Iberia check-in staff then asked for proof of marriage. We showed them our New York state marriage certificate, but this was rejected on the spot as appropriate proof of marriage. We were asked to go to the Iberia Office in Quito Airport to continue the conversation and get approval for our flight.

The Iberia staff member in the Quito airport back office took copies of my Irish passport, my husband's American passport and our New York state marriage certificate. We understood that Iberia staff in Quito were going to send copies of these to Madrid Airport Police to get approval for us to fly or stop us from flying.

We ultimately were permitted to check in and to take our flight, but I want to understand what the communication was between Iberia in Ecuador and The Airport Police in Madrid. I want to understand how my data was used by Iberia and to what end. I want to understand what the communication was around the refusal to let us check-in. I want to see the feedback from Madrid Airport Police around our permission to travel.

The Iberia Privacy Policy states 'We will be transparent about the information we are collecting and what we will do with it' I have not found this to be the case. I have requested this data four times through the Iberia customer complaint channel (...) and although I've received four responses, all were lacking specific details. I still don't know why I had to share this information with Iberia, how my data was used and what was the outcome of this communication.

I would appreciate it if you can provide this information to me.

*Best Regards,
A.A.A.”*

“Hello,

My husband and I were denied check-in on an Iberia flight from Quito to Madrid on May 31 of this year. The reason we were refused check-in was that my husband has a US passport and the check-in staff said Iberia does not could allow an American to travel to Europe for tourism. I let him know check-in staff that we were married and traveling on business relatives and to move to Ireland vs. be a tourist in Ireland. Next, the Iberia registration staff requested proof of marriage. We show them our New York State marriage certificate, but this was rejected on the spot as proper proof of marriage. They asked us to go to the Iberia office at the Quito airport to continue the conversation and obtain approval our flight.

The Iberia staff member in the back office of Quito airport took copies of my Irish passport, my husband's American passport and our New York State marriage certificate. We understood that the staff of Iberia in Quito was going to send copies of these to the Madrid Airport Police for get approval to fly or stop flying.

Ultimately, we were allowed to check in and take our flight, but I want to understand what the communication was between Iberia in Ecuador and the Police of the Madrid's airport. I want to understand how my data was used by Iberia and to what end I want to understand what the communication was around the refusal to let us check-in. I want to see the comments from the Airport Police Madrid about our permission to travel.

Iberia's Privacy Policy states: "We will be transparent about the information we are collecting and what we will do with it," it doesn't seem to me that this be the case. I have requested this data four times through the complaints from Iberia customers (...) and although I have received four responses, all They lacked specific details. I still don't know why I had to share this. information with Iberia, how my data was used and what was the result of this communication.

*I would appreciate it if you could provide me with this information.
Best regards, **AAA”]***

- Email dated June 23, 2021 sent by *****EMAIL.2** to
email from the complaining party with the following header:

And the following content:

“Thank you for contacting Iberia.

We apologise for any inconvenience caused.

We have received your complaint and our team will now analyse it and send you a reply within 7 business days.

Iberia Customer Services"

[Unofficial translation:

"Thank you for contacting Iberia.

We apologize for any inconvenience caused.

We have received your complaint and our team will analyze it and send you a response within the next 7 business days.

Iberia Customer Service"]

- Email dated June 24, 2021 sent by ***EMAIL.2 to the email of the complaining party with the following header:

And the following content:

"Dear A.A.A.,

Thank you for sending us your comments again.

However, please note that after reviewing your case, and given the circumstances of the incident, we must repeat the resolution we offered in our previous communication.

We apologise once again, and we trust that you will have a satisfactory experience the next time you fly with us.

Kind regards,

Iberia Customer Services"

[Unofficial translation: Dear

***AAA**, Thank you for*

sending us your comments again.

However, please note that after reviewing your case, and given the circumstances of the incident, we must repeat the resolution we offered in our previous communication.

We apologize once again, and trust that you will have a satisfactory experience the next time you fly with us.

Best regards, Iberia

Customer Service"]

SECOND: Through the “Internal Market Information System” (hereinafter IMI System), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the Council, of October 25, 2012 (IMI Regulation) , whose objective is to promote cross-border administrative cooperation, mutual assistance between Member States and the exchange of information, the aforementioned issue was transmitted on February 17, 2022 and was given a date of entry registration in the Spanish Protection Agency of Data (AEPD) the next day. The transfer of this matter to the AEPD is carried out in accordance with the provisions of article 56 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, relating to the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Movement of these Data (hereinafter, GDPR), taking into account its cross-border nature and that this Agency is competent to act as the main supervisory authority, given that IBERIA has its establishment main in Spain.

The data processing carried out affects data subjects in several Member States. According to the information incorporated into the IMI System, in accordance with the provisions of article 60 of the GDPR, the authorities of Belgium, Norway, Denmark, and the authorities of Belgium, Norway, and Denmark act as “interested supervisory authority”, in addition to the data protection authority of Ireland. , France, Portugal, Hungary, Austria, Finland and the German authorities of Rhineland-Palatinate, Lower Saxony, Berlin and Bavaria-Private Sector. All of them under article 4.22 of the GDPR, given that the interested parties residing in the territories of these control authorities are substantially affected or are likely to be substantially affected by the processing that is the subject of this procedure.

THIRD: On May 10, 2022, in accordance with the then current article 64.3 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), it was admitted for processing the claim presented by the complaining party.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out prior investigative actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in article 57.1 and the powers granted in the article 58.1 of the RGPD, and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, being aware of the following points:

On October 24, 2022, this Agency receives a written response to a request for information, presented on behalf of IBERIA, with entry registration number *****ENTRADA.1**, which provides, among other things, the Next information:

1. Indication that the regulation on personal data protection has not been violated.

2. Indication that *“at no time has it been their intention not to respond to the requests made by”* the complaining party, *“but that an error has been made when interpreting them”* since *“IBERIA understood that*

The claims filed were not specifically based on a right of access, but rather were based on claiming the payment made in relation to the check-in of hand luggage" ... "In addition to the above, it was interpreted that the fact of wanting to know why "The reason why the documentation was requested was not precisely based on an exercise of rights in relation to current regulations on data protection, but rather an exclusive matter of customer service."

3. Indication that, with respect to the data provided by the complaining party to IBERIA staff at the Quito airport, *"the data was never sent to the CPS nor stored by said center, proceeding to its immediate deletion on the devices. employees to carry out the necessary checks"*, and that, in this sense, IBERIA has sent a response to the complaining party on October 21, 2022, and a printout of this email sent by the DPO Office to the party is provided. claimant dated October 21, 2022 with the subject *" Use of my personal data and information by Iberia Airlines"* and the following content:

"Dear A.A.A., We

hope this message finds you well.

We are hereby writing in reply to your request for information, specifically, First of all we would like to acknowledge with you that indeed we received your past requests for information in this regard, but sadly, as they were received as customer complaints through our online webform for this type of cases, and not as data subject right exercise request –which can be made via a different available online webform too- we might have not been able to provide such a proper, complete and accurate answer as we should have. For this, we hereby humbly and deeply apologise with you for any discontent or inconvenience we might have caused you.

Secondly, in the belief that you deserve a proper reply and assuming that you still might be interested in receiving the explanations you were asking us for, we kindly request that you let us inform you as follows: - You may recall that by May 2021, many travel restrictions to try to avoid the spread of SARS- CoV-2 were still in force and/or under constant evolution or change. These travel restrictions usually were related not only to the origin of a flight, but also to the nationality of the passenger/s. Your case involved, as you already said in your claims in the past, documentation originated in three different jurisdictions which is significantly far from the standard cases of documents review our handling personnel in Quito airport was used to.

- For this reason, and following internal standard procedure for cases like this, they asked you to allow them take a picture of your travel documentation so that they might consult with Iberia's internal Permanent Security Centre ("Centro Permanente de Seguridad" or "CPS") and CPS could eventually review and confirm whether or not your documentation allowed you both to fly with Iberia to your final travel destination. In this regard, CPS works as a second level helpdesk for this type of issues.

- Nevertheless, according to our handling personnel in Quito in your case consulting with CPS was finally NOT NECESSARY, because they were able to check and confirm locally with another member of their staff that you were both able to travel with the documents you showed. Therefore, there was no need to send your documentation to CPS for review.

- Lastly, in accordance with Iberia internal standard procedures, once your case was reviewed and assessed, the pictures of your documents were **DELETED** from the devices they were taken with.

I hope this information and explanations, late as they might have been submitted to you, may help you to resolve the queries you having be posing to us in your different claims.

Anyhow, should you still have any further queries or doubts on this matter we kindly ask you to please transmit them to us directly by replying to this email or writing to oficinadpo@iberia.es, where we will do our best to provide any necessary explanation.

Yours faithfully,
Data Protection Office”

[Unofficial translation: “Dear
AAA

We hope this message finds you well.

We are hereby writing to you in response to your request for information, specifically, First of all, we would like to acknowledge with

you that we have in fact received your previous requests for information in this regard, but unfortunately, since they were received as complaints from clients through our online web form for this type of case, and not as a request to exercise the right of the interested party, which can also be done through a different online web form, we may not have been able to provide a adequate, complete and precise response as we should have. For this reason, we humbly and deeply apologize to you for any discontent or inconvenience we may have caused you.

Secondly, in the belief that you deserve an adequate response and assuming that you may still be interested in receiving the explanations that you were asking from us, we kindly ask you to allow us to inform you as follows: - You may remember that, in May 2021, Many travel restrictions to try to prevent the spread of SARS-CoV-2 were still in effect or constantly evolving or changing. These travel restrictions were generally related not only to the origin of a flight, but also to the nationality of the passenger(s).

In your specific case, as you have stated in your claims in the past, the documentation originated in three different jurisdictions which is significantly different from the standard document review cases that our staff at the Quito airport are accustomed to.

- For this reason, and following the internal standard procedure for cases like this, they asked you to allow them to take a photo of your travel documentation so that they could consult with the Iberia Permanent Security Center (CPS) and CPS could at that time review and confirm if your documentation allowed you both to fly with Iberia to your final destination. In this sense, CPS functions as a second-level customer service for these types of problems.

- However, according to our staff in Quito, in your case, the consultation with CPS ultimately WAS NOT NECESSARY, because they were able to verify and confirm locally with another member of your staff that you were both able to travel with the documents you showed. Therefore, there was no need to submit your documentation to CPS for review.

- Finally, in accordance with Iberia's internal procedures, once your case was reviewed and evaluated, the images of your documents were extracted from the devices with which they were taken.

I hope that this information and explanations, although they could have been sent to you earlier, can help you resolve the questions you are raising in your different claims.

However, in case you still have any questions or concerns regarding this matter, please forward them to us directly by replying to this email or by writing to OficinaDPO@iberia.es, where we will do our best to provide any necessary explanations. "

4. A search is carried out for the company IBERIA LÍNEAS AÉREAS DE ESPAÑA, SOCIEDAD ANÓNIMA OPERADORA in the Axesor Monitoriza service (<https://monitoriza.axesor.es/>) on March 22, 2023, obtaining that this company was a "... " type company and, in fiscal year 2020, it had *****QUANTITY.1** employees and sales of *****QUANTITY.2**.

FIFTH: On May 4, 2023, the Director of the AEPD adopted a draft decision to initiate the sanctioning procedure. Following the process established in Article 60 of the GDPR, on May 8, 2023, this draft decision was transmitted through the IMI system and the interested authorities were informed that they had four weeks from that moment to formulate relevant and reasoned objections. . The processing period for this sanctioning procedure was automatically suspended during these four weeks, in accordance with the provisions of article 64.4 of the then current LOPDGD.

Within the period for this purpose, the supervisory authorities concerned did not present relevant and reasoned objections in this regard, so it is considered that all authorities agree with said draft decision and are bound by it, in accordance with the provisions of section 6 of article 60 of the GDPR.

This draft decision, which was notified to IBERIA in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPACAP), was collected on May 5, 2023, as it appears in the acknowledgment of receipt that is in the file.

SIXTH: On September 7, 2023, the Director of the Spanish Data Protection Agency agreed to initiate a sanctioning procedure against IBERIA in order to impose a fine of 50,000 euros, in accordance with the provisions of articles 63 and 64 of the LPACAP , for the alleged violation of article 15 of the RGPD, typified in Article 83.5 of the RGPD, in which it was indicated that it had a period of ten days to present allegations.

This initiation agreement, which was notified to IBERIA in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (LPACAP), was collected on September 12, 2023, as it appears in the acknowledgment of receipt that is in the file.

SEVENTH: On September 26, 2023, IBERIA presented to the Agency a .pdf file named _____ in _____ Format _____ with _____ he

"DOC_1_CAC_GDPR_GUIA_PROCESO_PASAJE_ESTANDAR.pdf" and in the "Observations" field of the record the following was completed: "DOC 1 BASIC GUIDE GDPR CUSTOMER SERVICE SERV". But without giving more explanations about it.

EIGHTH: On October 5, 2023, the investigating body of the procedure agreed to grant a new period for allegations of five business days, which was notified to IBERIA on October 6, 2023, as stated in the acknowledgment of receipt in the proceedings.

NINTH: On October 17, 2023, this Agency received a letter from IBERIA in which it alleged allegations regarding the initiation agreement. In these allegations, in summary, he stated that: the amount established in relation to the assessed infraction was not proportional and that the classification of the infraction in relation to the events that occurred is not correct.

Along with the allegations, a file is provided with the name "DOC_1_CAC_GDPR_GUIA_PROCESO_PASAJE_ESTANDAR.pdf."

TENTH: According to diligence carried out on January 26, 2024, in the IBERIA privacy policy in force from June 25, 2020 to July 5, 2021 (<https://www.iberia.com/es/informacion-sobre-privacidad/>) stated that: "Throughout the Privacy Policy you will find a number of specific examples of why and how we use your personal data. If you have any questions, please contact us by writing to our Data Protection Office by email at OficinaDPO@iberia.es."

ELEVENTH: A list of documents recorded in the procedure is attached as an annex.

PROVEN FACTS

FIRST: On June 2, 2021, the complaining party received an email sent by ***EMAIL.2 to ***EMAIL.1 with the following header:

And the following content:

"Dear A.A.A.,

Thank you for your notification regarding flight ***VUELO.1 of ***FECHA.1.

As Iberia employees, we strive at all times to help customers and offer solutions for all eventualities.

However, it is clear from your comments that on this occasion there was a lack of professionalism on our part. We would ask you to treat this as an exceptional occurrence, and please be assured that we have referred the incident to the person C/ Jorge Juan, 6 www.aepd.es 28001 – Madrid sedeagpd.gob.es

concerned so that they may take the necessary measures to avoid this type of behaviour in the future.

Regarding the payment for your extra bag, we want to inform you that baggage allowances are based on the fare paid for tickets, the cabin class in which the passenger is travelling and the degree of customer loyalty.

Before buying a ticket, you should check the baggage allowance included. This will also be stated on the receipt we provide. Once a ticket has been purchased, we offer passengers the option of adding more items of baggage, either through the vouchers available on our website www.iberia.com or through payment of the excess directly at the airport.

In this particular case, we have checked that the allowance allocated to you was correct and the process followed was therefore correct as well.

We apologise for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

Kind regards,
Customer Relations"

[Unofficial translation:

"Dear **AAA**, Thank you

for your notification regarding flight *****FLIGHT.1** on *****DATE.1**.

As Iberia employees, we strive at all times to help customers and offer solutions for all eventualities.

However, it is clear from your comments that on this occasion there was a lack of professionalism on our part. We ask that you treat this as an exceptional event, and please be assured that we have forwarded the incident to the person concerned so that they can take the necessary steps to prevent this type of behavior in the future.

Regarding payment for your extra baggage, we want to inform you that baggage allowances are based on the fare paid for the tickets, the cabin class in which the passenger travels and the degree of customer loyalty.

Before purchasing a ticket, you should check the baggage allowance included. This will also be indicated on the receipt we provide. Once a ticket has been purchased, we offer passengers the option of adding more items of luggage, either through the vouchers available on our website www.iberia.com or by paying the excess directly at the airport.

In this particular case, we have verified that the assignment assigned to you was correct and therefore the process followed was also correct.

We apologize for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

Best regards, Customer
Relations"]

SECOND: On June 3, 2021, the complaining party sent an email from *****EMAIL.1** to *****EMAIL.2**, in response to the previous one, which indicates the following:

"Hi there,

Thank you for your reply. (...)

As mentioned in my first communication, I would like to understand what the communication was between Iberia and The Madrid Airport Police. After we were turned away from check in and directed to the Ibera office to prove our marriage, The Ibera Quito team took our passports and marriage certificate to share with Madrid Airport police to see if they would let us fly back to Ireland. I want to know how our data was used, that this communication actually happened and what the output of this communication was. Can you please follow up internally to get this information and feed this back to us.

Best Regards,

A.A.A.

*****PHONE.1"**

[Unofficial translation:

"Hi,

thank you for your answer. (...)

As I mentioned in my first communication, I would like to understand what the communication was between Iberia and the Madrid Airport Police. After we were turned away at check-in and directed to the Iberia office to prove our marriage, the Iberia Quito team took our passports and marriage certificate to share with the Madrid airport police to see if they would let us fly back to Ireland. I want to know how our data was used, that this communication actually happened, and what the outcome of this communication was. Please follow up internally for this information and let us know.

Best regards, AAA

*****PHONE.1"""]**

THIRD: On June 7, 2021, the complaining party receives an email sent by *****EMAIL.2** with the following header:

And the following content:

*"Dear **A.A.A.**,*

*Thank you for contacting us about the charge for your baggage on flight *****VUELO.1** on *****FECHA.1**, from Quito to Madrid.*

We appreciate that you were inconvenienced by this. Airlines are entitled to establish their own policies regarding baggage allowances based on the fare paid for tickets, the cabin class in which the passenger is travelling and the degree of customer loyalty.

In this particular case, we have checked that the allowance allocated to you was correct and the process followed was therefore correct as well. Even though your bag

was cabin size, if it weights more than 10 Kgs, it will be treated and charged as a bag on hold.

We apologise for this incident, and we trust that you will have a satisfactory experience the next time you fly with us.

*Kind regards,
Customer Relations"*

[Unofficial translation:

*Dear **AAA**,*

*Thank you for contacting us about the charge for your luggage on flight *****FLIGHT.1** of *****DATE.1**, from Quito to Madrid.*

We understand that this has bothered you. Airlines have the right to establish their own policies regarding baggage allowances based on the fare paid for the tickets, the cabin class in which the passenger travels and the degree of customer loyalty.

In this particular case, we have verified that the assignment assigned to you was correct and, therefore, the process followed was also correct. Even though his bag was the size of the cabin, if it weighs more than 10 Kgs, it will be treated and charged like a bag waiting.

We apologize for this incident, and trust that you will have a great experience. satisfactory the next time you fly with us.

*Best regards, Customer
Relations"*

FOURTH: On June 18, 2021, the complaining party receives an email from *****EMAIL.2** with the following header:

And the following content:

*"Thank you for contacting Iberia.
We apologise for any inconvenience caused.*

We have received your complaint and our team will now analyse it and send you a reply within 7 business days.

Iberia Customer Services"

[Unofficial translation:

*"Thank you for contacting Iberia.
We apologize for any inconvenience caused.*

We have received your complaint and our team will analyze it and send you a response within the next 7 business days.

Iberia Customer Service”]

FIFTH: On June 20, 2021, the complaining party received an email from *****EMAIL.2** with the following heading:

And the following content:

*“Dear **A.A.A.**,*

*We are writing in relation to flight *****VUELO.1** of *****FECHA.1**.*

With regard to travel documentation, airlines are not subject to the requirements of the government authorities of each country, which in certain cases may require, in addition to identification documents, a hotel reservation, a return ticket or any other specific condition. To avoid situations where you may be prevented from travelling by the immigration department in the country of departure, transit or destination, it is important to ensure that you have the necessary documentation for your complete itinerary. We must confirm at the airport of departure that the passengers have all the documents required by the authorities.

Kind regards.

Iberia Customer Services”

[Unofficial translation:

*“Dear **AAA**, We are*

*writing to you regarding your flight *****FLIGHT.1** on *****DATE.1**.*

With respect to travel documentation, airlines are not subject to the requirements of the government authorities of each country, which in certain cases may require, in addition to identification documents, a hotel reservation, a return ticket or any other conditions. specific. To avoid situations where you are prevented from traveling by the immigration department in the country of departure, transit or destination, it is important to ensure that you have the necessary documentation for your entire itinerary. We must confirm at the departure airport that passengers have all the documents required by the authorities.

Best regards, Iberia

Customer Service”

SIXTH: On June 22, 2021, the complaining party sent an email to OficinaDPO@iberia.es with the subject “Use of my Personal Data and Information by Iberia Airlines” [Unofficial translation: “Use of my personal data and information by Iberia Airlines” Iberia Airlines”] and the following content:

“Hi there,

C/ Jorge Juan, 6
28001 – Madrid

www.aepd.es
sedeagpd.gob.es

My husband and I were refused check-in on an Iberia flight from Quito to Madrid on May 31st of this year. The reason we were refused check-in was that my husband has a US passport and the check-in staff said Iberia couldn't allow an American to travel to Europe for tourism. I let the check-in staff know that we were married and that we were traveling for family matters and to relocate to Ireland vs. being a tourist in Ireland. Iberia check-in staff then asked for proof of marriage. We showed them our New York state marriage certificate, but this was rejected on the spot as appropriate proof of marriage. We were asked to go to the Iberia Office in Quito Airport to continue the conversation and get approval for our flight.

The Iberia staff member in the Quito airport back office took copies of my Irish passport, my husband's American passport and our New York state marriage certificate. We understood that Iberia staff in Quito were going to send copies of these to Madrid Airport Police to get approval for us to fly or stop us from flying.

We ultimately were permitted to check in and to take our flight, but I want to understand what the communication was between Iberia in Ecuador and The Airport Police in Madrid. I want to understand how my data was used by Iberia and to what end. I want to understand what the communication was around the refusal to let us check-in. I

want to see the feedback from Madrid Airport Police around our permission to travel.

The Iberia Privacy Policy states 'We will be transparent about the information we are collecting and what we will do with it' I have not found this to be the case. I have requested this data four times through the Iberia customer complaint channel (...) and although I've received four responses, all were lacking specific details. I still don't know why I had to share this information with Iberia, how my data was used and what was the outcome of this communication.

I would appreciate it if you can provide this information to me.

Best Regards,

A.A.A."

"Hello,

My husband and I were denied check-in on an Iberia flight from Quito to Madrid on May 31 of this year. The reason we were refused check-in was that my husband has a US passport and the check-in staff said Iberia does not could allow an American to travel to Europe for tourism. I let him know check-in staff that we were married and traveling on business relatives and to move to Ireland vs. be a tourist in Ireland. Next, the Iberia registration staff requested proof of marriage. We show them our New York State marriage certificate, but this was rejected on the spot as proper proof of marriage. They asked us to go to the Iberia office at the Quito airport to continue the conversation and obtain approval our flight.

The Iberia staff member in the back office of Quito airport took copies of my Irish passport, my husband's American passport and our New York State marriage certificate. We understood that the staff of Iberia in Quito was going to send copies of these to the Madrid Airport Police for get approval to fly or stop flying.

Ultimately, we were allowed to check in and take our flight, but

I want to understand what the communication was between Iberia in Ecuador and the Police of the Madrid's airport. I want to understand how my data was used by Iberia and to what end I want to understand what the communication was around the refusal to

let us check-in. I want to see the comments from the Madrid Airport Police about our permission to travel.

Iberia's Privacy Policy states: "We will be transparent about the information we are collecting and what we will do with it", this does not seem to me to be the case. I have requested this data four times through Iberia's customer complaints channel (...) and although I have received four responses, they all lacked specific details. I still don't know why I had to share this information with Iberia, how my data was used and what the result of this communication was.

*I would appreciate it if you could provide me with this information.
Best regards, AAA"]*

SEVENTH: On June 23, 2021, the complaining party receives an email from *****EMAIL.2** with the following header:

And the following content:

"Thank you for contacting Iberia.

We apologise for any inconvenience caused.

We have received your complaint and our team will now analyse it and send you a reply within 7 business days.

Iberia Customer Services"

[Unofficial translation:

"Thank you for contacting Iberia.

We apologize for any inconvenience caused.

We have received your complaint and our team will analyze it and send you a response within the next 7 business days.

Iberia Customer Service"]

EIGHTH: On June 24, 2021, the complaining party receives an email from *****EMAIL.2** with the following header:

And the following content:

*"Dear A.A.A.,
Thank you for sending us your comments again.*

However, please note that after reviewing your case, and given the circumstances of the incident, we must repeat the resolution we offered in our previous communication.

We apologise once again, and we trust that you will have a satisfactory experience the next time you fly with us.

*Kind regards,
Iberia Customer Services"*

[Unofficial translation: *Dear
AAA, Thank you for
sending us your comments again.
However, please note that after reviewing your case, and given the circumstances of the incident, we must repeat the resolution we offered in our previous communication.*

We apologize once again, and trust that you will have a satisfactory experience the next time you fly with us.

*Best regards, Iberia
Customer Service"]*

NINTH : On October 21, 2022, the IBERIA DPO Office sent an email to the complaining party with the subject " Use of my personal data and information by Iberia Airlines " Iberia"] and the following content:

*"Dear A.A.A.,
We hope this message finds you well.
We are hereby writing in reply to your request for information, specifically, First of all we would like to acknowledge with you that indeed we received your past requests for information in this regard, but sadly, as they were received as customer complaints through our online webform for this type of cases, and not as data subject right exercise request –which can be made via a different available online webform too- we might have not been able to provide such a proper, complete and accurate answer as we should have. For this, we hereby humbly and deeply apologise with you for any discontent or inconvenience we might have caused you.*

Secondly, in the belief that you deserve a proper reply and assuming that you still might be interested in receiving the explanations you were asking us for, we kindly request that you let us inform you as follows: - You may recall that by May 2021, many travel restrictions to try to avoid the spread of SARS- CoV-2 were still in force and/or under constant evolution or change. These travel restrictions usually were related not only to the origin of a flight, but also to the nationality of the passenger/s. Your case involved, as you already said in your claims in the past, documentation originated in three different jurisdictions which is significantly

far from the standard cases of documents review our handling personnel in Quito airport was used to.

- For this reason, and following internal standard procedure for cases like this, they asked you to allow them take a picture of your travel documentation so that they might consult with Iberia's internal Permanent Security Centre ("Centro Permanente de Seguridad" or "CPS") and CPS could eventually review and confirm whether or not your documentation allowed you both to fly with Iberia to your final travel destination. In this regard, CPS works as a second level helpdesk for this type of issues.

- Nevertheless, according to our handling personnel in Quito in your case consulting with CPS was finally NOT NECESSARY, because they were able to check and confirm locally with another member of their staff that you were both able to travel with the documents you showed. Therefore, there was no need to send your documentation to CPS for review.

- Lastly, in accordance with Iberia internal standard procedures, once your case was reviewed and assessed, the pictures of your documents were DELETED from the devices they were taken with.

I hope this information and explanations, late as they might have been submitted to you, may help you to resolve the queries you having be posing to us in your different claims.

Anyhow, should you still have any further queries or doubts on this matter we kindly ask you to please transmit them to us directly by replying to this email or writing to oficinadpo@iberia.es, where we will do our best to provide any necessary explanation.

Yours faithfully,
Data Protection Office"

[Unofficial translation: "Dear
AAA

We hope this message finds you well.

We are hereby writing to you in response to your request for information, specifically, First of all, we would like to acknowledge with

you that we have indeed received your previous requests for information in this regard, but unfortunately, since they were received as complaints from clients through our online web form for this type of case, and not as a request to exercise the right of the interested party, which can also be done through a different online web form, we may not have been able to provide a adequate, complete and precise response as we should have. For this reason, we humbly and deeply apologize to you for any discontent or inconvenience we may have caused you.

Secondly, in the belief that you deserve an appropriate response and assuming that you may still be interested in receiving the explanations that you were asking from us, we kindly ask you to allow us to inform you as follows: -

You may remember that, in May 2021, many travel restrictions to try to prevent the spread of SARS-CoV-2 were still in effect or constantly evolving or changing. These travel restrictions were generally related not only to the origin of a flight, but also to the nationality of the passenger(s).

In your specific case, as you have stated in your claims in the past, the documentation originated in three different jurisdictions which is significantly different from the standard document review cases that our staff at the Quito airport are accustomed to.

- For this reason, and following the internal standard procedure for cases like this, they asked you to allow them to take a photo of your travel documentation so that they could consult with the Iberia Permanent Security Center (CPS) and CPS could at that time review and confirm if your documentation allowed you both to fly with Iberia to your final destination. In this sense, CPS functions as a second-level customer service for these types of problems.

- However, according to our staff in Quito, in your case, the consultation with CPS ultimately WAS NOT NECESSARY, because they were able to verify and confirm locally with another member of your staff that you were both able to travel with the documents you showed. Therefore, there was no need to submit your documentation to CPS for review.

- Finally, in accordance with Iberia's internal procedures, once your case was reviewed and evaluated, the images of your documents were extracted from the devices with which they were taken.

I hope that this information and explanations, although they could have been sent to you earlier, can help you resolve the questions you are raising in your different claims.

However, in case you still have any questions or concerns regarding this matter, please forward them to us directly by replying to this email or by writing to OficinaDPO@iberia.es, where we will do our best to provide any necessary explanations. ”

TENTH: IBERIA LÍNEAS AÉREAS DE ESPAÑA, SOCIEDAD ANÓNIMA OPERADORA is a “...” type company and, in fiscal year 2020, it had *****QUANTITY.1** employees and sales of *****QUANTITY.2**.

ELEVENTH: In IBERIA's privacy policy in force from June 25, 2020 to July 5, 2021 (<https://www.iberia.com/es/informacion-sobre-privacidad/>) it was indicated that: “As Throughout the Privacy Policy you will find a number of specific examples of why and how we use your personal data. If you have any questions, please contact us by writing to our Data Protection Office by email at OficinaDPO@iberia.es.”

FOUNDATIONS OF LAW

Competence and procedure

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants to each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, insofar as they do not contradict them, on a subsidiary basis, by the general rules on administrative procedures."

II

Previous issues

In the present case, in accordance with the provisions of article 4.1 and 4.2 of the RGPD, personal data is processed, since IBERIA collects and preserves, among others, the following personal data of natural persons : name and surname and email, among other treatments.

IBERIA carries out this activity in its capacity as data controller, given that it is the one who determines the purposes and means of such activity, under article 4.7 of the RGPD. Furthermore, it is a cross-border treatment, given that IBERIA is established in Spain, although it provides services to other countries in the European Union.

The GDPR provides, in its article 56.1, for cases of cross-border processing, provided for in its article 4.23), in relation to the competence of the main supervisory authority, that, without prejudice to the provisions of article 55, the control of the main establishment or the sole establishment of the controller or processor shall be competent to act as the main supervisory authority for cross-border processing carried out by said controller or processor in accordance with the procedure established in Article 60. In the case examined As stated above, IBERIA has its main establishment in Spain, so the Spanish Data Protection Agency is competent to act as the main control authority.

For its part, article 15 of the GDPR regulates the right of access of interested parties to their personal data.

III

Allegations alleged

In relation to the allegations alleged in the agreement to initiate this sanctioning procedure, we proceed to respond to them according to the order set forth by IBERIA:

FIRST. – THE LACK OF PROPORTIONALITY OF THE AMOUNT FIXED IN RELATION TO THE ASSESSED INFRINGEMENT.

Firstly, IBERIA alleges that, on the date on which the reported events took place, that is, June 2021, there was a global crisis in relation to the pandemic caused by SARS-CoV-2 (COVID -19), which caused devastating effects at all levels, including, among others, the passenger air transport sector in which the Company operates.

Secondly, IBERIA alleges that:

- Between May 2021 and October 2022, through **IBERIA's online claims channel** (which aims to address and resolve travel or service incidents – cancellations, delays, denied boarding, incidents of luggage, etc... - and not answer requests to exercise rights under the RGPD), **More than 379,077 complaints** have been attended to . At this point, it is worth highlighting that customers use the forms and email addresses linked to Customer Service without taking into account, on many occasions, the possibility of making certain requests through the specific mechanisms enabled for this purpose.
- Between May 2021 and October 2022, they have been received and attended to correctly, through a **specific online form enabled** for the exercise of the rights recognized in articles 15 to 22 of the RGPD, **more than 14,696 requests**. Furthermore, it is important to highlight that the requests carried out by interested parties in 2022 have increased by 312%, compared to the previous year.

In view of the above, IBERIA indicates that it is clear that there has been a more than noticeable increase in requests regarding data protection by users.

IBERIA clients, which have been attended to in almost all cases in a satisfactory manner for those interested. However, the volumes of requests reached make it impossible not to make an error in any of the operations.

management that can be carried out in the development of your day-to-day life. However, and in order that these misunderstandings can be minimized as much as possible, the following points are emphasized: questions:

1. IBERIA staff have at their disposal, through the Company's intranet, training on the procedure for exercising GDPR rights through the which provides the appropriate instructions for correct care. This procedure is given at the time the employee becomes part of the company. template and is refreshed – along with updated content – on a biennial basis.

Thus, such circumstances are proven through the following captures of screen:

2. Likewise, an executive guide has been prepared so that the customer service client can have access to information related to the exercise of rights, making emphasis on the due transfer that must be made to the DPO Office, in the event that requests are carried out through said channel. This guide is provided as **DOCUMENT NUMBER 1** .

3. Best efforts are made to achieve the highest degree of transparency possible, keeping the privacy policy duly documented and updated.
which is available to all our users and clients. So things are,
Since the entry into application of the RGPD in 2018, the Company has put the day your policy up to 7 times:

Source: Screenshot of the IBERIA website www.iberia.com.

In this regard, this Agency wishes to point out that it does not deny the effects caused by the pandemic caused by SARS-CoV-2 (COVID-19), nor the high number of complaints that IBERIA has attended between May 2021 and October 2022, nor that measures have been adopted by IBERIA.

Rather, the object of this procedure is the possible infringement by IBERIA of article 15 of the RGPD for not having duly attended to the exercise of the right of the complaining party. Therefore, this allegation is rejected.

IBERIA continues to allege that all of the above highlights, in IBERIA's opinion, the great commitment in the matter that all areas of the Company have acquired, but it certainly does not prevent certain actions from being carried out in accordance with the established procedures, adequately enabled channels or, as the case may be, that there is no error in the interpretation of the requests made. As I already know revealed in the information request carried out by this Agency, it has never been IBERIA's intention not to address the right recognized in article 15 of the RGPD, but rather there was an error in the way of understanding the request made in the sense that it was considered that the user wanted to know why the They carried out this type of actions when making a stopover on their way.

IBERIA alleges that, as a sign of the Company's demands and best efforts to achieve the highest possible degree of trust and satisfaction of its customers, it has given more than one response to the complaining party when it has been directed to a mailbox in which is specified **"IBERIA No-Reply"**, so in no way can it be. It is appropriate to specify that IBERIA's intention has been to prevent or hinder the exercise of rights, but that: i) first of all and despite everything, it has responded to the emails sent to said address in good faith; and ii) unfortunately, there has been an inadequate interpretation of one request, among many thousands, that has given rise to inadequate management of it. Incorrect exegesis that, as it has been duly accredited, has been resolved as a consequence of the transfer of the information request from the AEPD, but without being able to conclude, taking into account the data exposed *above*, which has had the purpose of hindering, not wanting to respond or making it impossible to offer requested information to the owner of the data. Máxi- C/ Jorge Juan, 6 www.aepd.es

me when there was no type of impediment to it, since as stated exposed to the complaining party, the data was never sent to the Police in Spain (as the complaining party had apparently interpreted when the events occurred), they were not even finally sent to the Permanent Security Center (CPS) of IBERIA in Madrid (second level helpdesk for queries regarding documentation of trip for external handling agencies that provide services to IBERIA

outside Spain) as it was not necessary, nor were they stored by said center or by the agency of the scale of origin where the photos of the documentation were taken, proceeding to the immediate deletion of the same on the devices on which said Photos were taken, this elimination being carried out in accordance with the data deletion procedure accompanied as Document Number 2 of our previous writing.

In this regard, this Agency wishes to point out that it has not been considered that IBERIA had acted fraudulently by not properly addressing the exercise of the right of access of the complaining party, but it is understood that it should have been more diligent to prevent were an error such as the one in this case to occur, the existence of which IBERIA itself has recognized.

It should also be noted that this Agency has not received the aforementioned Document Number 2 that mentions the brief of allegations. However, it is not questioned in the present case that IBERIA had sent the data of the complaining party to the CPS of IBERIA nor that the data will be stored in said center or at the scale of origin or that the data had not been deleted, but rather that it was not provided information to the complaining party about what IBERIA had done with your data. No more no less. Therefore, this claim is rejected.

Furthermore, IBERIA brings up what was established by the European Committee of Data Protection (hereinafter, the "CEPD") in its Guidelines 01/2022 on the rights of interested parties, since it has specified that all requests linked to the exercise of the right of access that are carried out through through random or incorrect addresses, or to any communication channel that clearly does not

is intended to receive requests related to the rights of the interested party, they will not require attention (translation is carried out):

"54. It should be noted that the person responsible for the treatment is not obliged to process a request sent to a random or incorrect email (or postal) address, not provided directly by the data controller, or to any communication channel that is clearly not intended to receive requests relating to the rights of the interested party if the data controller has provided an appropriate communication channel that can be used by the interested."

In this regard, this Agency wishes to point out the entire content of the section cited by IBERIA (in English the original, unofficial translation):

"53. The CEPD encourages those responsible for the treatment to provide the channels of more appropriate and user-friendly communication, in accordance with Article 12, section 2, and article 25 of the RGPD, so that the interested party can submit an effective request. However, if an interested party submits a request using a channel communication provided by the data controller, which is different

than indicated as preferable, said request will be considered, in general, effective and the responsible for the treatment must process said request accordingly (...). The Data controllers must make all reasonable efforts to ensure that the exercise of the rights of the interested parties is facilitated (for example, when a data subject sends an access request to an employee who is on leave, an automatic message informing the data subject about a communication channel alternative for this request could be a reasonable effort)."

As a footnote, it is clarified that this "may include, for example, the communication data of the data controller provided in its communications addressed directly to the interested parties or the contact data provided by the data controller. controller publicly, such as in the controller's privacy policy or other required legal notices of the controller (for example, contact information of the owner or company on a site web)".

The aforementioned Guidelines continue:

"54. It should be noted that the data controller is not obliged to act on a request sent to a random or incorrect email (or postal) address, not provided directly by the data controller, or to any communication channel that is clearly not intended to receive requests relating to the rights of the data controller. interested party if the data controller has provided an adequate communication channel, which can be used by the interested party.

55. The data controller is also not obliged to respond to a request sent to the email address of the controller's employee who may not participate in the processing of requests relating to the rights of data subjects (for example, drivers, cleaning staff, etc.). sayings Requests will not be considered effective if the person responsible has clearly provided to the interested party an appropriate communication channel. However, if the interested party sends a request to the employee of the controller who has been assigned as your usual contact person (for example, a personal manager account in a bank or a regular consultant at a mobile operator), such contact does not should be considered random and the person responsible should make every effort to process said request so that it can be redirected to the contact point and responded to within the deadlines established by the RGD.

56. However, the EDPB recommends, as a good practice, that those responsible for the treatment introduce appropriate mechanisms to facilitate the exercise of the rights of the interested parties, including autoresponder systems to report the absences of staff and appropriate alternative contacts and, to the extent possible possible, mechanisms to improve internal communication between employees about "requests received by those who may not be competent to process such requests."

In the present case, the complaining party has exercised its right of access to its personal data through IBERIA customer service in numerous cases. occasions in June 2021. In no way can this be considered a "random or wrong" address for your request.

In this sense, this Agency insists that contacting a company's customer service is a perfectly valid address to request the exercise of the rights recognized in the RGPD by the interested parties. And that it is IBERIA's obligation to arbitrate the necessary internal mechanisms so that rights requests are duly attended to or, at least, forwarded to the appropriate team to provide a proper response.

In this sense, it is not unreasonable (neither impracticable nor a disproportionate effort) that the data controller (IBERIA, in this case) must implement the necessary internal mechanisms so that, at least with regard to its customer service, where it is expected to receive requests of all types (including the exercise of rights that the RGPD recognizes to the interested parties), these requests are resolved or redirected as soon as possible to the team designated for this purpose, so that they can be responded to within the period provided for by the GDPR.

In any case, this Agency considers that communicating with IBERIA customer service cannot be understood as a "random or incorrect address, not provided directly by the person responsible for the treatment", nor "any communication channel that clearly does not intend to receive requests related to the rights of the interested party", in the terms outlined in Guidelines 01/2022 of the European Data Protection Committee, without prejudice to the fact that IBERIA had provided for a different preferred means of communication.

Therefore, in the present case, this Agency considers that, by contacting customer service, the complaining party could reasonably expect that its request would be attended to.

In any case, on June 22, 2021, the complaining party sent an email to OficinaDPO@iberia.es, the address that appeared in the privacy policy in force at that time for this type of queries, in which it indicated that it still did not know why you had to share your information with Iberia, how your data was used and what the result of that communication was, but in any case you did not receive a response to this email from IBERIA.

Therefore, for all the above reasons, this Agency rejects this allegation.

IBERIA alleges that the AEPD must assess all the actions followed by the company, in order to classify the alleged infraction committed, as well as when quantifying the sanction. And all this because, as this Agency has stated on repeated occasions, the response perpetrated, even if it is untimely, does not prevent the right from being duly attended to. Furthermore, the "exceptional nature of the sanctioning procedure must be taken into account, *from which it follows that - whenever possible - the prevalence of alternative mechanisms should be chosen in the event that they are protected by current regulations.*"

In this regard, this Agency wishes to point out that, without its intervention once the claim was admitted for processing, the right of the complaining party would not have been addressed. Therefore, this claim is rejected.

IBERIA considers that the AEPD has not adequately applied the principles of administrative sanctioning procedure, as long as we are faced with an indisputably disproportionate sanction, in his opinion, reaching such conclusions from the following facts:

1. It cannot be said that a large number of people have been affected for making an extemporaneous response nor can we speak of serious damages and/or losses suffered by the claiming party, taking into account that said right has been satisfied, nor are they proven.

In this regard, this Agency wishes to point out that the RGPD does not require that there must be serious damages and/or losses of the complaining party to verify the existence of infringement, as in the present case. And it is insisted that the right was satisfied only after this Agency had intervened, once the claim was admitted for processing. Finally, the nature of the infringement, the number of people affected, the existence or not of damages, are all issues that have been taken into account and

have been duly motivated when grading the sanction to be imposed on IBERIA. Therefore, for all the above reasons, this claim is rejected.

2. Likewise, in the opinion of IBERIA, in view of the data presented in relation to the number of claims filed and exercises of rights attended to, the fact of that the Company's business activity requires continuous data processing personal, should be valued as a positive and not a negative aspect, since the number of claims filed with this control authority in comparison with the more than 14,696 applications that can be received through the DPO mailbox, They are minimal.

In this regard, this Agency wishes to point out that a large company that processes the personal data of its clients on a large scale, in a systematic and continuous manner, must take extreme care in complying with its obligations regarding data protection. data protection, as established by jurisprudence. In this sense, the Judgment of the National Court of October 17, 2007 (rec. 63/2006), based on that these are entities whose activity entails continuous processing of client data, indicates that *"...the Supreme Court has been understanding that imprudence exists whenever a legal duty of care is neglected, that is, when the offender does not behave with the required diligence. And in assessing the degree of diligence, the professionalism or otherwise of the subject must be especially weighed, and it is not possible doubt that, in the case now examined, when the appellant's activity is "Constant and abundant handling of personal data must insist on rigor and exquisite care to comply with legal provisions in this regard."*

That is to say, precisely because personal data is continuously processed, greater care and greater diligence is required, in this case, when managing the exercises of rights on the part of the interested parties. Therefore, this claim is rejected.

3. IBERIA alleges that it is at least striking that the AEPD has taken into account consideration as an aggravating factor *"the financial benefits or losses avoided, directly or indirectly through the infringement"*, when such circumstance is neither

certain nor has it been able to be accredited by the Agency, leaving unknown the motivation on which this body is based to reach such a conclusion.

Well, as the Supreme Court has recalled in a ruling of September 20, 2012:

*"the requirement of motivation for administrative acts constitutes a constant of our legal system and this is proclaimed by article 54 of the LRJPA (previously, article 43 of the Administrative Procedure Law of July 17, 1958), taking into account
The purpose is that the interested party knows the reasons that lead to the resolution of the Administration, in order, where appropriate, to be able to refute them in the procedural form regulated for this purpose.*

*Motivation that, in turn, is a consequence of the principles of legal certainty and prohibition of arbitrariness stated in section 3 of article 9 of the Spanish Constitution (EC) and which also, from another perspective, can be considered as a constitutional requirement imposed not only by article 24.2 CE, but also by article 103 (principle of legality in administrative action). For his part, the Charter of Fundamental Rights of the European Union, proclaimed by The European Council of Nice of December 8/10, 2000 includes in its article 41, dedicated to the "Right to good Administration", among other particulars, "the obligation that falls on the Administration to motivate its decisions." Such precept is integrated today into the Treaty of the European Union (Lisbon Treaty), of December 13, 2007, ratified by the Instrument of December 26, 2008, which in its article 6 states that "The Union recognizes the rights, freedoms and principles enunciated in the Charter of Fundamental Rights of the European Union of December 7, 2000, as adapted on December 12, 2007 in Strasbourg, the
which will have the same legal value as the Treaties."*

In this regard, this Agency wishes to remember that section k) of article 83.2 of the GDPR does not refer only to the financial benefits obtained or losses avoided through the violation but refers to "Any other aggravating factor or mitigating circumstance applicable to the circumstances of the case...". That is, the financial benefits or losses avoided is just an example, but does not limit the content of said aside solely to those factors. On the contrary. In this sense, this Agency has considered that the size of IBERIA, number of employees and sales volume must be taken into account when grading the sanction to be imposed. For what I know rejects this claim.

4. In addition to all of the above, IBERIA considers that the Agency, with the aim of increasing the amount imposed, has assessed different sanctioning procedures in the that said company committed an infringement. Thus, IBERIA qualifies the following questions:

to. Resolution PS/00060/2020 published on July 20, 2020 and in which the commission of a violation of "article 37.1.f of the LOPD, classified as as serious in article 44.3.i of the LOPD." To this end, by virtue of the provisions by article 78 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, "LOPDGDD"), said

sanction is prescribed as the period of three years has elapsed since was dictated.

In this regard, this Agency wishes to point out that PS/00060/2020 determined the commission, contrary to what IBERIA claims, of a violation of article 58.2 of the RGPD, typified in art. 83.5 e) of the GDPR.

Regarding the prescription of the sanctions referred to by IBERIA, the article 78 of the LOPDGDD refers to the possibility that said sanctions can be executed and has no relationship with the possibility contemplated in section e) of article 83.2 of the RGPD: *"e) any previous infraction committed by the person responsible or the person in charge of the treatment"* when grading the possible sanction to be imposed in the event of an infraction.

Therefore, this claim is rejected.

b. Resolution PS/00402/2019 published on February 3, 2020 and where alleged a violation of article 6.1 of the RGPD *-Legality of Processing-*, typified in Article 83.5 of the RGPD, considering it prescribed as it has elapsed three years since it was issued.

In this regard, this Agency reiterates what was stated in the previous allegation, therefore This claim is rejected.

c. Resolution of PS/00127/2020. Although it is true that the latter dates back to April 2021, it must be taken into account that it analyzed the violation of the provisions of Article 13 of the GDPR - *Information that must be provided when personal data is obtained from the interested party*, which is why it should not be taken into account in the this procedure taking into account the lack of similarity and coherence with what was analyzed in the present factual scenario.

And in the words of the CEPD *"Although all previous infractions can provide an indication of the general attitude of the person in charge or in charge of the processing with respect to compliance with the GDPR, violations thereof object should be given greater importance, since they are closer to the infringement currently investigated, especially when the controller or the person in charge of the treatment previously committed the same infringement (repeated infringements). For the Therefore, the same violations of the matter must be considered more relevant than the previous violations in relation to a different topic."*

In this regard, this Agency wishes to point out that article 83.2 of the RGPD does not indicate that should be infringements of the same nature or object, but rather makes a broad reference. In fact, the CEPD itself does not indicate this either, which simply limits itself to say that greater importance should be given to those violations of the same object, but not that the fact that there have been other previous infractions, even if they are not of the same nature, cannot be taken into consideration. Therefore, this allegation is rejected.

IBERIA alleges that, in light of what was stated above, the AEPD take into consideration any type of mitigating factor that could reduce the impact.

established postage for making an untimely communication that, in no case, has been the result of malicious conduct, so IBERIA concludes that the principle of proportionality has not been rigorously observed. So, in the words of Supreme Court, in its ruling June 6, 2007:

“The principle of proportionality, as indicated by the STS of June 2, 2003, tends to adapt the sanction, by establishing its specific gradation within the possible margins, to the seriousness of the fact constituting the infraction, both in its aspect of illegality and guilt, weighing as a whole the objective and subjective circumstances that make up the budget of punishable fact and, in particular, as results from article 131.3 of Law 30/92, intentionality or reiteration, the nature of the damages caused and recidivism.”

IBERIA alleges that, although it is true that zero risk is non-existent, it must be assessed appropriately the volume of treatments that an entity such as IBERIA when imposing a sanction as a result of a mistake made when managing an exercise of rights, especially taking into account the circumstances that at that time overwhelmed the world population.

In this regard, this Agency reiterates that the factors have been duly motivated. to be taken into account when grading the sanction that could be imposed on IBERIA, both the number of people affected, the nature of the infraction, among others, which is why this allegation is rejected.

Finally, IBERIA emphasizes the reference made in the Fundamentals of Law VI of the Agreement, regarding the imposition of measures to adjust IBERIA's actions to the aforementioned regulations and that nothing is said or motivated in this regard. Well, you want to inform this supervisory authority of the measures adopted by the company are the following:

1) Reiteration of the importance of attending to the exercises of rights carried out by part of the data owners, in accordance with the requirements of current regulations regarding data protection and the processes established in the Company.

2) Reduce the training update time, which must be done in a manner annual and/or semiannual.

In this regard, this Agency wishes to point out that this allegation is upheld and is not will propose the adoption of additional measures by IBERIA.

SECOND. - OF THE TYPIIFICATION OF THE INFRINGEMENT IN RELATION TO THE EVENTS HAPPENED.

IBERIA alleges that, under compliance with the criteria described by the CEPD in its Guidelines 01/2022 the alleged infringement would have to be framed within the legal framework established by article 74.c) of the LOPDGDD.

In this regard, this Agency would like to point out that it finds it surprising that IBERIA invokes Guidelines 01/2022 on the right of access of interested parties, in which

In no way is any reference made to the provisions of article 74 of the LOPDGDD.

The infractions established in articles 72, 73 and 74 of the LOPDGDD are only for the purposes of prescription, as stated at the beginning of each and every one of these precepts. This need arose in our State since there is no reference in the GDPR to the prescription relating to infringements, since this legal institute is not specific to all EU Member States.

This is evident and regarding the prescription in the LOPDGDD's own explanatory memorandum when it states that *"The categorization of infractions is introduced for the sole purpose of determining the prescription periods, having the description of typical behaviors as the only object."* the enumeration as an example of some of the sanctionable acts that must be understood as included within the general types established in the European standard. The organic law regulates the cases of interruption of the prescription based on the constitutional requirement of knowledge of the facts that are attributed to the person.

It results from the application and interpretation of the RGPD, and not the LOPDGDD, which determines the seriousness of an infraction based on a series of conditions provided therein.

As can be seen, there is no classification in the RGPD of very serious, serious or minor infractions typical of the Spanish legal system, nor can it be deduced from its diction that the violation of the precepts of article 83.4 of the RGPD correspond to minor infractions and The provisions of article 83.5 or article 83.6 of the RGPD correspond to serious infringements.

Thus, recital 148 speaks of serious infringements as opposed to minor ones when it determines that *"In the case of a minor infringement, or if the fine that would probably be imposed constitutes a disproportionate burden for a natural person, instead of a sanction by fine, a fine may be imposed. warning. However, special attention must be paid to the nature, severity and duration of the infringement, its intentional nature, the measures taken to alleviate the damages suffered, the degree of liability or any relevant previous infringement, the way in which the control authority has been aware of the infraction, compliance with measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."*

For all these reasons, the seriousness of an infraction is determined for the purposes of the RGPD and with the elements provided by it.

In this sense, the Opinion of the Council of State of October 26, 2017 regarding the Draft Organic Law on the Protection of Personal Data should be brought up, which explains it in true profusion:

"On the other hand, the European Regulation does not distinguish, when setting the amount of sanctions, between very serious, serious and minor infractions, as the explanatory memorandum of the Preliminary Draft states. In reality, the European standard is limited to distinguishing, depending on the maximum quantitative limit of the fine to be imposed, between infringements that can be sanctioned "with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, a amount equivalent to a maximum of 2% of the overall total annual turnover of the previous financial year" (Article 83(4)), and other infringements which may be sanctioned "with administrative fines of a maximum of EUR 20 000 000 or, in the case of a company, of an amount equivalent to a maximum of 2% of the volume of

overall annual total business of the previous financial year" (sections 5 and 6 of article 83). From this distinction it is deduced that, for European Union Law, the infringements classified in sections 5 and 6 of article 83 may come to be considered the same and greater severity than those contemplated in section 4 of the same article 83 of the European Regulation. The European standard is therefore limited to establishing two categories of infractions based on their seriousness.

The Preliminary Draft contemplates, however, three categories of infractions: article 73 of the Preliminary Draft considers "very serious" infractions the "substantial violation" of the precepts mentioned in sections 5 and 6 of article 83 of the European Regulation; Article 74 of the Preliminary Draft considers "serious" infractions the "substantial violation" of the precepts mentioned in section 4 of Article 83 of the European Regulation; and article 75 considers the remaining "infringements of a merely formal nature" of the provisions mentioned in sections 4 and 5 of article 83 of the European Regulation to be "minor" infractions.

The tripartition carried out by the Preliminary Draft results from the distinction between "substantial violations" and "merely formal violations" of the precepts mentioned in sections 4, 5 and 6 of article 83 of the European Regulation: if they are substantial violations, they will be considered violations "very serious", when the precepts violated are those mentioned in sections 5 and 6, or "serious", when the precepts violated are those mentioned in section 4, while if they are merely formal violations of such precepts, they will be considered in any case as "mild".

This distinction between "substantial violations" and "merely formal violations" and the consequent inclusion of a third category of "minor violations", different from serious and very serious violations, has been made - as can be seen from the file and from the very tenor of the Draft - for the sole purposes of establishing the statute of limitations for infractions and not for determining the amount of administrative fines, which requires, for better understanding, some additional clarifications.

Limitation periods for infringements are not provided for in the European Regulation and, therefore, there is a tacit but peaceful understanding that the Member States have the authority to establish such periods. The determination of such deadlines must depend, as is well known, on the seriousness of the infringement. Well, the infringements provided for in section 4 of article 83, on the one hand, and in sections 5 and 6 of article 83 of the European Regulation, on the other, have a different maximum limit - 10,00,000 euros or 2% of the volume of business in the first case, 20,000,000 euros or 4% of the business volume in the second - but the same minimum limit, which in both cases is 1 euro. The existence of such wide quantitative margins indicates that the violations of article 83, whether those of section 4 or those of sections 5 and 6, can be of very different nature and that, for this reason, they cannot have the same limitation period. Those infractions that, due to their severity, are close to the upper quantitative limit than those others that, due to their lightness, are closer to the lower quantitative limit. In such circumstances, the setting of the limitation periods would not be resolved satisfactorily by applying to violations of the precepts mentioned in sections 5 and 6 of the article.

83 a longer period than for violations of the precepts mentioned in section 4 of article 83, given that the violations contemplated by both provisions, if minor, would require a shorter limitation period.

From this point of view and with the sole purpose of establishing its statute of limitations, the Draft has distinguished between "merely formal violations" and "substantial violations" of such precepts, considering the former as "minor violations" with a statute of limitations. one year and the latter as "serious" and "very serious" infractions with prescription periods of two and three years respectively. In the opinion of the Council of State, this classification of infractions, to the extent that it is carried out for the sole purpose of determining prescription periods for infractions not provided for in the European Regulation, cannot be understood as contrary to the provisions of the norm. European.

This classification has no significance, however, in terms of the amount of the fines. The determination of the amount of the fines to be imposed for the violation of the precepts mentioned in sections 4, 5 and 6 of article 83 of the European Regulation is the responsibility, in accordance with the European standard, of the control authorities, in accordance with the graduation criteria established in section 2 of this same precept, among which is the "nature" or "seriousness" of the infraction". Within the quantitative limits established by the European Regulation, the control authorities, taking into account the greater or lesser seriousness of the infraction, they must set the amount of the fines. Certainly, the margins available to the control authorities are very wide - from 1 euro to 10,000,000 euros per violation of the precepts mentioned in section 4 of the article. 83 and from 1 euro to 20,000,000 euros for violation of the precepts mentioned in sections 5 and 6-, which gives such authorities a high degree of discretion, much higher than that which is usually usual in countries of our legal tradition. . In any case, it is the model intended by the European Regulation, hence the distinction between minor, serious and very serious infractions contemplated in the Preliminary Draft cannot have any consequence in determining the maximum amount of minor infractions, and must be in any case to the determination of its amount made by the control authorities, in accordance with the circumstances of the specific case, within the limits set in that regulation."

Therefore, the classification of infractions for the purposes of the LOPDGDD prescription has no effect in terms of determining the seriousness of the infraction for the purposes of the RGPD or with respect to the imposition of the corresponding fines, if applicable. Therefore, this claim is rejected.

IBERIA alleges that, by virtue of former article 74, said infringement, being considered minor, would be prescribed since, if the date on which the complaining party sent its first email to IBERIA is taken into account, that is, on December 31, May 2021, more than one year has passed from the date of commission of said violation until the date of notification of this Agreement, that is, September 2023.

In this regard, this Agency wishes to bring up the Judgment of the National Court 3432/2009, of June eighteenth, two thousand and nine, which indicates that:

"(...) it being precisely the fact of not providing the requested information that constitutes the type of violation of article 44.3.e) LOPD. And this is because the lack of response to the complainant's access requests and their delivery to another company constitutes an obstacle to the right of access that is recognized by all affected parties in article 15 of the LOPD, and that article 44.3 e) classifies as a serious infraction."

That is to say, the fact of not having provided the complaining party with access to the data that IBERIA had is an obstruction of the right of access, typified in section k) of article 72.1 of the LOPDGDD. Reason why this allegation is rejected.

Finally, IBERIA indicates that, in the event that the prescription of the infraction is not appreciated by this control authority, it would be appropriate to observe the warning as a sanction, as has been done in other procedures followed before this Agency, as it is more appropriate in accordance with the provisions of article 58.2 of the RGPD.

In this regard, this Agency wishes to reiterate what recital 148 of the GDPR indicates about the possibility of imposing a warning: *"In the case of a minor infringement, or if the fine that would probably be imposed constitutes a disproportionate burden on a natural person, instead of sanction by fine, a warning may be imposed. However, special attention must be paid to the nature, severity and duration of the infringement, its intentional nature, the measures taken to alleviate the damages suffered, the degree of liability or any relevant previous infringement, the way in which the control authority has been aware of the infraction, compliance with measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."*

In the present case, this Agency has evaluated and justified all the aggravating or mitigating circumstances referred to in the aforementioned recital 148 of the RGPD (which are none other than those of article 83.2 of the RGPD) and has understood that the infringement in question is not light for the purposes of the GDPR, so it has considered it in accordance with the law to impose a fine instead of issuing a warning. Reason why this allegation is rejected.

IV

Right of access of the interested party

Article 15 *"Right of access of the interested party"* of the GDPR establishes:

"1. The interested party will have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her is being processed and, in such case, the right of access to personal data and the following information:

- a) the purposes of the processing;*
- b) the categories of personal data in question; c) the recipients or categories of recipients to whom the personal data were or will be communicated, in particular recipients in third countries or international organisations;*

d) if possible, the expected period of retention of the personal data or, if not possible, the criteria used to determine this period; e) the existence of the right to request from the controller the rectification or deletion of personal data or the limitation of the processing of personal data relating to the interested party, or to oppose such processing; f) the right to file a claim with a supervisory authority; g) when the personal data have not been obtained from the interested party, any available information about their origin; h) the existence of automated decisions, including profiling, referred to in Article 22(1) and (4), and, at least in such cases, meaningful information on the logic applied, as well as the significance and intended consequences of said treatment for the interested party.

2. Where personal data is transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards under Article 46 relating to the transfer.

3. The data controller will provide a copy of the personal data being processed. The controller may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party submits the request by electronic means, and unless the interested party requests that it be provided otherwise, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 shall not adversely affect the rights and freedoms of others.”

In the present case, the complaining party requested access to his personal data related to the communication of his data between Iberia and the Madrid Airport Police, at least on June 3 and 22, 2021 by email to the service of customer service of IBERIA and the DPO Office of IBERIA, without obtaining a due response until October 21, 2022, as a consequence of the intervention of this Agency.

Therefore, in accordance with the evidence available at this time for the proposed sanctioning procedure, and without prejudice to what results from the investigation, it is considered that the known facts could constitute an infringement, attributable to IBERIA, for violation of article 15 of the RGD.

IN

Classification and classification of the violation of article 15 of the RGD

If confirmed, the aforementioned violation of article 15 of the RGD could lead to the commission of the violations classified in article 83.5 of the RGD, which under the heading “*General conditions for the imposition of administrative fines*” provides:

“Infringements of the following provisions shall be punished, in accordance with 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 total global annual turnover of the previous financial year, opting for the highest amount:

(...)

b) the rights of the interested parties under articles 12 to 22; (...)"

For the purposes of the limitation period, article 72 *"Infringements considered very serious"* of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, infractions that involve a substantial violation of the articles mentioned therein and, in particular, the following are considered very serious and will expire after three years: (...)

k) The impediment or obstruction or repeated failure to attend to the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679. (...)"

WE

Penalty for violation of article 15 of the GDPR

For the purposes of deciding on the imposition of an administrative fine and its amount, in accordance with the evidence available at this time of the proposed sanctioning procedure, and without prejudice to what results from the investigation, it is considered that it is appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

As aggravating factors:

- The nature, severity and duration of the infringement, taking into account the nature, scope or purpose of the processing operation in question as well as the number of interested parties affected and the level of damages they have suffered (section a): for not properly addressing the exercise of the complaining party's right of access, from at least June 3, 2021 to October 21, 2022.

- Negligence in the infringement: The right of access was not properly attended to despite the fact that there was more than one occasion to do so. In its email dated June 2, 2021, IBERIA acknowledges that there had already been a previous claim from the complaining party, but is not given any indication about the communications between IBERIA and the Madrid Airport Police. On June 7 and 18, 2021, the complaining party receives two emails acknowledging receipt of the claim presented by the complaining party. Although IBERIA responded to the complaining party on June 20, 2021, it did not provide a proper response regarding the requested information. On June 22, 2021, the complaining party insists on its request and explains that it had already requested this data four times through the IBERIA customer complaints channel and that, although it received four responses, all of them lacked specific details, for example. which continued without knowing why he had to share his data with IBERIA, how that data was used and what the result of that communication was. On June 24, 2021, IBERIA responded to the complaining party that "we must repeat the resolution we offered in our previous communication", that is, it continued without giving a due response to the

request of the complaining party. And the aforementioned request was only given a proper response once IBERIA became aware of the claim through this Agency. Despite having had multiple opportunities to do so, IBERIA has been extremely negligent when it comes to properly responding to the request for access to personal data from the complaining party, since the intervention of this Agency was necessary, despite the fact that the interested party He contacted the company by various means and on different dates.

- Any previous infringement committed by the person responsible or in charge of the treatment (section e): this Agency has verified infringement of the RGPD by IBERIA in the sanctioning procedures PS/00402/2019 (for failure to attend to a request to exercise the right of deletion), PS/00060/2020 (due to failure to respond to a request to exercise the right of access) and PS/00127/2020 (due to lack of transparency of information on the processing of personal data).

- Any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the losses avoided, directly or indirectly, through the infringement (section k): IBERIA (...) has *****QUANTITY.1** employees and sales of *****QUANTITY.2**.

Likewise, it is considered that it is appropriate to graduate the sanction to be imposed according to the following criteria established in section 2 of article 76 "*Sanctions and corrective measures*" of the LOPDGDD:

As aggravating factors:

- The linking of the offender's activity with the processing of personal data (section b): The development of the business activity carried out by the entity requires continuous processing of personal data.

The balance of the circumstances contemplated in article 83.2 of the RGPD and 76.2 of the LOPDGDD, with respect to the infraction committed by violating the provisions of article 15 of the RGPD, allows us to propose a penalty of €50,000 (fifty thousand euros).

In view of the above, the following is issued:

MOTION FOR RESOLUTION

That the Director of the Spanish Data Protection Agency sanction **IBERIA LÍNEAS AÉREAS DE ESPAÑA, SA OPERADORA**, with NIF **A85850394**, for a violation of Article 15 of the RGPD, typified in Article 83.5 of the RGPD, with a fine of 50,000 €.00 (fifty thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, you are informed that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which

It will mean a 20% reduction in the amount. With the application of this reduction, the penalty would be established at 40,000.00 euros and its payment will imply the termination of the procedure. The effectiveness of this reduction will be conditional on the withdrawal or renunciation of any administrative action or appeal against the sanction.

If you choose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, you must make it effective by depositing it into the restricted account number **IBAN: ES00-0000-0000-0000- 0000- 0000 (BIC/SWIFT Code: CAIXESBBXXX)** opened in the name of the Spanish Data Protection Agency in the banking entity CAIXABANK, SA, indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause, by voluntary payment, reduction of the amount of the penalty. Likewise, you must send proof of admission to the General Inspection Subdirectorate to proceed to close the file.

By virtue of this, you are notified of the above, and the procedure is made clear to you so that within a period of TEN DAYS you can allege whatever you consider in your defense and present the documents and information you consider pertinent, in accordance with article 89.2. of the LPACAP.

926-070623

R.R.R.

INSPECTOR/INSTRUCTOR

ATTACHMENT

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SECOND: On February 8, 2024, the claimed party has proceeded to pay of the penalty in the amount of **40,000 euros** making use of the reduction provided in the proposed resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource pending. administrative against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

Competence

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), the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

Likewise, article 63.2 of the LOPDGDD determines that: *"The procedures processed by the Spanish Data Protection Agency 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 do not contradict them, on a subsidiary basis, by the general rules on administrative procedures."*

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), under the heading *"Termination of sanctioning procedures"* provides the following:

"1. Once a sanctioning procedure has been initiated, if the offender recognizes his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely of a pecuniary nature or a pecuniary sanction and another of a non-pecuniary nature can be imposed but the inadmissibility of the second has been justified, the voluntary payment by the presumed responsible, at any time prior to the resolution, will imply the termination of the procedure, except in relation to the restoration of the altered situation or the determination of compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely of a pecuniary nature, the body competent to resolve the procedure will apply reductions of at least 20% on 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 their effectiveness will be conditional on the withdrawal or renunciation of any administrative action or appeal against the sanction.

The reduction percentage provided for in this section may be increased by regulation."

In accordance with the above, the

Director of the Spanish Data Protection Agency RESOLVES: _____

FIRST: DECLARE the termination of the **EXP202202064** procedure, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to **IBERIA LÍNEAS AÉREAS DE ESPAÑA, SA OPERADORA**.

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 art. 114.1.c) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations, interested parties may file a contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions in article 25 and in 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 counting from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

968-21112023

Sea Spain Martí
Director of the Spanish Data Protection Agency