 Procedure No.: PS/00500/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: On November 6, 2018, this Agency received a letter from Mr.

A.A.A., in which he denounces that the entity CAIXABANK, CONSUMER FINANCE, EFC has

requested to EMPRESA.1 information on the inscriptions related to his person in the

COMPANY file.2. He states that at present there is no contract nor has

requested any service from any company of the CAIXABANK group. He points out that although

was a client of CAIXA, said relationship was formally terminated in 2014 with the termination of

all existing contracts.

Said claim was transferred to the Data Protection delegate of the person in charge,

in accordance with the provisions of article 9.4 of Royal Decree-Law 5/2018, of 27

July, of urgent measures for the adaptation of Spanish Law to the regulations of the

European Union on data protection, receiving a response from

CAIXABANK CONSUMER FINANCE EFC, S.A.U., in which an error of

human and punctual character. It was indicated that, although the claimant was a client in the

past, at the date of the claim it had already ceased to be. Despite this, his

data was mistakenly included in a pre-granted credit campaign.

On February 6, 2019, the Director of the Spanish Agency for the Protection of

Data agrees not to admit the submitted claim for processing, noting however

in said resolution that "This is without prejudice to the fact that the Agency, applying the powers of

investigation and corrections that it holds, can carry out subsequent actions

regarding the processing of data referred to in the claim."

Said resolution was appealed, alleging the claimant that said entity, of which he did not is a client, since his relationship with her was punctual and limited in time within the of a sales contract with associated financing finalized years before, has used solvency files in order to prepare a profile and offer you a financial service, without asking for your consent. This resource was estimated.

SECOND : In view of this claim, on October 16, 2019, the Director of the Spanish Agency for Data Protection urged the General Subdirectorate of Data Inspection the beginning of preliminary investigation actions that reveal what form CAIXABANK CONSUMER FINANCE EFC, S.A.U is profiling the personal data of its clients in the context of its commercial activity, in order to verify its adequacy to the personal data protection regulations.



THIRD : On February 6, 2020, the Subdirectorate General for Inspection of Data makes request to CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U. to provide the following information:

List of personal data processing activities of clients and/or potential clients clients carried out in the development of the commercial activity of CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U. that involve profiling (according to the definition set forth in article 4.4 of the RGPD, in particular with regard to the economic situation of the interested parties). For each of the treatment activities

of personal data, contribution is requested:

1. Definition of the logic applied in the profiling and the expected consequences of said

treatment for the interested party.

2. Description of the purpose of the treatment and detail of the basis of legitimacy of the

article 6.1 of the RGPD on which it is based.

3. Procedure followed to comply with the duty of information to the interested party (articles

13 and 14 of the GDPR)

4. Means used to collect consent in the event that the activity of

treatment is covered by article 6.1.a of the RGPD.

5. Categories of interested parties and personal data subject to treatment.

6. Origin or origins of the personal data subject to treatment (with an indication of the

basis of legitimacy that supports, where appropriate, the use of data collected from sources

external - credit information systems, other companies of the business group,

etc.-).

7. If applicable, list of treatment managers who participate in the activity of

profiled on behalf of CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U. and copy

of the contracts that govern said treatments.

8. Description of the technical and organizational security measures applied in

under article 32 of the RGPD to the profiling activity.

9. If applicable, a copy of the Personal Data Protection Impact Assessment

(EIPD) carried out on the profiling activity.

10. Number of interested parties whose personal data have been processed in the development

of profiling activity by category (client, potential client) and year (2018 and

2019).

FOURTH: On March 2, 2020, CAIXABANK PAYMENTS & CONSUMER

EFC, EP, S.A. requests an extension of the term due to the impossibility of collecting and

structure the required information within the established period.

On March 3, 2020, the Deputy Director General for Data Inspection

agrees to extend the term to respond for a period of five days, which

must be computed from the day following the day on which the first term ends.

granted.



FIFTH: On June 2, 2020, you have entered this Agency in writing

response to the request for information referred to in point

SECOND. In said document the following is stated:

In the first place, reference is made to the fact that "on March 14, 2020, the

in the Official State Gazette (BOE) and Royal Decree 463/2020, of 14

March, which declares the state of alarm for the management of the situation of

health crisis caused by COVID-19, which includes in its Additional Provision

third, the suspension of administrative deadlines, applying the suspension of

terms and the interruption of deadlines to the entire public sector defined in Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public; being, therefore, suspended the terms and interrupted the deadlines

for the processing of procedures of public sector entities,

decreeing that the computation of said terms will be resumed at the time of the

expiration of the validity of this Royal Decree, extended, in turn, by Royal

Decree 476/2020, of March 27, which extends the state of alarm

declared by virtue of the preceding legislative text, as well as by its extensions

successive.”

Secondly, it makes some preliminary considerations, of which they must

highlight the following:

-

-

“CAIXABANK PAYMENTS & CONSUMER is the entity resulting from the

merger operation by absorption between CaixaBank Payments, E.F.C., E.P.,

S.A.U., absorbed company, and CaixaBank Consumer Finance, E.F.C., S.A.U.,

acquiring company; both wholly owned by CaixaBank, S.A.

(hereinafter also called “CaixaBank”). This merger took place in

date of July 11, 2019, after having been notified of the non-opposition of

Bank of Spain to the structural modification operation, under the

prevented in Law 10/2014 of June 26, on management, supervision and

solvency of credit institutions, as well as the corresponding procedure

of authorization before the Ministry of Economy and Business provided for in the Law

5/2015 of April 27, promoting business financing. What

As a result of the aforementioned operation, CaixaBank Consumer Finance,

E.F.C., S.A. has been subrogated by universal succession in all

rights and obligations, acquired and assumed, respectively, by

CaixaBank Payments, E.F.C., E.P., S.A.U., changing its corporate name

to the current CaixaBank Payments & Consumer, E.F.C., E.P., S.A.”

“The main activity of CAIXABANK PAYMENTS & CONSUMER consists of

the commercialization of credit or debit cards (hereinafter,

called "Cards"), credit accounts with or without a card (hereinafter,

called "Credit Accounts") and loans (hereinafter called

“Loans”), (hereinafter, all of them individually called

"Product" and jointly, "Products"), directly or through

third parties -whether they are agents or prescribers-, with whom they have signed the

corresponding agency or collaboration contracts. Specific: -

Directly, CPC markets some of the aforementioned Products. -

Indirectly, CPC markets through Prescribers and agents."



-

-

"Prescriptor" or "Prescriptors" means those entities with which

CPC has signed a collaboration agreement, based on which they are

undertake to offer their customers the possibility of contracting the Products

of CPCs to, mainly, finance the purchase price of the products

and/or services marketed by them (Specifiers) at their points of sale,

either face-to-face or online (for example, establishments such as

*** ESTABLISHMENT.1

Y

*** ESTABLISHMENT.3).

CPC Products

marketed through Prescribers are the Cards, the Accounts of

Credit and Loans."

*** ESTABLISHMENT.2

In particular,

or

“Finally, agent means CaixaBank, S.A. (onwards,

indistinctly the "Agent" or "CaixaBank"), entity with which CPC maintains

an agency agreement, by virtue of which CaixaBank promotes and concludes,

through its channels, the CPC Cards, as well as, where appropriate, loans

refinancing of the debt derived from these Cards.”

Regarding the personal data processing activities that in the development

of its commercial operations imply the elaboration of profiles, according to the definition

consigned in article 4.4 of the RGPD, in particular with regard to the situation

of the interested parties, indicates that they are the following:

I

II.

“Analysis of the repayment capacity or risk of non-payment of a

interested in your Request for a Product: It consists of the evaluation by

part of CPC of the Request for a Product (Card, Credit Account or

Loan, hereinafter the "Application") received from an interested party (in

hereinafter, “Applicant” or “Applicants”). This evaluation involves a

processing of personal data that is specified in the necessary assessment

of the repayment capacity or solvency of the Applicant (probability of

default risk). Said assessment is carried out, within the framework of the Application

received, in order to comply with what is established by the regulations that, in

quality of financial credit establishment and payment institution,

results from application to CPC (Prudential and Solvency Regulations and

Responsible Lending).”

“Analysis of the repayment capacity or risk of non-payment in the management

of credit risk granted to customers: It consists of monitoring

of the ability to return or risk of non-payment of customers to

who CAIXABANK PAYMENTS & CONSUMER has granted

financing and, therefore, with which it maintains a credit risk with two

purposes i) the management of the credit risk granted to them in

compliance with certain legal obligations (specifically, the

Prudential and Solvency and Responsible Lending Regulations, as

as it is defined in section I.A.6 of this writing); and, ii) the

commercial management in accordance with the consents obtained from the

holders of the data (customers) with the subsequent purpose of offering them

products and services tailored to your needs, which may include

assignment of “pre-granted” credit limits (pre-granting of a

credit based on the information available to the Entity).”



III.

“Analysis and selection of target audience: It consists of the analysis and selection,

prior to a certain commercial impact, of a target audience

(composed of those clients of CAIXABANK PAYMENTS &

CONSUMER that meet, where appropriate, the requirements designed to be

impacted by a potential campaign in order to offer you

Products). This treatment is carried out in accordance with the

consents obtained from the owners of the data (clients).”

Regarding the categories of data owners that are treated in the execution of the

detailed treatments, states that "it only treats data of interested parties that are

clients of the Entity or applicants of its Products. Does not perform data processing

about interested parties that could be called “potential clients”, understanding by

these, holders of data that do not have a current relationship with CPC or that previously did not

have requested a Product through any of the established channels.”

Thirdly, from the examination of what was stated by CPC regarding the activity

called "analysis of the repayment capacity or risk of non-payment for the

credit risk management granted to customers during the contractual relationship”

highlight the following aspects:

1. Regarding the purposes and bases of legitimacy of the treatment, it is stated that

It has two purposes:

I

II.

“The management of credit risk granted, in compliance with

certain legal obligations of the Prudential Regulations and of

Solvency and Responsible Lending, applicable when the Product is

a credit account since, by allowing the availability of credit

granted on a constant basis, this (Product) must be adapted

constantly to the updated solvency capacity of the interested party.

As stated, the enabling title to carry out this purpose, give

compliance with regulatory requirements, is the legal obligation,

in accordance with article 6.1 c) of the RGPD.

The commercial management in the event that you have the consent of the

data owner. Said treatment foresees, among others, being able to label the

client with the purpose of granting him a "pre-granted" (granting of a

based solely on the information available to the Entity).

In this case, only the data of those clients who have

consented to profiling."

2. Regarding the logic applied in the profiling and the foreseen consequences of

said treatment for the interested party states the following:

"CAIXABANK PAYMENTS & CONSUMER uses a logic that has been defined in

the Entity's bankability process. This financing process consists

of different policies explained below and based on which they are

assigns to customers (...).



i.

(…) This label is the one used by CPC to categorize its clients into

relation to the promotional activity that could be carried out on them.

Loans or Credit Accounts. (…)

•

(…)

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•

•

(…)

(…)

(…)

As mentioned, this direct financing has a commercial purpose

so CPC only uses it in those clients who have consented to the

treatment of your data. Those who have not consented, therefore,

separate from the previous ones including themselves -for the sole purpose of respecting the

requested in relation to the processing of your data- in the subcategory of

Direct financing - D - Not evaluable. The implication of such a subcategory is, by

Therefore, customers with this LABEL 1 - D cannot be included in

commercial campaigns.

ii.

(…)

•

•

•

•

(…)

(…)

(…)

(…)

Finally, in this case also included are customers who have not authorized the

processing of your data in the Prescriber Financing subcategory - D - No

evaluable. These are, therefore, customers who have not given their consent for the

processing of profiling data.

i.

(…)

□

□

□

(…)

(…)

(…)

Finally, as in the other labels, there is the subcategory Extension of

limits D - Not evaluable that incorporates those clients who have not authorized the

treatment of your personal data and, consequently, cannot be

object of commercial campaigns.



i.

(…)

to)

b)

(…)

(…)

(…)

• (…)

• (…)

• (…)

• (…)

3. Regarding the personal data subject to treatment, it is indicated that they are the

following:

- Identification: DNI/NIE/Passport and date of birth.

- Financial: Internal CPC data obtained or derived from the relationship

existing contract between it and its client and consultation of solvency files and

to the Risk Information Center (CIR) of the Bank of the Bank of Spain.

- Sociodemographic: postal code, country of birth and nationality, type of

housing and seniority and marital status.

- Socioeconomic: income and payments, employment status and profession, seniority

bank and domiciled entity.

- Others: risk score.

4. Regarding the origin of the personal data object of treatment, details, for the

categories of data indicated in the previous section, the following sources:

- Data provided by the Applicant in the Product Application itself.

- CPC data in relation to the Applicant in the event that the Applicant is already

client and provided that CPC has data on their payment behaviour.

- Data from external sources: in accordance with the regulations that result from

application to CPC as financial institution of credit and payment institution,

The following information is also included:



 Result of the query to credit information systems.

 Result of the query to the Risk Information Center

(CIR) of Bank of Spain.

(…)

5. Regarding the means used to collect consent in the event of

that the treatment activity is covered by article 6.1.a of the RGPD, informs that

the channels through which it collects the consents for commercial purposes of its

clients are the following:

a) Through the prescribers.

b) Through your CaixaBank Agent.

to)

“Through the Prescribers In relation to this channel, we can differentiate three

(3) different collection methods:

i.

The first is through the employees of the Prescriptors themselves, who,

at the time of formalizing financing contracts with customers

who want to contract the Products offered by CAIXABANK PAYMENTS &

CONSUMER, they are asked about each of the consents, and then

capture the response given by you for each of them in the Conditions

Particulars of the financing contract signed for this purpose.

In this regard, the three (3) tools provided by CAIXABANK PAYMENTS

& CONSUMER to the vendors of the Prescribers so that they can carry out the

capture of the necessary information to process the operations of

financing and, therefore, also to obtain the aforementioned consents,

are the Web “***WEB.1”, the capture App (its use is made through

a tablet carried by the vendors of the Prescribers who are constantly

movement through the store) and the "Web Auto" (...), which are the software provided by

part of CAIXABANK PAYMENTS & CONSUMER to the Prescribers, connected

with the systems of the former (CAIXABANK PAYMENTS & CONSUMER), so that

their vendors process financing operations by entering

of the personal and economic data of the clients and the contractual data of

operations (TIN, APR, months of amortization, etc.), as well as collect the

consents, which will later be reflected in the Conditions

Individuals of the financing contracts that are formalized and delivered to the

customers."

Provides three screenshots that correspond to these three

tools. They note that consent is requested for the

following purposes, being able to choose yes or no in each modality:

- “I authorize the CaixaBank Group to use my data for study purposes and

profiled”



- "I authorize to be sent advertising and commercial offers of the Group

CaixaBank by the following means”, which in turn allows consent or not by

each of the following headings):

- Telemarketing

- Electronic means such as SMS, email and others

- Post mail

- Commercial contacts through any channel of my manager

- “I authorize my data to be transferred to third parties with whom the CaixaBank Group has

agreements”

- “I authorize the CaixaBank Group to use my biometric data (image, fingerprint

fingerprint, etc.) in order to verify my identity and signature. This authorization is

It will be complemented with the registration of the biometric data to be used in each

moment"

Likewise, a screenshot of the AUTO web tool is provided in the

which is allowed to consult more details. According to the printing provided detail

consists of the following:

“Consent and protection of personal data

The authorizations that you provide now or have previously provided

may

through

www.caixabankpc.com/ejerciciode-rights.

be revoked at any

moment to

If you grant authorization (1) the offers sent to you will be

tailored to your profile.

Authorizations (2) (3) (4) and (5) refer to the channels through which

that you agree to be contacted by the Caixabank group either by phone, by

electronic means, by post and/or in person.

If you do not authorize any channel, the Caixabank group will not be able to contact you to

offer you products of your interest.

If you provide authorization (6) at the time the data is transferred,

will inform you of which third party is the receiver of your data and if you do not agree

agreement you can revoke that authorization.

The authorization (7) is to be able to verify your identity/signature since in the

Caixabank group we use biometric recognition methods such as

facial recognition systems, fingerprint reading and the like."

ii.

"The second form of recruitment within this group is through the web portal

of CAIXABANK PAYMENTS & CONSUMER authorized to process the operation



of financing by the client himself, who will have been redirected by clicking

in a link included in the website of the Prescriber in question. So by

example, the interested party who decides to request the card (...) will initiate the request in the

own portal of the Prescriber *** ESTABLISHMENT.1 and immediately it will be

redirected to the web portal enabled for this purpose by and from CAIXABANK PAYMENTS &

CONSUMER where the entire contracting procedure will take place.

In this case, it is the client himself, through his computer/tablet, who marks the

response for each of the planned treatments, which are then

transcribed in the Particular Conditions of the financing contract

formalized."

Attached, as ANNEX DOCUMENT No. 13, is the screen displayed by the client

and in which the consents are obtained, as well as ANNEX DOCUMENT No.

14, an example of how the consents granted by the client are reflected in

the Particular Conditions of the financing contract.

Annex 13 contains a printout of the screen in which the

consents, which coincide with those described above in point

relative to the prescriber channel.

Annex 14 is called APPLICATION-CREDIT CONTRACT. Is structured

in various sections related to personal data of the owner and co-owner, to the

purchase, the financing plan, etc. Of these sections, it is worth highlighting the

indicated in the SUMMARY OF DATA PROCESSING AND

AUTHORIZATIONS FOR DATA PROCESSING.

The SUMMARY OF TREATMENTS section contains the following information:

“the treatments of your data with respect to which you can facilitate your

authorization in the terms established in this contract are the

following:

“COMMERCIAL PURPOSES:

Processing of data by Caixabank Payments

TO.

& Consumer and the companies of the Caixabank Group with

study and profiling purposes to inform you of the products

that suit your interests/needs, as well as for the

monitoring of contracted services and products, carrying out

surveys and design of new services and products.

b.

Processing of data by Caixabank Payments

& Consumer and the companies of the Caixabank Group with the

purpose of communicating offers of products, services and

promotions marketed by them, their own or third parties whose

activities are included among the banking, services of

investment and insurance companies, share holdings, venture capital,

real estate, road, sale and distribution of goods or services,

consultancy, leisure and charitable-social services.

c.

Transfer of data by Caixabank Payments &

Consumer and the companies of the Caixabank Group to third parties with

the purpose that they can send you communications

commercial. Said third parties will be dedicated to the activities

banking, investment and insurance services, ownership of

shares, venture capital, real estate, roads, sales and

distribution of goods and services, consultancy services, leisure and

charitable-social.

OTHER PURPOSES

Processing of the biometric data you provide by

TO.

Caixabank Payments & Consumer and

the companies of the

GrupoCaixabank, such as facial image, voice, fingerprints,

graphs, etc., in order to verify their identity and signature with the

help of biometric recognition methods."

In the section AUTHORIZATIONS FOR DATA PROCESSING there are

a series of sections in each of which, both for the holder and for

the co-owner two boxes appear, one to mark yes and another to mark no, the

various authorizations to carry out data processing. These authorizations

are the following:

TO)

“I authorize the processing of my data for the purpose of study and

analysis by Caixabank Payments & Consumer and the companies

of the Caixabank group.”

b)

“I consent to the processing of my data by Caixabank

Payments & Consumer and the companies of the Caixabank group with the

in order for them to communicate offers of products, services and

promotions through the channels that you authorize.” In this case, the yes/no boxes

are broken down for each of the following channels: Telemarketing,

Electronic means such as SMS, email and others, Postal mail. contacts

commercials through any channel of my manager.

“I authorize Caixabank Payments & Consumer and the

c)

companies of the Caixabank group transfer my data to third parties.”

i.

The third way is through telephone capture in which the

vendors of the Prescribers and managers of CAIXABANK PAYMENTS &

CONSUMER. In this case, the Prescriber's salesperson provides the

manager of CAIXABANK PAYMENTS & CONSUMER all customer data

necessary to formalize the financing operation and it processes it. One time

approved the hiring, the client, by means of the Particular Conditions of the

contract that you must sign, defines the granting of your consents

marking freely and in a handwritten way your option on the boxes

enabled for this purpose, as can be verified in DOCUMENT No. 14

attached to this letter”.



This document has been described in the previous point.

to)

“Through your CaixaBank Agent. Additionally, CPC is a beneficiary of the

consents granted, where appropriate, by customers before CaixaBank.

We attach an example of the consent collection screens in the

CaixaBank branches where it is the customer himself who, interacting

directly with the device provided by the employee (Tablet), proceed to

signal your preferences in relation to the processing of your data.”

In the screen print, which you incorporate in your writing, various

authorizations for each of which there is the option to mark yes or no in

their respective box. The authorizations refer, as in the previous cases:

-To the use of the data for study and profiling purposes, clarifying that

If the offers that are sent to you are authorized, they will be adapted to the profile of the

interested.

- To receive advertising and commercial offers. At this point it is also allowed

choose the channels to receive advertising by checking the respective box.

- To transfer the data to third parties with whom the Caixabank group has agreements.

-The use of biometric data in order to verify my identity and signature.

6. Regarding the procedure followed to comply with the duty of

information to the interested party (articles 13 and 14 of the RGPD) indicates that "It is attached, as

ANNEX DOCUMENT No. 12, copy of the general conditions that is provided to the

interested in the framework of the contracting of a product and in which it is informed of what

provided for in article 13; not resulting from application, therefore, the provisions of the

article 14 of the RGPD.”

The document contained in annex 12 called "GENERAL CONDITIONS

OF THE APPLICATION-CREDIT CONTRACT” contains various sections,

referring to section number 26 to the "Processing of personal data

based on the execution of contracts, legal obligations and legitimate interest and

Privacy Policy". This point is structured in turn in 10 sections, of which

which it is interesting to transcribe here the information contained in points 26.1 and 26.4.

“26.1 Processing of personal data for the purpose of managing

Business Relations.

The personal data of the Holder, both those that he himself provides, as well as

those derived from commercial, business and contractual relations

established between the Account Holder and CaixaBank Payments & Consumer either in

the marketing of its own products and services, either in its capacity as

mediator in the commercialization of products and services of third parties (in

hereinafter all referred to as Business Relations), or of the

Business relations between CaixaBank Payments & Consumer and the companies

of the CaixaBank Group with third parties and those made from them, are

incorporated into files owned by CaixaBank Payments & Consumer and

the companies of the CaixaBank Group holding the Commercial Relations,

to be treated in order to comply with and maintain them,

verify the correctness of the operation and the commercial purposes that the Holder

accept in this contract.

These treatments include digitization and registration of documents

identifiers and the signature of the Holder, and its availability to the internal network

of CaixaBank Payments & Consumer, to verify the identity of the

Holder in the management of its Commercial Relations.

The indicated treatments, except those that have a commercial purpose whose

acceptance is voluntary for the Holder, they are necessary for the

establishment and maintenance of Business Relationships, and

will necessarily be understood to be in force while said Relationships

Commercials remain in force. Consequently, at the time of

Cancellation by the Holder of all Business Relationships with CaixaBank

Payments & Consumer and/or with the companies of the CaixaBank Group, the

mentioned data processing will cease, being your data canceled

in accordance with the provisions of the applicable regulations, keeping them by CaixaBank

duly limited its use until the derivative actions have prescribed

thereof"

“26.4. Treatment and transfer of data for commercial purposes by

CaixaBank and the companies of the CaixaBank Group based on consent.

In the Particular Conditions of this contract it will be collected, under the heading

of authorizations for data processing, the authorizations that you

grant or revoke us in relation to:

(i) Data analysis and study processing for commercial purposes by

CaixaBank Payments & Consumer and companies of the CaixaBank Group.

(ii) The treatments for the commercial offer of products and services by

CaixaBank Payments & Consumer and the companies of the CaixaBank Group.

(iii) The transfer of data to third parties.

In order to put at your disposal a global offer of products and

services, your authorization to (i) data analysis and study processing, and

(ii) for the commercial offer of products and services, if granted,

shall include CaixaBank Payments & Consumer and the companies of the Group

CaixaBank detailed at www.caixabank.es/empresasgrupo (the "companies of the

CaixaBank Group") who may share and use them for the purposes

indicated.

The detail of the uses of the data that will be carried out in accordance with your

authorizations is as follows:

(i) Detail of the analysis, study and monitoring treatments for the offer

and design of products and services adjusted to the client's profile. bestowing his

consent to the purposes detailed here, you authorize us to:



a) Proactively carry out risk analysis and apply it to your data

Statistical techniques and customer segmentation, with a triple purpose:

one)

Study products or services that can be adjusted to your

specific profile and commercial or credit situation, all for

make commercial offers tailored to your needs and

preferences,

2) Track the contracted products and services,

Adjust recovery measures on non-payments and incidents

3)

derived from the contracted products and services.

b) Associate your data with that of other clients or companies with which you have

some type of link, both family or social, as well as due to their property relationship

and administration, in order to analyze possible interdependencies

in the study of service offers, risk requests and

contracting of products.

c) Carry out studies and automatic controls of fraud, defaults and incidents

derived from the contracted products and services.

d) Conduct satisfaction surveys by telephone or electronically

in order to assess the services received.

e) Design new products or services, or improve the design and usability of the

existing, as well as define or improve the experiences of users in their

relationship with CaixaBank Payments & Consumer and the companies of the Group

CaixaBank.

The treatments indicated in this point (i) may be carried out in a

automated and entail the elaboration of profiles, with the purposes already

marked. To this effect, we inform you of your right to obtain the

human intervention in the treatments, to express their point of view, to

get an explanation about the decision made based on the treatment

automated, and to challenge said decision.

(ii) Detail of the treatments for the commercial offer of products and services

of CaixaBank Payments & Consumer and the companies of the CaixaBank Group.

By granting your consent to the purposes detailed here, you

authorizes:

Send commercial communications both on paper and by means

electronic or telematic, related to the products and services that, in each

time: a) markets CaixaBank Payments & Consumer or any of its

CaixaBank Group companies b) market other companies

owned by CaixaBank Payments & Consumer and third parties whose

activities are included among banking, investment services and

insurer, shareholding, venture capital, real estate, road, sales



and distribution of goods and services, consultancy services, leisure and charity-

social.

The Holder may choose at any time the different channels or means by which

whether or not you want to receive the indicated commercial communications through

your internet banking, through the exercise of your rights, or through your

management in the CaixaBank branch network.

The data that will be processed for the purposes of (i) data analysis and study,

and (ii) for the commercial offer of products and services will be:

a) All those provided in the establishment or maintenance of

commercial or business relationships.

b) All those generated in the contracting and operations of products and

services with CaixaBank Payments & Consumer, with the companies of the

CaixaBank Group or with third parties, such as account movements or

cards, details of direct debits, payroll direct debits,

Claims derived from insurance policies, claims, etc.

c) All those that CaixaBank Payments & Consumer or the companies of the

CaixaBank Group obtain from the provision of services to third parties,

when the service is addressed to the Holder, such as the

management of transfers or receipts.

d) Whether or not you are a CaixaBank shareholder, as stated in the

records of this, or of the entities that, in accordance with the regulations

securities market regulator must keep records of the

Securities represented by book entries.

e) Those obtained from the social networks that the Holder authorizes to consult.

f) Those obtained from third parties as a result of requests for

aggregation of data requested by the Owner.

g) Those obtained from the Owner's browsing through the web service

of CaixaBank Payments & Consumer and other websites this and/or of the

companies of the CaixaBank Group or mobile phone application of

CaixaBank Payments & Consumer and/or the companies of the Group

CaixaBank, in which it operates duly identified. These dates

may include information related to geolocation.

h) Those obtained from chats, walls, videoconferences or any other

means of communication established between the parties.

The Holder's data may be supplemented and enriched by data

obtained from companies providing commercial information, by data

obtained from public sources, as well as by statistical data,

socioeconomic (hereinafter, "Additional Information") always verifying

that these comply with the requirements established in the regulations in force

on data protection."

7. Regarding the number of interested parties whose personal data have been processed in the

development of profiling activity by category (client, potential client) and year

(2018 and 2019), (...).

Finally, regarding the third activity carried out called "Analysis and

selection of target audience" states the following:

1. Regarding the definition of the logic applied in the profiling and the

anticipated consequences of such treatment for the interested party, states that "The

processing activity known as Commercial Profiling responds to the

need for CPC to analyze, select and extract, prior to its impact

commercial, the target audience to which the commercial communications will be directed

associated with a potential campaign.

For this purpose, CPC selects and extracts the information of the clients to whom

potentially they will be sent the commercial communications of the campaign in

question.

For this, personal data from internal sources of CPC are processed.

(Host, DataPool and DataWareHouse) of those of its clients who have authorized

expressly the treatment of commercial profiling and, subsequently, they have not

revoked. Regarding the aforementioned repositories (Host, DataPool and DataWareHouse),

takes a list of clients based on the result obtained once the process has been carried out.

treatment based on the client's consent, detailed in the previous section ("II. Analysis of the repayment capacity or risk of non-payment for risk management of credit granted to clients") and on said list of clients, filters of selection based on identifying data such as age ranges, language of communication, sex, location or address, with the aim of proceeding to the extraction of the target audience to which the campaign will be directed. Ultimately, the system generates a file with the selection of the target audience that meets the conditions set after filters are applied.

It should be noted, however, that the selection criteria that, in essence, constitute the logic applied to profiling, they do not become standardized parameters but they are segments that vary and adjust to the needs of the Product or the characteristics associated with the commercial or promotional initiative of which its launch is intended, as well as the type or volume of data that CAIXABANK PAYMENTS & CONSUMER has with respect to each of the interested.

For its part, the consequence that the profiling activity carried out by CAIXABANK PAYMENTS & CONSUMER generates on the client, is limited to the fact that it will become, or not, part of a list that could potentially be used in the framework of a commercial campaign."

2. Regarding the description of the purpose of the treatment and detail of the basis of legitimacy of article 6.1 of the RGPD on which it is based, states that

“CAIXABANK PAYMENTS & CONSUMER processes the personal data of the

interested parties associated with the activity of Commercial Profiling in order to know if the

they meet the necessary conditions for their inclusion in a potential

commercial campaign and improve the impact of your commercial campaigns. Definitely,

although expressed in different terms, the profiling process linked to this

treatment activity is carried out with the aim of generating the list with the public

objective that, at later times, can be exploited to impact customers

through communications with commercial content. On the other hand, as for the title

enabling, is the one provided for in art. 6.1.a) of the RGPD (consent).

3. Regarding the procedure followed to comply with the duty of information to the

interested (articles 13 and 14 of the RGPD), refers to what is exposed in the activity of

treatment “Analysis of the repayment capacity or risk of non-payment for the management

of credit risk granted to customers” in which reference was made to the document

Annex No. 12.

4. With regard to the means used to collect consent in

In the event that the treatment activity is covered by article 6.1.a of the RGPD, it will be

also refers to those indicated in the treatment activity "Analysis of the

repayment capacity or default risk for credit risk management

granted to clients.

5. State the following regarding the categories of interested parties and data

personal object of treatment:

“The category of interested parties subject to the treatment called Commercial Profiling

is that of clients with a current contract with CPC. The category of potential clients in

no case is subject to this processing activity”

“The personal data subject to treatment are the following:

- Identification: client identifier, NIF/NIE/Passport, name and surname, date

of birth, gender, postal address, email, telephone (landline or mobile) and

communication language.

contracted products and services and condition of

Financial:

owner/beneficiary/proxy and the label resulting from the treatment described in the

previous section II).”

6. Regarding the origin of the personal data subject to treatment (with an indication of

the basis of legitimacy that supports, states that "The origin of the data of

personal character object of treatment is the interested party and the internal sources

owned by CAIXABANK PAYMENTS & CONSUMER, already described in point 1 of

this section (III. Treatment: "Commercial Profile"), as well as the labels

detailed in the previous section (Analysis of the repayment capacity or risk of

non-payment for credit risk management granted to customers). In this case, the

The basis of legitimacy is the consent of the interested party (art. 6.1.a RGPD).”

7. Regarding the number of interested parties whose personal data have been processed in the

development of profiling activity by category (client, potential client) and year



(2018 and 2019), points out that "First of all, it must be indicated that the numbers that are

reflected below refer only to the category of customers, since

that in this profiling activity data of potential clients is not processed, of

in accordance with what is stated in point b) of the Preliminary Considerations. (...).”

SIXTH: Information is obtained on the volume of sales of the entity, being the

results of the turnover during the year 2019 of €872,976,000. capital

social security amounts to €135,155,574.

SEVENTH: On December 23, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate sanctioning procedure to the claimed, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 6 of the RGPD, typified in Article

83.5.a of the RGPD, declaring that the corresponding sanction would amount to

a total of 3,000,000.00 euros, without prejudice to what resulted from the instruction.

EIGHTH: Once notified of the aforementioned initiation agreement, the investigated entity presented on 28

December 2020 written, reiterated on January 4, 2021, in which he requested

extension of the term in order to present allegations. Granted the extension of the

deadline dated December 30, 2020, a brief of allegations was filed on the date

January 19, 2021, in which he requests the annulment of the initiation agreement,

subsidiarily, the filing of the proceedings and subsidiarily, in the event that

considers him responsible for the infractions of article 6, that the

warning or, failing that, to impose the amount of the sanction in its degree

minimum. In any case, the consents obtained are not declared null and, if

If this were the case, the AEPD orders the measures that, in its opinion, may be

adequate to improve compliance with data protection regulations.

The aforementioned entity bases its requests on the allegations that, in summary, are

set out below, which divides into two groups:

A. In relation to the initiation agreement and the violation of principles of

administrative action and sanctioning procedure

1. Considers that for the Agency the complaint referred to in the first incident

of the initiation agreement, is relevant for its adoption, since in the SECOND

factual background it is stated verbatim that “In view of this claim, with

dated October 16, 2019 the Director of the Spanish Agency for the Protection of

data urged the Subdirectorate General for Data Inspection to initiate actions

previous investigations that reveal how CAIXABANK CONSUMER

FINANCE EFC, S.A.U is profiling the personal data of its

clients in the context of their commercial activity, in order to verify their adequacy

to the personal data protection regulations.”

It indicates that the facts that motivate the initiation of a sanctioning procedure

form part of the minimum content of the initiation agreement (article 64.2.b of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, hereinafter LPACAP) and that, despite the relevance that

has the complaint in the Initiation Agreement, some details about the



procedure followed with such Claim since, although it is mentioned that this was

transferred to the Delegate of Data Protection of the person in charge of the treatment, it will not be

refers to the date of the transfer (November 29, 2018); indicated

erroneously that the transfer of the claim was carried out in accordance with the

provided for in article 65.4 of the LOPDGDD, when it was carried out in accordance

with the provisions of article 9.4 of Royal Decree-Law 5/2018 (BOE July 30, 2018,

repealed on December 7, 2018 by the LOPDGDD and it is obvious that on February 7

2019, the AEPD agreed not to admit the aforementioned claim for processing.

No motivation on the part of the Agency is attached to the fact that a

8 months later, the inadmissibility of processing a claim gives rise to the start of preliminary investigative actions. There is no direct connection between the content of the inadmissible claim and the beginning of previous proceedings. Since the object of the complaint not admitted for processing, was the fact that the complainant was included in a pre-granted credit campaign and that such commercial communication was attributed to a human error, qualified as punctual and exceptional, on the other part, an error unrelated to the profiling logic or process,
but rather for having considered that the interested party was still a client of the Entity, adopting at the time measures so that it would not happen again, an error that, in
In any case, it did not cause any damage to the interested party or to third parties.
Of a punctual and exceptional human error that had as the only consequence for the interested in its inclusion in a commercial campaign and in respect of which the Director of the AEPD agreed not to admit the claim for processing, apparently it follows that 8 months later, the same Director urged the General Subdirectorate of Inspection of Data to initiate previous investigation actions, in order to obtain information on how CAIXABANK CONSUMER FINANCE EFC, S.A.U. was “profiling the personal data of its clients in the context of its commercial activity”, with the “object of verifying its adequacy to the regulations of personal data protection".

2. Affirms that in general, the possibility of opening a period of information or of previous actions before initiating a sanctioning procedure is foreseen in Article 55 of the LPACAP, and corresponds exclusively to the competent body for initiate such an administrative proceeding make that decision to the fullest extent, it is In other words, not merely agree on the start, it must also specify the scope of the research. In this case, such decision corresponds exclusively to the Director of the AEPD, as head of the administrative body. The information request

raised on February 6, 2020 clearly overreached the instructions on

the previous actions given by the Director of the Agency, in particular regarding the

scope of the investigation, since what was urged by the Director of the AEPD, the

October 16, 2019, was to find out how data profiling was carried out

personal of the “CPC clients”; however, the information requirement

course surprisingly broadened its scope as the Inspector decided to also include

to the "potential clients", a change that is undoubtedly significant that exceeds the

attributions of the personnel that develops the research activity, which come

specified in article 53 of the LOPDGDD, since these should be limited to

investigate what the head of the administrative body has decided should be

object of previous investigative actions. We don't know if we have to continue

attributing this circumstance to a new error in the processing or if it is practical



It is common for inspectors to arbitrarily decide what the scope of inspections is.

previous investigative actions, ignoring the instructions of the holder of the

administrative body; we hope, in any case, that the Agency pronounces itself

respect.

3. States that, perhaps, the explanation for some of the doubts raised about the

The reasons why the Start Agreement has been issued is found in the fact that

that the actions related to this have been fed by another procedure

sanctioning against CAIXABANK, S.A. (procedure number: PS/00477/2019), whose

lengthy processing goes in parallel to the actions related to the Agreement of

Home, and in which it has also been the subject of investigation, and resolution, the same collection of consents for the elaboration of profiles, so that we we would find ourselves before an alleged case of violation of the “non bis in idem” principle, first of all from the material perspective, which requires the Agency to avoid the duplication of sanctions for the same acts, that is to say, that it could reach punish the same conduct twice, since the conduct giving rise to the Agreement of Start (alleged lack of consent for profiling treatment) is the which has already been the subject of a resolution by the AEPD dated January 7, 2021 in the sanctioning procedure against CAIXABANK, S.A., for which the Agreement of Start, in the unlikely event that the procedure continues sanction initiated against CPC, could violate the "non bis in idem" principle, prohibited in our legal system.

CPC is part of the CaixaBank Group. The way in which this has been articulated Group responds to the regulation of the banking sector, which means that many treatments are carried out under co-responsibility; in particular, that co-responsibility applies to the treatment identified in section 6.1. (TREATMENTS BASED ON CONSENT), with the letter A, described such as “Analysis of your data for the preparation of profiles that help us offer you products that we think may interest you”, in the privacy policy of CAIXABANK, S.A., in its version of December 17, 2020, publicly available at https://www.caixabank.es/particular/general/politica-privacidad.html, and in the Policy of CPC Privacy, available at https://www.caixabankpc.com/, at the bottom of the page in the link “Privacy Policy”.

There is identity of sanctioned subject, since CAIXABANK, S.A. and CPC are part of the CaixaBank Group, which as companies act under a system of co-responsibility with respect to treatments that imply the elaboration of profiles for the same

business activity, and in both cases the alleged infringement of the

article 6 of the RGPD on the same treatment and with material link to a

same collection of consents; Therefore, we are faced with an indisputable

identity of the subject, fact and foundation, consequently what is adjusted to law would be

proceed to file the agreement to initiate the sanctioning procedure initiated

against CPC, so that this Agency complies with the legal system and does not

arbitrarily deviate from its own administrative precedents (question of the

that we will affect, from another perspective and in detail, later).

4. It alleges that article 9.3 of the Constitution prohibits the arbitrary action of

public powers, and article 103 obliges the Public Administration to serve with

objectivity the general interests, considering that the initial agreement of this



sanctioning procedure is an arbitrary action that does not objectively pursue

the general interest, evidencing, in addition, a discriminatory treatment with respect to other

managed. It is surprising to this part that, if the Agency had a special

concern about the adequacy of the personal data protection regulations of

treatments carried out by financial entities, would not have proceeded to

propose a preventive audit plan since, as provided in article 54 of the

LOPDGDD, the Presidency of the Spanish Data Protection Agency can

agree to carry out preventive audit plans referring to the treatment of

a specific sector of activity. What surprises us and raises doubts about the

application of the principle of equal treatment is that for other sectors it seems that the

Agency has been more sensitive and has preferred to carry out a more

preventive in its supervisory activity. The administrative action of the AEPD

results erratic based on the application of disparate criteria when deciding what

mechanisms to use with one or other entities or sectors, especially taking into account

account that the Director of the institution in public statements has equated

certain sectors and, however, later it has decided to apply action criteria

very different management.

We know very well that already in 2016 CAIXABANK, S.A. shared with the

AEPD aspects that have now been sanctioned, or for which it is intended

now sanction CPC, when it decided of its own accord to communicate to the authority a

documentary structure related to the adequacy of the Caixabank Group to the RGPD,

also expressly requesting a meeting or contacts, in order to obtain and adopt

criteria and recommendations that the AEPD would have wanted to transfer in this regard;

initial steps that did not work despite the insistence of CAIXABANK,

S.A.. Thus, the Caixabank Group adopted a diligent and preventive attitude, and the

effect has been that the AEPD has adopted an exclusively punitive attitude with the

Caixabank Group. Where then is the function that the AEPD must assume,

according to the provisions of article 57.1.d of the RGPD, to "promote awareness of

those responsible and in charge of the treatment about the obligations that

incumbent".

5. When the Director of the AEPD, in interviews granted to the media

communication at the beginning of 2020, advanced the result of files

sanctioning just started, violated the principle of presumption of innocence

(an issue on which we will go into depth later), but it was also missing

to the due discretion that an authority must maintain in relation to this type of

matters, and even beyond, it also forgot the provisions of article 54.2 of the RGPD,

which provides that: “The member or members and the staff of each supervisory authority shall be subject, in accordance with the Law of the Union or of the States members, to the duty of professional secrecy, both during their mandate and after of the same, in relation to the confidential information of which they have had knowledge in the performance of their duties or the exercise of their powers. ”; So, To give three examples, we have the following interviews and public interventions of the Director of the AEPD, Ilma. Ms. Mar España Martí:

- On January 13, 2020, in an interview in "Five days" of El País, it is used as holder of the same one of the affirmations of the Director of the AEPD: "There files to large companies that can end in very high penalties”

https://cincodias.elpais.com/cincodias/2020/01/10/legal/1578667140_483443.html



the

from

for

infringe

- On February 9, 2020, in another interview in "La Voz de Galicia", it is used again as holder of one of the declarations of the Board of the AEPD; in this case with full conviction that it will be sanctioned: “There will be very

important

data"

https://www.lavozdegalicia.es/noticia/sociedad/2020/02/08/marespana-habra-

sanctions-important-violate-

data protection/00031581176394099239215.htm

protection

- On March 13, 2020, in the chronicle of the magazine "El Derecho.com" (from the editorial

legal Lefebvre), on the XII Privacy Forum, organized by ISMS Forum,

together with the Data Privacy Institute (DPI), held on March 3, 2020 at the

CaixaForum Madrid Main Auditorium, a part of the intervention of the

Director of the AEPD in the following terms, which have already provided more details

about these planned sanctions: “We already have two or three procedures

high-impact sanctions that are going to have a lot of media coverage in

relation to the financial sector, will be the first important quantitative fines

by the Agency."

In relation to the last referenced manifestation, it is evident that the repercussion

media is the main result sought by these sanctioning procedures to

referred to, despite still being at that time in phases of

very initial processing, an impact derived from the fact that they were going to suppose some

"significant quantitative fines", not so much for the result of protection of the right

fundamental to the protection of personal data and data subjects, which is not

to take a backseat, it just seems to have no relevance at all

in those sanctioning procedures; at least that conclusion can be drawn from

expressed by the Director of the AEPD, since there does not seem to be a general interest in

protect, or damages to be remedied, or legal rights to be preserved.

Everything remains in the objective of achieving: “a lot of media coverage”.

It should be remembered that the request for information addressed to CPC took place

on February 6, 2020 and the agreement to initiate sanctioning proceedings to

CAIXABANK, S.A. on January 21, 2020. As has been amply stated

evidence, already at that very moment, the Director of the AEPD had the capacity to

foresee that there would be very important sanctions; previously, just a month before, the

December 2, 2019, the AEPD had agreed to start the procedure

sanctioning the entity BBVA, which was resolved with the imposition of a total fine

five million euros; that is to say, in less than 3 months actions were initiated in

relation to financial entities and it was already known that all of them would result in

large administrative fines, some fines with amounts not imposed until the

moment, everything and that the RGPD and its sanctioning regime was already applicable from the

May 25, 2018.

Regarding the already mentioned violation of the fundamental right to the presumption of

innocence, recognized by article 24.2 of the Spanish Constitution, the

Constitutional Court has projected the content of this fundamental right in the

sanctioning administrative procedures. To this effect, SSTC 129 and 131,

both of June 30, establish: "(...) the presumption of innocence governs without

exceptions in the sanctioning system and must be respected in the imposition



of any sanctions, whether criminal or administrative (...), since the exercise

of ius puniendi in its various manifestations is conditioned by article 24.2

of the Constitution to the game of evidence and to a contradictory procedure in which

their own positions can be defended."

This principle is also expressly included for the

sanctioning administrative procedures in article 53.2.b) of the LPACAP.

The presumption of innocence has a double essential meaning; on the one hand, it is a rule of judgment and, on the other, constitutes a rule of treatment, that is, in relation with the treatment that should be given to the accused during the processing of the procedure sanctioning In this sense, constitutional jurisprudence obliges us to consider innocent the accused and to treat him as such during the processing of the entire procedure, both inside and outside of it, which means that you cannot punish him before his guilt is proven. Thus, the STC 25/2003, of 10 February, stresses that "the presumption of innocence, in addition to constituting a principle or an informative criterion of the criminal procedural system is, above all, a right by virtue of which a person accused of an offense cannot be considered guilty until so declared in a conviction.

Ad extra, the presumption of innocence as a rule of treatment implies that the Administration cannot harm the accused in other areas, precisely because being processed a sanctioning procedure against him or, in general, for being suspected of having committed an administrative offence.

In the present case, we find ourselves before the beginning of a sanctioning procedure, preceded by a request for prior information dated February 6, 2020. Well, well, before the expiration of the mandatory administrative term to respond to said requirement, specifically, on March 3, in an act of ISMS Forum held in Madrid, as has already been described in detail above, the Director of the AEPD, highest authority of the institution, and competent person for resolve this file, publicly pointed out the existence of two or three high-impact sanctioning procedures that were going to have a great impact media in relation to the financial sector.

In accordance with articles 24.2, 103. 1 and 3 CE –and art. 6.1 of the European Convention of Human Rights-, any action of the Public Administration must

obey the principles of objectivity and impartiality; however, in this case, without

have still assessed the response to the request for information, since this

was presented on June 2, 2020 (almost three months after the aforementioned

declarations of the Director), the person who has to resolve, and who, in addition,

as the highest authority, inspectors and instructors are hierarchically dependent on the

AEPD, far from keeping any semblance of justice, decided (publicly) that

there would be a sanction, and this without only having agreed to initiate the procedure

sanctioning

It should be noted that the Director of the AEPD is not the only one who dictates the resolutions

but, in accordance with article 12.2 i) of the Organic Statute of the AEPD (RD

428/1993 of March 26), one of its functions is to "Start, promote the

instruction and resolve sanctioning files referring to those responsible for

private files. And it should also be noted that the AEPD is the only one of the



so-called independent administrations that do not have as the highest governing body

resolution of files to a collegiate body but to a single person. Therefore,

there is no debate in the assertion that it is his will alone that informs the impulse

instructor and the one that will determine the final resolution of the administrative file. Well

well, if the person who is going to solve this sanctioning procedure by himself, the

person who has been promoting your instruction, in short, the highest authority

of the institution, it was clear to me, before hearing what CPC had to say about it,

that he was going to sanction him, and he was so clear that he would say it in a public act, difficult

is to understand that there has not been a flagrant violation of the right
fundamental to the presumption of innocence (article 24.2 of the Constitution). This in
definitively, it should lead to the immediate annulment of the administrative actions.
Likewise, the resolutions of sanctioning procedures of this
Agency in which the person responsible for the treatment is sanctioned for infringing the
article 6 RGPD (vid. PPSS 00235/2019, 00182/2019, 00415/2019) and that, taking into account
account the status of a large company and volume of business, among others, not even remotely
sanctions reach the economic level of the sanction proposal contained in the
this Home Agreement, since they are sanctions that have ranged between
€60,000 and €120,000.
In this sense, it is not understood what this Agency is based on to modulate the
economic sanctions since the Initiation Agreement neither motivates nor explains
minimally the application of the graduation criteria of the sanction, nor the fact of
deviate from them in the proposed sanction, in the case of very
similar.
In line with the previous point, in a subsidiary manner, and in the unlikely event that
this Agency resolved that it must sanction CPC for the infractions imputed and
does not consider these allegations, this representation understands that they would result
application of the following criteria for assessing the sanctions established in the
article 83.2 RGPD (as mitigating factors): (a) Any measure taken by the
responsible or in charge of the treatment to alleviate the damages suffered by
the interested parties (art. 83.2.c) RGPD): CPC has made an important effort during
recent years – and especially since the entry into application of the RGPD and the merger
made on July 11, 2019 – to provide its clients with the information
regarding the treatment of your personal data in an adequate way. The
The clearest example of this initiative is the different versions of the

privacy policies and clauses, a fact that reaffirms the proactivity and spirit of

continuous improvement of CPC. This behavior demonstrates a clear exercise of

transparency and loyalty, as well as proactive and diligent activity on the part of CPC

in relation to compliance with data protection regulations, in addition to

demonstrate the desire of CPC to repair potential errors, if any, when

obtain the consent of the interested parties.

The degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement (art. 83.2.f) RGPD):

CPC has shown, at all times, its willingness to collaborate with the Agency in order to

to improve those aspects of the treatments that are susceptible to improvement.

As has been revealed in this Letter, CPC has launched



a series of measures aimed at improving the collection of consents.

Thus, these circumstances must be assessed by the Agency as extenuating circumstances. fits

remember that both CPC and its data protection delegate have been, throughout

time, available to cooperate and have been proactive in responding to

any Agency requirements.

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time, available to cooperate and have been proactive in responding to

any Agency requirements.

Omitting the aforementioned criteria, the Start Agreement refers, without

justification or motivation, to the following criteria in relation to each

imputed infraction, limiting itself to its simple enumeration, without even indicating its

application as an aggravating or mitigating circumstance, which generates defenselessness since it does not

we are able to understand the intention of the AEPD (and we only have, given the

disproportionate proposed sanctions interpreted as aggravating).

Next, we refer to those criteria that are most notoriously far from

reality:

(a) The nature, seriousness and duration of the infringement (art. 83.2.a) RGPD): It results

surprising that the AEPD proposes the imposition on CPC of a fine of such an amount

raised for issues that are not particularly serious:

— This is not a case in which CPC has radically dispensed with the

obligations related to obtaining consent, notwithstanding that the

AEPD considers that certain issues should be corrected, which could

imply improvements to the way in which consents are collected.

— Special categories of data are not processed (art. 9 RGPD and 9 LOPDGDD).

— To date, the sanctions imposed for violation of article 6 GDPR have not

reached the economic level proposed in this Start Agreement (with the

exception of the sanction imposed on the entity BBVA, already referenced).

— There is only one claim from a CPC client (claim, remember,

inadmissible for processing)

That said, even in the event that the Agency appreciates hypothetical

Indications of the commission of an infringement of the regulations on data protection

personal, it must be taken into account that no damage or harm has been caused

to CPC clients.



The processing of personal data, in accordance with the operation explained with the

maximum level of detail in the response to the request for information, are the

necessary for the development of the CPC's own activity, as well as for the

corresponding purposes when the basis of legitimacy of the treatment is the

consent freely granted by the interested party, and are carried out in accordance with the

requirements demanded by the applicable regulations on data protection and the

sector regulations.

It should be noted the importance that the RGPD first and the LOPDGDD later have

granted to the fact that the conduct of the data controller gives rise to a

serious and effective damage to the rights of those affected. In the present case

We understand that such damage has not occurred and that, therefore, it is neither serious nor

cash.

The former Article 29 Working Party, in its Guidelines on the Application and

setting of administrative fines for the purposes of Regulation 201 6/679 (WP 253,

adopted on October 3, 2017), ratified by the European Committee for the Protection

of Data (hereinafter, “CEPD”), refers to this issue in the following terms:

“If the interested parties have suffered damages, the level of

the same. The processing of personal data may generate risks for individual rights and freedoms, as stated in recital 75:

«The risks to the rights and freedoms of natural persons, serious and variable probability, may be due to the processing of data that could cause physical, material or non-material damages, particularly in cases where that the treatment may give rise to problems of discrimination, usurpation of identity or fraud, financial loss, reputational damage, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of the pseudonymization or any other significant economic or social damage; in the cases in which the interested parties are deprived of their rights and freedoms or are prevent exercising control over your personal data; In cases where the data treated personalities reveal ethnic or racial origin, political opinions, religion or philosophical beliefs, militancy in trade unions and the processing of genetic data, data relating to health or data on sexual life, or convictions and offenses criminal or related security measures; In cases where they are evaluated personal aspects, in particular the analysis or prediction of aspects related to the performance at work, economic situation, health, preferences or interests personal, reliability or behavior, situation or movements, in order to create or use personal profiles; in the cases in which personal data of vulnerable people, in particular children; or in cases where the treatment involves a large amount of personal data and affects a large number of interested". If damages have been suffered or are likely to be suffered due to to the infraction of the Regulation, the control authority must take this into account when when selecting the corrective measure, even if the supervisory authority lacks powers to grant specific compensation for damages suffered".

Well, as we say, in the present case no damage has been proven

any for the rights of those affected, nor has the sole claimant been able to prove

said damages, having been inadmissible his claim by the Agency. Is

This circumstance must be taken into account when determining the



hypothetical infraction and the sanction that, if applicable, could be imposed. It

above is also accredited by the fact that there have been no other

complaints or legal actions for these facts. That is, no damage has been done.

any that could be the subject of an action before the jurisdictional bodies

competent since CPC has acted, at all times, in full compliance with the

regulations on personal data protection.

(b) The intentionality or negligence appreciated in the commission of the infraction.

There is no intentional conduct in relation to the violation of the regulations

protection of personal data. CPC has acted diligently,

establishing clear procedures in relation to the information released

disposition of the clients and the procedures for obtaining consents from

the same. CPC has a desire for continuous improvement and transparency, a fact that is reflected

in the evolution of the documents and in the improvement of the information contained in the

themselves.

(c) The high linkage of CPC activity with the performance of treatment of

personal information.

CPC is a subsidiary of the CaixaBank Group and, as a financial credit institution,

its activity is consumer finance and means of payment; In no case, your

main activity is the processing of personal data of its most

beyond what is necessary for the development of that main activity, nor

nor does it benefit economically from the processing of the personal data of its

customers.

(d) High volume of data and processing that constitutes the object of the file.

The volume of data corresponds to the essential to be able to carry out

normality the activity of CPC and, in no case, the presumed infraction affects

all personal data processing carried out by CPC, nor is it

uses all the information related to customers.

6. Concurs in the Home Agreement a breach of the principle of legitimate expectations in

administrative action; As already described in these pleadings, on 29

November 2018, the AEPD transferred the claim and made a request for

information (Ref. E/09305/2018) to the Data Protection Officer as a result of a

complaint filed by D. A.A.A.. Based on the information provided by CPC and

In response to the reasons stated, the AEPD, on February 7, 2019, agreed

the inadmissibility of the submitted claim for processing, a fact that generated on CPC the

legitimate confidence of its performance in accordance with the law; months later they start

previous investigative actions, allegedly based on the Complaint,

resulting in the Home Agreement.

We have already asked ourselves before: how is it possible to start a

previous investigative actions based on a claim that has not been

admitted for processing by the AEPD itself?

This action can only be incardinated in a breach of trust

legitimate, one of the essential principles of administrative action. Saying

principle, of jurisprudential construction first by the CJEU and then by the Court
Supreme, and later recognized in article 3 of Law 40/2015, of 1
October, of the Legal Regime of the Public Sector, is intimately interrelated
with the principle of good faith and legal certainty and implies that "the public authority
cannot take measures that are contrary to a reasonable hope
induced on the stability in the decisions of the former, and based on which
individuals have adopted certain decisions" (STS 173/2020).

On the other hand, there is permissiveness with respect to other subjects as a reference. In this
In this sense, the AEPD has made public other actions, of a preventive nature, that
provide a series of recommendations to other sectors of activity, in relation to
the relevant legal basis to be applied in terms of profiling
commercial; recommendations that CPC applies in an equivalent manner in the
treatment settings.

As we say, these recommendations for other sectors create a confidence
legitimate, reinforced by the conduct of the AEPD itself by refraining from sanctioning
acts of an identical nature to those attributed to CPC, which would completely undermine the
enforceable requirement of guilt "by legitimate and invincible belief of being acting
lawfully" (Sic. SAN of March 30, 1999). 50. In this sense too, the
doctrine derived from the SAN of October 19, 2006 concludes that "(...) The relationship
of those managed with the Administration must be based on legitimate expectations,
trust that can only be generated when there is predictability and security in the
Administration action. (...) and no reproach can be made for the

Administration -not even simple non-observance- to those who adjusted their actions to its guidelines - fully "observed" them.

7. There is also an artificial and unlawful extension of the previous actions;

As has been repeatedly described, the AEPD, in its own words, initiates a sanctioning procedure in view of a claim inadmissible for processing. The previous investigative actions agreed by the AEPD supplanted the activity instructor, having been prolonged until almost their expiration date.

The Initiation Agreement rests, practically in its entirety, on elements of charge collected during the preliminary actions phase.

The previous investigation actions constitute an enabling mechanism of the performance of the Administration conferred on it "in order to achieve a better determination of the facts and circumstances that justify the processing of the procedure" (article 67 of Organic Law 3/2018) or "in order to know the circumstances of the specific case and the advisability or not of initiating the procedure" (Article 55 LPACAP).

The initiation of preliminary investigation actions has a very limited purpose: bring together an indicative base of elements of judgment (not evidence) that allow have a minimum certainty of the occurrence of the act, its typicity and the person responsible, and with it, of the appropriateness of initiating a sanctioning procedure about himself.



From the moment in which the Administration is certain of the commission of the

facts and the identity of the person responsible, even if it is not fully accredited, the itself is obliged, for the sake of due respect for the Constitution and the guarantees enshrined therein, to immediately initiate the appropriate procedure sanctioning

In this sense, the Supreme Court has revealed, among others in the Judgment of December 26, 2007, that the preliminary investigation actions only will be worthy of such consideration (and therefore, of the legal regime applicable to the same) "to the extent that those preliminary or preparatory proceedings serve the purpose that really justifies them, that is, to gather the data and initial indications that serve to judge on the pertinence of giving way to the sanctioning file, and it is not denature by becoming a surreptitious alternative to the latter".

Similarly, the Judgment of the Supreme Court of June 9, 2006, has highlighted the need to safeguard the constitutional guarantees of the administered in cases such as the one at hand: "As a result of this rule, prior information is not mandatory, having declared this Chamber in a judgment of November 6, 2000 that "if there is sufficient data to initiate the file, the information reserved should not be practiced, because it is unnecessary and because the rights fundamental defense of art. 24.2 of the C.E. They demand that the granting of the condition of imputed or filed, thus avoiding the risk of use the delay to conduct interrogations in which the interrogated person would be in a disadvantaged situation.

It is especially striking in this case, the time elapsed between the inadmissibility of processing the claim and the requirement of prior information, this is, more than a year; or the extension of the period of previous actions of investigation for a period of 14 months, yes, taking into account the already mentioned incidence of the pandemic.

The Supreme Court itself, in its Judgment of May 6, 2015, establishes the following: "(...) this Chamber has declared that this period prior to the initiation agreement «(...) must be necessarily brief and not conceal a contrived way of carrying out acts of investigation and mask and reduce the duration of the subsequent file itself" (judgment of 6 May 2015, appeal 3438/2012, F.J 2º".

In addition, during this period there has been a parallel procedure sanctioning against CAIXABANK S.A. (matrix of the group to which CPC belongs), where Coincidentally, an infringement of article 6 RGPD is also imputed, among others, in relation to the same treatment. Thus, taking into account the inadmissibility for processing of the claim, the time elapsed until giving rise to the preliminary actions and the sanctioning procedure against the parent company of CPC, it follows that both the previous actions such as the agreement to initiate sanctioning proceedings subject to these allegations (Sanctioning Procedure) are the result of the information obtained in another administrative procedure.

B. Regarding the alleged infringement.

The consent of the interested parties is specific and duly informed. At Start Agreement the AEPD erroneously assesses that the consent collected



by CPC for profiling purposes is not specific since the body administrative interprets that it does not meet the requirement of separation of the purposes and consequent provision of consent for each of them, to which is added the assessment that the consent given is not informed either.

Thus, due to the absence of the requirements related to the provision of consent specific and informed, presumably this would not be valid, implying, therefore, that the treatments based on the consent of the interested party would lack legitimation for an alleged breach of the provisions of article 6 of the RGPD.

The foregoing is justified in the Start Agreement, based on five factors of the operation of CPC that, according to the AEPD, would not be aligned with the provisions of the applicable regulations regarding the protection of personal data.

i. There is an alleged extension of the purposes of the treatment: it is affirmed by the AEPD that, when informing about the treatments for the "offer and design of products and services adjusted to the client's profile", purposes such as:

— Adjust recovery measures on defaults and related incidents of the contracted products and services;

— Analyze possible economic interdependencies in the study of offers of services, risk requests and product contracting;

— Assess the services received;

— Design new products or services, or improve the design and usability of the existing ones, as well as define or improve the experiences of the users in their relationship with CaixaBank Payments & Consumer and the companies of the Group CaixaBank.

ii. The data is communicated to the companies of the Group without a legal basis: the consent is requested for the CaixaBank Group, which according to the AEPD constitutes a communication of data to the companies of the Group, which in turn would constitute a specific purpose in itself that would require, therefore, a manifestation of will of the interested party for which he consents that it can be carried out.

iii. The interested party cannot know the data that will be processed for profiling:

According to the AEPD, the information provided to the interested party includes data that is not

are going to be processed, and yet you are allegedly not informed of the

treatment of other data that will be the object of the same, such as the consultation of files

of solvency and the Risk Information Center of the Bank of Spain or the

called "Risk Score".

IV. Data contained in solvency files are processed for profiling purposes for the purposes of

credit rating without legal basis of the treatment.

v. The interested party is not informed about the profiling operation related to the “Risk

Score”: according to the AEPD, the interested party is not informed about this new operation of

profiled, nor on the legal basis that allows its realization, nor on the

data used to carry it out.



It is stated that each of the above statements does not correspond to the

reality alleging that:

i. There is no extension of the purposes of the treatment.

The AEPD argues that the requests for

consent since, when informing about the analysis and study treatments

of data for commercial purposes, including treatments that are not compatible with said

purpose and, therefore, require a specific consent request.

The truth is that this confusion is due to a slight error in the informative clause, in the

that the error was made (remedied in the current CPC Privacy Policy,

in turn aligned with that of CAIXABANK, S.A.), to list treatment operations

that are not made based on the consent obtained for profiling; specific:

- Carry out the follow-up of the contracted products and services: treatment necessary for the execution of the contractual relationship with the interested party;

- Adjust recovery measures on non-payments and incidents derived from the contracted products and services: treatment necessary for the execution of the contractual relationship with the interested party;

- Associate your data with that of other clients or companies with which you have some type of link, both family or social, as well as due to their property relationship and administration, in order to analyze possible interdependencies in the study of service offers, risk requests and contracting of products: treatment necessary for the execution of the contractual relationship with the interested party. In addition, it is a necessary treatment to comply with the obligations established in Law 10/2014, of 26 June, of Management, Supervision and Solvency of Credit Institutions, in the Law 44/2002, on Financial System Reform Measures, as well as for the compliance with the other obligations and principles of the regulations on responsible lending;

- Carry out studies and automatic controls of fraud, defaults and incidents derived from the contracted products and services: Treatment carried out by be necessary for the satisfaction of the legitimate interest of CPC to prevent fraud that suppose economic or reputational losses;

- Carry out satisfaction surveys by telephone or electronically in order to assess the services received: Necessary treatment for the execution of the contractual relationship with the interested party;

- Design new products or services or improve the design and usability of the existing, as well as define or improve the experiences of users in their relationship with CPC and the companies of the CaixaBank Group: It is a treatment that

It is not done with personal data but by analyzing statistics and data

added after anonymization processes.



This incident, after being detected, has been corrected by the CaixaBank Group and, by

therefore, also by CPC, through the elaboration of a new Privacy Policy

in which the treatments carried out are correctly and precisely detailed

for analysis and study for commercial purposes.

However, despite CPC acknowledging the aforementioned circumstances, and

Regardless of whether it has been corrected, this does not have as

consequence that consents are being collected for different purposes

under a single and unifying question, a fact that could effectively affect the

principle of specificity of consent.

Consent is only requested for the purpose of studying products or

services that could be adjusted to the specific commercial or credit profile or situation

of customers to send them commercial offers tailored to their needs and

preferences.

The fact that other additional purposes have been included when reporting on the

above purpose does not imply that different purposes are authorized en bloc: in the

In the event that the interested party gives his consent for profiling, only

will process your data for the initial purpose based on the consent given. The rest

of the purposes will be carried out only in the event that the requirements are met

necessary so that the listed legal bases converge in each case

previously.

ii. The data is not communicated to the companies of the CaixaBank Group without a legal basis

In the Home Agreement it is indicated that the fact of requesting the consents for the

CaixaBank Group constitutes a communication of data to the companies of the Group.

Said alleged communication of data to the companies of the Group would constitute a

specific purpose in itself that would require, therefore, according to the AEPD, a

expression of will of the interested party by which he consents that he can take

finished.

However, it should be noted that no data communication takes place

since there is a system of co-responsibility between the companies of the Group

CaixaBank, due to the existence of an agreement to jointly determine the objectives and

means of treatment object of the Home Agreement, as provided in article 26

of the GDPR.

As specified by the CEPD, in its "Guidelines 07/2020 on the concepts of

controller and processor in the GDPR" (adopted on September 2, 2020), the

assessment of co-responsibility should be based on a factual analysis, rather than

formal, on the influence in the determination of the purposes and means of the treatment;

for example, co-responsibility may take the form of a decision made by

two or more entities, or it may be the result of converging decisions of two or more entities.

more entities in terms of essential ends and means.

Therefore, the

co-responsibility is sustained on the basis of decisions adopted by the different

entities that want to act as co-controllers of the treatment; that is, it depends

of their willingness to act in a co-responsible manner, without prejudice to the fact that, in cases

concrete, a norm can also expressly establish that

co-responsibility

The situation of co-responsibility based on converging decisions is derived from the jurisprudence of the Court of Justice of the European Union, so that it can be consider that decisions converge in ends and means if they complement each other yes and they are necessary for the treatment to take place, so that a criterion important to identify converging decisions in this context is whether the treatment as a whole would not be possible without the participation of entities co-responsible.

Likewise, the CEPD points out that the existence of co-responsibility does not imply necessarily equal responsibility of the different operators involved in the processing of personal data; on the contrary, the CJEU has clarified that those Operators may be involved at different stages of treatment and with different degree of intervention, so that the level of responsibility of each of them must be evaluated taking into account all the relevant aspects and circumstances of the particular case.

Therefore, there is no communication of data between the companies of the Group but a direct collection of the same by companies in the field of

co-responsibility

The consents object of the Home Agreement are managed within the framework of the mentioned co-responsibility. This is because it would not be operational for entities of the Group, nor easy to manage for the interested parties themselves, manage separately the consents for those treatments that are carried out

jointly in the context of the activities of the CaixaBank Group for a

same purpose and with the same means, in relation to data of which the entities of the

Group are co-responsible.

However, the mentioned co-responsibility does not only respond to doing more

operationalize the management of consents and to facilitate the management and

understanding of the treatments carried out based on your consent but also

to regulatory needs.

In this sense, a large part of the entities of the CaixaBank Group, including

CPC, special diligence is required of them when granting an operation of

active; diligence that translates into the duty to carry out an analysis in

depth of the client's ability to borrow, as well as to meet

the obligations derived from the contracting of its products. These obligations are

configured in the regulations on transparency of operations and protection of

clientele (see articles 29.1 and 14 of Law 2/2011, of March 4, on Economy

Sustainable. and Law 16/2011, of June 24, on consumer credit contracts,

respectively).

Additionally, the aforementioned regulations require taking into account

specific on risk management and internal control contained in the legislation

in force on prudential regulation of credit institutions. The regulations on

prudential regulation of credit institutions, or regulations on credit requirements



solvency, has been implemented and adapted to the Union legal system

European through the following standards:

- EU Regulation No. 575/2013, of June 26, 2013, on the requirements

Prudential solvency and risk requirements of credit institutions and insurance companies

investment;

- Directive 2013/36/EU, of June 26, 2013, regarding access to the activity of

credit institutions and the prudential supervision of credit institutions and

investment companies, transposed into the Spanish legal system by Law 10/2014 and

Royal Decree 84/2015.

In accordance with the regulations listed, the entities and groups that can be consolidated

credit institutions (1) must carry out effective risk control, both

at an individual level as an aggregate (2), a fact that implies that the Consolidated Group

CaixaBank must carry out risk management in the joint or global scope of the

mentioned group. This management includes the admission of risks and, consequently, the

study of the solvency and the capacity of return of the applicant of an operation of

active.

(1) Circular 4/2017, of November 27, of the Bank of Spain, to entities of

credit, on rules of public and reserved information and models of statements

financial, defines the nature and content of the consolidatable groups of entities

of credit:

Consolidable groups of credit institutions: These are those groups that have to

comply with prudential requirements, on a consolidated or sub-consolidated basis,

established in Regulation (EU) 575/2013 of the European Parliament and of the Council,

of June 26, 2013 […].

(2) Article 40.1 of Law 10/2014 establishes the subjective scope of application of the

solvency regulations, this being applicable to:

a) To credit institutions

b) Consolidable groups and subgroups of credit institutions

It should also be mentioned that the European Central Bank, in the exercise of its supervisory powers, carried out the inspection identified as OSI-2017-1-ESCAX-3084, in which he identified as a deficient aspect in relation to the requirements of the Prudential and Solvency Regulations applicable to the Group Consolidated CaixaBank, the non-integration of all the databases of the entities of the Consolidated Group.

Due to the above, co-responsibility does not only imply benefits operations for the Group but is necessary for the adequate fulfillment of the legal obligations of CPC and the rest of the entities of the Consolidated Group CaixaBank. This necessarily implies that said co-responsibility will have implications not only in those treatments carried out strictly



compliance with mandatory legal obligations but also some carried out in based on the consent of the interested parties.

This would be the case of data analysis and study processing for the purpose of commercial. It is necessary to take into account the type of products marketed by the CaixaBank Group and, specifically, by CPC. As reported in the reply to Request for information prior to the Start Agreement, CPC, as long as financial credit establishment, offers and sells loans. Therefore, and although the treatment related to commercial profiling is carried out on the basis of the consent of the interested party, it must be carried out in compliance with the legal obligations

applicable in each case.

In other words, considering that personalized loan offers

are binding for CPC (in the sense that, if the client accepts the offer, the

conditions of the product will be those previously offered), when performing them CPC must

also comply with prudential and solvency regulations, even when the treatment

It is carried out based on the consent of the interested party.

It is for the foregoing that the CaixaBank Group decided to manage

centralization of consents for commercial purposes, including the treatment

data analysis and study; so the fact that consent is requested

for the CaixaBank Group does not constitute a communication of data to the companies of the

Group, but it is a consequence of co-responsibility in the terms set forth

in the previous paragraphs

iii. The duty to inform the interested parties in relation to

with the data processed for profiling

In the Home Agreement it is considered that the interested party cannot know the data that

are going to be treated for the profiling since among the information that is provided is

include data that will not be subject to such treatment and, however, always

according to the AEPD, you are not informed of the processing of other data that will be subject to the

same.

Based on the foregoing, and according to the criteria of the AEPD, it is concluded that the

consent given for profiling purposes is not duly

reported, so this would not be valid.

In this regard, it is necessary to take into account two factors: first, the

fact that the categories of data subject to treatment are not among the

minimum information described in article 13 of the RGPD so that the consent

be informed; secondly, and despite not being mandatory to report it, the

information provided does allow interested parties to know the data that will be

treat for profiling. Both will be further developed below.

listed factors.

As regards the obligation to inform about the type of data subject to

treatment, it should be noted that neither article 13 RGPD, nor the corresponding

Article 11 of the LOPDGDD, require the interested parties to be provided with this information



compulsory form; it is required under article 14 RGPD when the data is not

obtained directly from the interested party, but this is not the case analyzed by the AEPD.

Additionally, in the GDPR itself, by establishing in its recital 42 the

information that the interested party must know so that the consent is

informed, it is determined that at least you must know the identity of the

responsible for the treatment and the purposes of the treatment for which they are intended

Personal information.

Notwithstanding the foregoing, CPC decided to provide interested parties with information

additional information regarding the processing of your personal data. In this way, in addition to

the minimum information established by article 13 RGPD, the

categories of personal data subject to treatment for the purpose of analysis and

data study.

Regarding said information provided, the AEPD considers that it is insufficient,

erroneously stating that CPC does not report the query to solvency files and

to the Risk Information Center of the Bank of Spain or the “Risk Score”. Is not

It is true that such uses of the data are not reported, and we understand that this

statement is due to the lack of analysis of the information provided in its

group to those interested.

The AEPD limits the information provided to the interested parties in relation to the

personal data object of treatment to the following:

The data that will be processed for the purposes of (i) data analysis and study, and (ii)

for the commercial offer of products and services will be:

a) All those facilitated in the establishment or maintenance of relationships

commercial or business.

b) All those generated in the contracting and operations of products and services

with CaixaBank Payments & Consumer, with the companies of the CaixaBank Group or with

third parties, such as account or card movements, receipt details

direct debits, payroll direct debits, claims arising from insurance policies,

claims etc

c) All those that CaixaBank Payments & Consumer or the companies of the Group

CaixaBank obtain from the provision of services to third parties, when the service has

as recipient to the Holder, such as the management of transfers or receipts.

d) Whether or not you are a CaixaBank shareholder, as recorded in the records of

this, or of the entities that, in accordance with the regulations of the market of

securities must keep records of the securities represented by means of

book entries.

e) Those obtained from the social networks that the Holder authorizes to consult.

f) Those obtained from third parties as a result of requests for aggregation of

data requested by the Owner.

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g) Those obtained from the Holder's navigation through the web service of

CaixaBank Payments & Consumer and other websites of this and/or of the companies of the Group

CaixaBank or CaixaBank Payments & Consumer mobile phone application and/or

the companies of the CaixaBank Group, in which it operates, duly identified. These

Data may include information related to geolocation.

h) Those obtained from chats, walls, videoconferences or any other means of

communication established between the parties.

The Holder's data may be supplemented and enriched by data obtained

of companies providing commercial information, by data obtained from sources

as well as by statistical, socioeconomic data (hereinafter, "Information

Additional"), always verifying that they meet the requirements established in

current regulations on data protection.

The above excerpt, transcribed in the Start Agreement, is part of the conditioned

that is provided to the interested party in the framework of contracting a product and in

which is informed of the provisions of article 13 of the RGPD. However, the AEPD,

evaluate the information provided to the interested parties regarding the typology of

data object of treatment, has not taken into account the rest of the general conditioning.

Specifically, the transcribed fragment corresponds to point 26.4. (ii) of the

general conditioning. In this sense, it is indicated as a type of data processed to

the purpose of analysis and study of data, "All those provided in the establishment or

maintenance of commercial or business relations" (underlined fragment in the

transcript of the excerpt herein).

It could only be considered that not enough information is provided regarding

to the categories of personal data subject to processing if provided

exclusively this fragment of text to those interested, but more is added

information.

In section 26.3 of the general conditions (prior to 26.4.ii transcribed in the Agreement

of Start) specifies in greater detail what data will be processed for the establishment

or maintenance of commercial relations:

“Payments & Consumer and, where applicable, the companies of the CaixaBank Group, is

obliged by different regulations and agreements to carry out certain data processing

data of the people with whom it maintains Business Relations, as indicated

in the following sections of this clause (hereinafter, “Treatments with

Regulatory Purposes”). These treatments are necessary for the establishment

and maintenance of Business Relations with CaixaBank Payments &

Consumer and/or with the companies of the CaixaBank Group, and the opposition of the Holder to the

themselves would necessarily entail the cessation (or non-establishment, as the case may be) of

these relationships. In any case, Processing for Regulatory Purposes is

limited exclusively to the stated purpose, without prejudice to other purposes or

uses that the Holder authorizes according to the provisions of clause 26.4. of the present

document"



Thus, in the transcribed fragment it is indicated that, due to the need to comply with

specific regulations applicable to CPCs, the establishment and maintenance of

commercial relationships with CPC will require specific data processing that is

will specify later. In addition, in the same fragment it is indicated that said

Processing will be limited to regulatory purposes, without prejudice to the fact that, in the case

that the interested party authorizes it, they can also be used for other purposes.

Regarding the categories of data that according to the AEPD are not included in the

information provided to data subjects in relation to the categories of data

object of treatment, these are effectively included in points 26.3.3 and 26.3.4

of the general conditioning.

In this way, point 26.3.3 informs about the query to files of

credit information (among which are those necessary to obtain the “Risk

Score”, as will be explained later):

26.3.3 Communication with credit information systems.

The Account Holder is informed that CaixaBank Payments & Consumer, in the study of the

establishment of Commercial Relations, you can consult information in

credit information systems. Likewise, in the event of non-payment of any of the

obligations derived from the Commercial Relations, the data related to the non-payment

may be communicated to these systems.

And, in point 26.3.4, there is information about the query to the Information Center of

Bank of Spain risks:

26.3.4. Communication of data to the Risk Information Center of the Bank of

Spain

The Holder of the right is informed that he assists CaixaBank Payments & Consumer to

Obtain reports from the Risk Information Center of the Bank of Spain (CIR).

about the risks that could be registered in the study of the establishment of

Business relationships. […]

Therefore, it is not true that, as the AEPD considers, information is not provided

enough about the data to be processed for profiling. Information

provided to data subjects should be analyzed as a whole and not just

fragments of it.

IV. It is not true that data contained in solvency files are processed for purposes of

profiling for credit rating purposes without legal basis for processing

In the Home Agreement, the provisions of the third section of article 20 are used

of the LOPDGDD to determine that the treatment carried out by CPC of data

contained in solvency files for profiling purposes for qualification purposes

credit is carried out without a legal basis for the treatment.

This party understands that the reference to the third section of the aforementioned article is

due to an error since this refers to the treatment carried out by the entity



to maintain the credit information system, and as was specified in the

response to the request for information dated June 2, 2020 between the

activities carried out by CPC system maintenance is not found

of credit information.

Due to the foregoing, the reference to the third section of article 20 of the LOPDGDD does not

would be appropriate in the present case.

Notwithstanding the foregoing, this part can answer the possible question

the AEPD can do about what is the legitimizing basis for processing data

contained in solvency files for profiling purposes for qualification purposes

credit.

In this sense, as stated in the response to the request for information

Prior to the Start Agreement, CPC can carry out treatments focused on analyzing the repayment capacity or risk of non-payment of the interested party based on two bases legal conditions of the treatment, according to the factual assumption in question:

- Exclusively the fulfillment of legal obligations applicable to CPC: It would be the case (i) of the analysis of the repayment capacity or risk of non-payment of a interested in your request for a product, and (ii) the analysis of the capacity of repayment or risk of non-payment in credit risk management granted to customers. In these cases, CPC makes an assessment of the ability to return or solvency of the interested party in compliance with the Prudential and Solvency Regulations and of Responsible Lending, as stated in the response to the Requirement for information and in this Letter.
- Consent of the interested party: This would be the case of the treatments carried out on the basis to the consent of the interested party for the analysis and study of data with the purpose commercial. The purpose of these treatments is to offer the interested parties and services adjusted to your needs (including the possible assignment of limits of pre-granted credit), selecting the target audience before carrying out a certain business impact.

However, it is necessary to take into account, as previously stated in the this writing, the nature of the products and services marketed by CPC, as well as the regulatory implications that this entails.

The fact that certain treatments are carried out based on the consent of the interested party does not exclude that CPC must comply with the legal obligations associated with these treatments. In the case of preparing commercial offers adapted to the profile of the interested parties CPC must comply with the legal obligations established in the Prudential and Solvency and Responsible Lending Regulations given that the Products marketed are credit accounts and loans.

In this way and taking into account that in the realization of a personalized offer

to a client it is binding for CPC (in the sense that, if the client

accepts the offer, the services will be provided under the terms previously indicated by

CPC), CPC has the obligation, prior to making the offer,

Assess the repayment capacity and solvency of the interested party. Otherwise, CPC



would be breaching the Prudential and Solvency and Loan Regulations

Responsable.

Therefore, even when the treatment is carried out based on the consent of the

interested, CPC must comply with the legal obligations established in the Regulations

Prudential and Solvency and Responsible Lending; so when you do a

personalized offer to an interested party, CPC must assess their ability to return

and solvency, consulting for this the data contained in information systems

credit.

v. It is not true that the interested party is not informed about the profiling operation

relative to the “Risk Score”

The Initiation Agreement states that CPC does not adequately inform the

interested parties about the treatment related to obtaining the data called

"Risk Score", considering that obtaining said data constitutes an operation of

independent data profiling and therefore should also be reported

specific.

(...). When informing the interested parties about the processing of their data, it is not mentioned

obtaining this specific data since, even if it is obtained with the

intervention of a person in charge of the treatment, it does not differ from the simple analysis and

study of data carried out both for regulatory purposes and with

commercial purposes.

In this sense and in terms of the legal basis that allows its realization, it is the same

than in the rest of the cases, that is, when it is carried out to carry out the

assessment of the repayment capacity or solvency of the interested party exclusively

within the framework of your request for a product or the management of credit granted to

clients, the legal basis is compliance with legal obligations applicable to CPC.

On the other hand, when it is carried out for commercial purposes, the legal basis of the

treatment will be the consent of the interested party, taking into account that to carry out

carrying out the analysis and study of data for commercial purposes will be

It is also necessary to observe prudential and solvency regulations.

As for the data used to obtain the "Risk Score", it is the work of

in credit information systems.

Therefore, the interested parties are duly informed about the treatment

carried out to obtain the "Risk Score", when integrating said operation of

treatment within the analysis and study of data carried out both for purposes

regulatory and commercial purposes.

According to each of the points previously exposed, it can be concluded that

effectively the consent given for the profiling purposes analyzed

complies with the requirement of separation of purposes and provision of consent

for each of them, in addition to being duly informed, so this is

valid.

C/ Jorge Juan, 6

28001 – Madrid

NINTH: In accordance with the provisions of article 77 of the LPACAP, on the date June 22, 2021, it is agreed to open a period of practice tests, considering reproduced for evidentiary purposes the filed claim, the documentation corresponding to the transfer of the claim to the claimed entity, the appeal for reversal filed by the claimant, as well as the documentation in investigation file E/10053/2019. Likewise, it considers reproduced for evidentiary purposes, the allegations to the initial agreement PS/00500/2020 filed by CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U. It is agreed to include in the file the privacy policy that appears in the website of the entity CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U.

On the other hand, it is agreed to require said entity to provide the information and following documentation within 10 business days:

Date of implementation of the new privacy policy and period during which that the previous one was in force.

 Copy of the co-responsibility agreement referred to in the new privacy policy and in the allegations to the initial agreement presented.

 Documents that provide customers with information to obtain consent to carry out processing for commercial purposes, such as, by way of example, the so-called "general conditions" and, if they have been object of modifications, date in which these were produced.

 Contract made with the entity ***EMPRESA.3 for risk activity score.

 Business volume of the Caixabank group in 2020.

By means of a procedure dated July 2, 2021, a capture of

screen with the privacy policy of CAIXABANK PAYMENTS & CONSUMER

EFC, EP, S.A.U. listed on their website. It is reproduced below

indicated in points 5 and 6.1 of said policy:

"5. Data categories

At CaixaBank Payments & Consumer we will process different personal data in order to

manage the Contractual Relations that you establish with us, to carry out the rest of the

the data processing that derives from your condition as a client and, if you have given us your

consent, to also carry out the processing of your data for the activities that are

detailed in section 6.1.

To facilitate your understanding, we have arranged the data we process in the categories that

we detail below.

Not all the categories of data that we detail are used for all data processing.

data. In section 6, where we detail the data processing we carry out, you

You can consult specifically for each specific treatment the categories of data that are

use, thus having the necessary information that allows you to exercise, if you wish, your

rights recognized by the RGPD, especially those of opposition and revocation of the

consent.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

42/133

The categories of data used by the different treatments exposed in section 6 are

the following:

> Data that you have provided us when signing up for your contracts or during your relationship with us. These data are:

- 
- 
- 
- 

identification and contact data: your identification document, name and surnames, gender, postal, telephone and electronic contact information, residence address, nationality and date of birth, and language of communication.

socioeconomic data: detail of the professional or work activity, income or remuneration, family unit or circle, educational level, assets, tax data and tax data.

financial data: contracted products and services, relationship with the product (condition of holder, authorized or representative), MiFID category.

biometric data: facial pattern, voice biometrics or fingerprint pattern.

> Data observed in the maintenance of products and services. These data are:

- 

financial data: the information of the notes and movements that are made in current accounts, including the type of operation, the issuer, the amount, and the concept, information on investments made and their evolution, information on financing, statements of operations with debit and credit cards, products contracted and payment history.

It is important that you know that we will not treat data observed in the maintenance of products and services that may contain information revealing their origin racial or ethnic background, your political opinions, your religious or philosophical convictions, your union affiliation, the processing of genetic data, biometric data aimed at

uniquely identify you, data relating to health or data relating to your life

or sexual orientation (“Sensitive Data”).

□

□

□

their status as a shareholder, or not, of CaixaBank.

digital data: the data obtained from the communications that we have established

between you and us in chats, walls, video conferences, phone calls or

equivalent means and the data obtained from your browsing through our pages

web or mobile applications and the navigation you make in them (device ID,

advertising ID, IP address and browsing history), if you have accepted

the use of cookies and similar technologies on your browsing devices.

geographic data: the geolocation data of your mobile device provided

for the installation and/or use of our mobile applications, where applicable

authorized in the settings of the application itself.

> Data inferred or deduced by CaixaBank Payments & Consumer from the analysis and

treatment of the rest of the data categories. These data are:

□

groupings of clients into categories and segments based on their age, wealth

and estimated income, operations, consumption habits, preferences or propensities to

contracting of products, demographics and relationship with other clients or categorization

according to the regulations on Markets in Financial Instruments (“MiFID”).

scoring scores that assign probabilities of payment or non-payment or limits of

risk.

> Data that you have not provided us directly, obtained from sources accessible to the

public, public records or external sources. These data are:

capital and credit solvency data obtained from Asnef and Badexcug files.

data on risks held in the financial system obtained from the database

of the Risk Information Center of the Bank of Spain (CIRBE).

data of persons or entities that are included in laws, regulations, guidelines,

resolutions, programs or restrictive measures in terms of economic-

international financial institutions imposed by the United Nations, the European Union, the

Kingdom of Spain, United Kingdom and/or the U.S. Department of the Treasury's Office of

Foreign Asset Control (OFAC).

cadastral or statistical data obtained from companies that facilitate studies

socioeconomic and demographic statistics associated with geographical areas or codes

postcards, not to specific people.

digital data obtained from your browsing through third-party web pages (ID

device, advertising ID, IP address, browsing history), in the event that there is

accepted the use of cookies and similar technologies on your browsing devices.

data from social networks or the internet, that you have made public or that you authorize us to

Consult."

In point 6 of said privacy policy under the title "What treatments

we do with your data", the following is stated:

"The treatments that we will carry out with your data are diverse, and respond to

different purposes and legal bases:

> Processing based on consent

> Treatments necessary for the execution of the Contractual Relations

> Treatments necessary to comply with regulatory obligations

> Processing based on the legitimate interest of CaixaBank Payments & Consumer"

Section 6.1 of said privacy policy contemplates the following treatments

based on consent:

A. Analysis of your data for the elaboration of profiles that help us to

offer you products that we think may interest you

B. Commercial offer of products and services through the selected channels.

C. Transfer of data to companies that are not part of the CaixaBank Group



d

Identification of clients and signature of documentation through the use of biometrics.

In point 6.1 of the aforementioned privacy policy, the following is stated:

"TREATMENTS BASED ON CONSENT.

These treatments have your consent as a legal basis, as established in art.

6.1.a) of the GDPR.

We may have asked you for that consent through different channels, for example, to

through our electronic channels or at any of the CaixaBank Group companies. Yes

for some circumstance, we have never requested your consent, these

treatments will not apply to you.

You can consult the authorizations that you have consented or denied us, and

modify your decision at any time and free of charge on the CaixaBank website

Payments & Consumer (www.caixabankpc.com) and in each of the companies in the

CaixaBank Group, or in your private area of the CaixaBank website or mobile applications

Payments & Consumer and at CaixaBank offices.

The treatments based on your consent are indicated below in order of (A)

to the (D). We will indicate for each of them: the description of the purpose (Purpose), if they are or

no processing carried out under a co-responsibility regime with other Group companies

CaixaBank (Joint Controllers/Data Controller), and the categories of data

used (Categories of processed data).

A. Analysis of your data to create profiles that help us offer you

products that we think may interest you.

Purpose: The purpose of this data processing is to use the categories of data that

indicated below, to create profiles that allow us to identify you with segments

of customers with similar characteristics to yours and suggest products and services that

we believe may interest you, as well as establish the frequency with which we

we relate to you.

Through this treatment we will analyze your data to try to deduce your preferences or

needs and thus be able to make commercial offers that we believe may have more

interest than generic offers.

When the offers that we want to transmit consist of products that imply the payment of

installments or financing, we will carry out a pre-assessment of solvency to calculate the limit of adequate credit to offer, in accordance with the principles of responsibility in the offer of financing products required by the Bank of Spain.

It is important that you know that this treatment, including the pre-assessment of solvency in products with risk, is limited to the indicated purpose of suggesting products and services that we believe may interest you, and is not used, in any case, for denial of any product or service or credit limit.

You always have at your disposal our complete catalog of products and services, and this treatment does not prejudge, limit or condition your access to them, which, in the event that request them, they will be evaluated with you in accordance with CaixaBank's ordinary procedures Payments & Consumers.



We will only carry out this processing of your data if you have given us your consent. for it. Your consent will remain in effect as long as you do not withdraw it.

If you cancel all your products or services with the CaixaBank Group companies, but forget withdraw your consent, we will do so automatically.

Categories of processed data: The categories of data that we will process for this purpose, whose content is detailed in section 5, they are:

> data that you will have provided us

> data observed in the maintenance of products and services, with the exception of data sensitive

> data inferred or deduced by CaixaBank Payments & Consumer.

> data that you have not provided us directly.

Co-responsible for the treatment: The treatment of your data of the indicated categories, with

the purpose of analysis for the elaboration of profiles that help us offer you products

that we believe may be of interest to you, is carried out under co-responsibility by the

following companies of the CaixaBank Group:

> CaixaBank, S.A.

> CaixaBank Payments & Consumer, E.F.C., E.P., S.A.U.

> CaixaBank Electronic Money, EDE, S.L.

> VidaCaixa, S.A.U., insurance and reinsurance

> New Micro Bank, S.A.U.

> CaixaBank Equipment Finance, S.A.U.

> Promo Caixa, S.A.U.

> Comercia Global Payments, E.P. SL

> Buildingcenter, S.A.U.

> Imagintech S.A.

You will find the list of companies that process your data, as well as the essential aspects of

the co-responsibility treatment agreements at: www.caixabank.es/empresasgrupo."

Accessing from this link, the following text can be read:

"To carry out the processing that we indicate below, CaixaBank and

CaixaBank Group companies will jointly process your data, deciding

It brings together the objectives ("what the data is used for") and the means used ("how the data is used").

the data"), being, therefore, co-responsible for these treatments (Entities

co-responsible).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

The processing for which CaixaBank and the CaixaBank Group companies will process jointly your data, are the following (you can see the detail of the companies of the Group Caixabank that make up the perimeter of each of the treatments carried out in co-responsibility by clicking on each of the following links):

Carry out the commercial activities of: (i) analysis of your personal data for the

profiling to help us offer you products that we believe may interest you; (ii) commercial offer of products and services through the selected channels, and (iii) transfer of data to companies that are not part of the CaixaBank Group;

Comply with the following regulations applicable to the companies of the Group

CaixaBank: (i) the regulations for the prevention of money laundering and financing of the terrorism; (ii) tax regulations; (iii) the obligations derived from the sanctions policies and international financial countermeasures, as well as (iv) the obligations of granting and managing credit operations and the consultation and communication of risks to the Risk Information Center of the Bank of Spain (CIRBE).

Carry out the analysis of the solvency and the repayment capacity of the applicants

of products that involve financing.

In accordance with the provisions of the applicable regulations, the Jointly Responsible Entities have signed an agreement of co-responsibility for certain treatments, whose elements essential are the following:

(i) That, for certain treatments identified in the Privacy Policy, the

Co-responsible Entities will act in a coordinated or joint manner.

(ii) That they have proceeded to determine the security, technical and organizational measures, appropriate to guarantee a level of security appropriate to the risk inherent in the processing of personal data subject to co-responsibility.

(iii) That they have a single window mechanism for the exercise of the rights of the stakeholders, assuming the commitment of the duty of collaboration and assistance in those cases in which it was appropriate.

(iv) That they comply with the obligation to respect the duty of secrecy and keep due confidentiality of the personal data that are processed within the framework of the activities of reported data processing.

(v) Regardless of the terms of the co-responsibility agreement, the interested parties may exercise their rights in terms of data protection against each of the responsible."

TENTH: In response to what was requested by CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U, the term granted to provide documentation was extended by five business days.

On July 12, 2021, a written response to the opening of the period is received. of practice of tests, in which it is indicated that the date of publication of the new privacy policy is dated January 18, 2021 and that said privacy policy replaces the previous one, which had been in force from July 21, 2019 to January 17, 2021.

Said letter also states the following:

Attached as an Annex to this document is the co-responsibility agreement to which refers to in the aforementioned privacy policy, as well as in the allegations to the initial agreement presented, previously provided in the course of the Procedure Penalty PS/00477/2019 to CAIXABANK, S.A. hereinafter, the "Sanctioning Procedure to CAIXABANK"),

and whose essential aspects are published in https://www.caixabank.es/particular/general/tratamiento-de-datosempresas-del-grupo.html.

The aforementioned co-responsibility agreement defines the purposes and means of the treatments, as well as the basic rules to be observed by all the companies that make up these treatments in co-responsibility, and duly reflects the existing agreement regarding to the respective responsibilities in terms of data protection referred to in the Article 26 of Regulation (EU) 2016/679 General Data Protection; it's found pending signature pending the resolution of the request for the application of measures precautionary measures related to the Sanctioning Procedure against CAIXABANK, which could imply the modification of its content.

Regarding the information provided to the interested parties to obtain their consent, it is stated that "the information provided for the performance of treatments for commercial purposes, previously provided in the response to the request for information received on February 6, 2020 (in hereinafter, the "Information Request").

Although they have been planned, no modifications have yet been made to the aforementioned information from your contribution in the response to the Request for information, waiting of the resolution of the request for the application of precautionary measures related to the Penalty procedure against CAIXABANK, which could affect the modifications of the mentioned documentation, planned at this time.

Said Annex also includes the information provided to the interested parties for the

Obtaining your consent to carry out processing for commercial purposes,

when the consent is collected from the banking channel (CAIXABANK). Is

documentation, provided previously in the course of the Sanctioning Procedure to

CAIXABANK, was modified in March 2021, within the framework of the aforementioned actions

aimed at the implementation of the new privacy policy.

In relation to the contract with the entity ***EMPRESA.3, annex III is attached, "the contract

of services carried out with the entity ***EMPRESA.3, previously provided in the response to

already mentioned Request for information. Likewise, it is reported that the aforementioned

The contract has not undergone modifications since its contribution to the Spanish Protection Agency

of data.

Lastly, regarding the volume of business of the Group or CAIXABANK, it is indicated that "as of 31 December

December 2020 is estimated at twelve thousand one hundred and seventy-two million euros. bliss

information is extracted from pages 248 and 249 (“Annex 6 – Annual bank report”) of the

Consolidated Annual Accounts of the

available in

https://www.caixabank.com/deployedfiles/caixabank_com/Estaticos/PDFs/Accionalessinversore

s/General_Information/Consolidated_Annual_Accounts_CBK_2020_ES.pd”

CaixaBank Group,

Provide as Annex II the following documents:

 GENERAL CONDITIONS OF THE APPLICATION-CREDIT AGREEMENT, in

whose header appears the entity CaixaBank Payments & Consumer and the date

April 10, 2020. The content of said document coincides with the one sent after

the requirement of the Data Inspection made on February 6, 2020 as

annex 12.

This document is structured in various sections, of which number 26

contemplates in different sections various aspects of data processing

such as the different treatments according to their basis of legitimacy, the exercise of

rights by the interested parties or the period of conservation of the data

among other issues. Thus, section 26.1 refers to the Processing of

personal data for the purpose of managing relations

Commercial; section 26.3 to the processing of personal data with

regulatory purposes, this section in turn is divided into various subsections

such as those related to Processing for the adoption of diligence measures

due to the prevention of money laundering and the financing of the

terrorism (26.3.1), treatment for compliance with the management policy of

International financial sanctions and countermeasures (26.3.2), communication with

credit information systems (26.3.3.), communication of data to the Central

Information on Risks from the Bank of Spain (26.3.4), etc. Section 26.4 is

refers to the processing and transfer of data for commercial purposes by CaixaBank

and the CaixaBank Group companies based on consent. the section

26.1 and 26.4 are transcribed in the fifth factual record of the

this motion for a resolution.

 Framework Agreement in whose header appears CaixaBank, and in whose section 4.1 it is

indicates that "the person responsible for the processing of your personal data in your

contractual and business relations is CaixaBank, S.A., with NIF A08663619 and

address at calle Pintor Sorolla, 2-4 Valencia." Adding the following:

"Co-responsible for treatment: In addition, for certain treatments that are

reported in detail in the aforementioned policy, CaixaBank and the companies of the Group

CaixaBank will jointly process your data, jointly deciding the

objectives (“what the data is used for”) and the means used (“how the data is used”).

data"), being, therefore, co-responsible for these treatments. treatments

for which CaixaBank and the CaixaBank Group companies will treat

jointly your data are the following: > carry out commercial activities

of: (i) analysis of your personal data for the preparation of profiles that we

help offer you products that we think you may be interested in; (ii) offer

commercial products and services through the selected channels, and (iii) assignment of

data to companies that are not part of the CaixaBank Group; (…)

You will find the list of companies that process your data, as well as the aspects

essentials of treatment agreements in co-responsibility in:

www.caixabank.es/empresasgroup.”

On the point. 4.5 of this document, entitled "What treatments do we carry out with your

data”, it indicates with respect to the treatments based on consent, the

following purposes:

− Analysis of your data to create profiles that help us offer you

products that we think may interest you.



− Make our commercial offer of products and services available to you for the

selected channels.

− Transfer of data to companies that are not part of the CaixaBank Group for

that they make commercial offers of products that they commercialize.

− Identification of clients and signature of documentation through the use of biometrics.

− Application of personal conditions in co-ownership contracts.

This document is not dated. In the information provided in the

written sent to this Agency, it is indicated that "This Annex also includes

the information provided to the interested parties to obtain their

consent to carry out processing for commercial purposes, when

consent is collected from the banking channel (CAIXABANK). Is

documentation, provided previously in the course of the Procedure

Sanctioning CAIXABANK, was modified in March 2021, within the framework of the

aforementioned actions aimed at the implementation of the new policy of

Privacy."

 Screenshots requesting customer consent.

- A screenshot on the prescriber channel, which exactly matches

the one described for said channel in point 5 of the fifth antecedent of this

resolution proposal.

- New office client registration screen capture (face-to-face onboarding, in the

that the following is stated: "deliver the tablet to the client so that he can complete

himself the consents" and screenshots of the new client Portal

Web (digital onboarding). In both modes, information is provided

basic for the client on the treatment of personal data indicating that the

responsible for the treatment is: "Caixabank, with NIF A08663619 and address at

Calle Pintor Sorolla, 2-4 Valencia. Co-responsible for the treatment "For

certain activities Caixabank, S.A. and the companies of the Group

Caixabank will jointly process your data. You will find the list of

companies that process your data, as well as the essential aspects of the

agreements

in

treatment

www.caixabank.es/empresasgroup."

Regarding the consents, it is indicated in both modalities that

"You authorize the companies of the CaixaBank group to:

co-responsibility

of

in

Analyze your data to create profiles that help us offer you

products that we think may interest you. If we have your consent,

we will configure or design an offer of adjusted products and services

to your characteristics as a client, through the analysis of your data and the

profiling with your information."

Next, there are two boxes in which you can check yes or no. In

other sections consent is requested to communicate the commercial offer



of products and services through the channels that are selected and to transfer the data

to companies that are not part of the Caixabank Group with which they have

agreements.

Regarding the analysis treatments for profiling, it is provided

also in both modalities the following information: “These treatments

have your consent as a legal basis, as established in article

6.1.a of the General Data Protection Regulation.” It is reiterated to

Below is the information offered in the privacy policy relating to this

type of treatment regarding the purpose, categories of data processed and

co-responsible for the treatment. However, regarding the data

Processed indicates: “the categories of data that we will process for this purpose

whose content is detailed in section 5 of our Privacy Policy.

Privacy (www.Caixabank.es/privacy policy) are: data that you

will have provided, data observed in the maintenance of the products and

services with the exception of sensitive data, data inferred or deduced by

Caixabank, data that you have not provided us directly.” not listed in

none of the screens the description of this data.

 Co-responsibility agreement. This agreement has no date or signature. The

Number 6 regarding its duration states that “This Agreement shall enter into force

on the date of its signature and will remain in force indefinitely, without prejudice to

the revision and necessary modifications of its terms and content for its

adaptation, where appropriate, to the current regulations that are applicable in each

moment..."

Said agreement contains the following definition: “Co-responsible for the Treatment or

Co-responsible: Means those responsible who jointly determine the

objectives, purposes and means of Treatment detailed in Annex 1.”

In the aforementioned annex it mentions the following treatments object of

co-responsibility regarding “commercial activities”:

a) analysis of personal data for the preparation of profiles that help us to

offer products that we believe may be of interest to the customer

the

in

Politics

Purpose: The purpose of this data processing is to use the data categories

indicated

CaixaBank

(www.caixabank.com/politicaprivacidad) to create profiles that allow users to

Co-responsible identify the customer with similar customer segments

characteristics to be able to offer you products and services that may interest you, as well as

as, to establish the periodicity with which the Joint Controllers relate

with the.

Privacy

from

from

Legitimizing basis: The legitimizing basis of this treatment is the consent

granted by the interested parties.

b)

Commercial offer of products and services through the selected channels.

Purpose: The purpose of this data processing is to make available to the client

communications of commercial offers related to own products and services or

third parties marketed by CaixaBank and/or entities of the CaixaBank Group. Are

Communications will only be sent to the client through the channels previously

he has authorized us by giving his consent.

Legitimizing basis: The legitimizing basis of this treatment is the consent

granted by the interested parties.

c) transfer of data to entities that are not part of the CaixaBank Group Purpose: The

The purpose of this treatment is to transfer the data of the interested parties to entities that do not

are part of the CaixaBank Group with which the Joint Controllers have agreements,

with the purpose that they make commercial offers of the products that they

they market.

Legitimizing basis: The legitimizing basis of this treatment is the consent

granted by the interested parties.

Then list the co-responsible parties, which would be the following:

CAIXABANK, S.A.

CAIXABANK PAYMENTS & CONSUMER, E.F.C., E.P., S.A.U.

CAIXABANK ELECTRONIC MONEY, EDE, S.L

VIDACAIXA, S.A.U., OF INSURANCE AND REINSURANCE

NEW MICRO BANK, S.A.U.

CAIXABANK EQUIPMENT FINANCE, S.A.U

PROMO CAIXA, S.A.U.

COMERCIA GLOBAL PAYMENTS, E.P. SL

BUILDINGCENTER, S.A.U.

IMAGINTECH, S.A.

In successive annexes, other treatments subject to co-responsibility are contemplated,

whose legitimate basis is found in the fulfillment of legal obligations or the

execution of contractual relations.

□

Contract signed with the entity ***COMPANY.3 for risk activity

score. As indicated in said contract, dated June 2, 2020,

the contract signed on May 2, 2017 has been renewed,

in turn extended on May 2, 2019 to incorporate the

services outlined in Annex I (not attached). are parts

in said contract CAIXABANK and CAIXABANK PAYMENTS &

CONSUMER and the entities (...) designating the latter two

jointly as SUPPLIER. This document contains two

clauses:

The first clause of said contract regarding the modifying novation does not

termination of clause 15 of the contract, replaces the aforementioned clause with effect



retroactive to May 25, 2018, with new elements related to the person in charge

of treatment, in order to adapt the risk score services to the obligations

regulations contained in the LOPDGDD and in the RGPD

In the second of the clauses, it is agreed to include in Annex I (Annex of

services) a clause relating to specific aspects of data processing of

personal nature of the risk score service. This clause refers to the

description of the treatment, indicating that for the sole purpose of providing the

risk score service CAIXABANK AND CAIXABANK PAYMENTS & CONSUMER

make the following information available to the supplier “(…).” are pointed to

then the following treatments by the supplier: exploitation,

query and destruction; the typology of the data (DNI (NIE/Passport) and categories of interested parties affected (customers, non-customer participants). Refering to purpose of the treatment it is indicated that the provider will use the data of a personal object of treatment solely and exclusively for the fulfillment of the ANNEX I, not being able to use them, in any case, for their own purposes. Annex I does not Attached.

ELEVENTH: On 08/06/2021, a resolution proposal was issued in the following sense:

FIRST: That the Director of the Spanish Data Protection Agency sanction CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U., with NIF A08980153, for an infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, and qualified as very serious for the purposes of prescription in article 73 of the LOPDGDD, with a fine amounting to 3,000,000 euros (three million euros.

SECOND: That the Director of the Spanish Data Protection Agency proceed to impose on the entity CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U in the period determined, the adoption of the necessary measures to adapt the procedures to the personal data protection regulations through which it obtains from its clients the consent to create profiles with commercial purposes, with the scope expressed in the Legal Basis VII.

TWELFTH: Notified to the entity CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U the aforementioned resolution proposal, dated 08/13/2021, was entered written in this Agency requesting an extension of the term to formulate allegations. Once the extension of the term was granted, on 09/03/2021 it was entered into this Agency written of allegations, in which the annulment of the initiation agreement, subsidiarily the filing of the proceedings and subsidiarily,

in case you are held responsible for violations of article 6 of the

RGPD, that the warning be agreed or, failing that, that the amount be imposed

of the corresponding sanction in its minimum degree. It also requests again that

in any case that the consents obtained are not declared null and, if it were the

case, the AEPD orders the measures that in its opinion may be

adequate to improve compliance with data protection regulations.

It declares reproduced in its entirety its allegations to the initial agreement and formulates the

considerations, also divided into two groups, which are briefly exposed to



continuation:

A) REGARDING THE NULLITY OF THE ACTIONS

CPC alleges that it cannot share that the connection between the claim initially

inadmissible for processing and the Agreement to Start this Sanctioning Procedure is

based on "the request for information about the claimant to a solvency file

without your consent and the subsequent offer of a financial product, which

presupposes that the data of said person has been improperly used to carry

carried out a profile on the basis of which said product was offered'

On the one hand, it is stated that it is "assumed" that profiling has been carried out without

consent, ignoring that, as has already been explained in allegations

prior, which are considered reproduced here, once consent has been obtained (for

therefore, consent is requested), to carry out the personalization of the

product offer according to the analysis of customer data (profiling), exists,

in addition, a legal obligation on the part of CPC not to offer financial products
that may not be suitable according to the economic-financial capacity profile of the
potential recipient of the commercial offer; therefore, before offering them, they must
Solvency aspects of the potential recipients of these products should be verified.
Therefore, that profiling referred to by the AEPD, in which, among others, is used
information on solvency, the use of that type of data would specifically have its
basis of legality in the fulfillment of a legal obligation by the person in charge
treatment, even if it is part of a treatment for which previously
has requested the consent of the interested party.
In addition, it affirms that relevant information for the defense has been ignored since in the
initial agreement no reference was made to the fact that the interested party filed an appeal
of reinstatement to the inadmissibility of his claim and this was estimated by the AEPD.
2. Regarding the allegation regarding the alleged breach of article 55.1
of the LPACAP, in connection with article 53 of the LOPDGDD, by which CPC
considers that the data inspection would have exceeded the scope of the phase
prior investigation, indicates that the AEPD recognizes a new error, in this case
seems to be a "transcription" error impossible to detect, nor confirm by this part
in any way, in such a way that the AEPD, highlighting its alleged error,
deactivates a potential cause of nullity of the administrative procedure, with which
Once again, the need for information and actions in
the framework of a sanctioning procedure must be characterized by its precision and rigor
in all relevant circumstances.
"The AEPD affirms, in an added justification effort, that as such treatments
of "potential clients" do not exist, since that is indeed what CPC has informed, not
research actions have been carried out on this type of treatment,
diverting attention from what is relevant, not so much the actions

actually carried out, but those that allegedly wanted to be carried out

exceeding the inspection activity of what was ordered by the Director of the

AEPD; another thing is that, when advancing in the investigative actions, there would have been

had to give up such an objective, in the absence of such treatments, which does not diminish



in any degree the excess initially proposed. We don't know what would be

past if such treatments had existed, but it is reasonable to think that the

investigation had been carried out outside the scope specified by the Director

of the AEPD.

3. Regarding the alleged violation of the ne bis in idem principle, CPC values that the

The same collection of consents for the elaboration of profiles was the object of

investigation and sanction in the sanctioning procedure against CAIXABANK, S.A,

number PS/00477/2019, as long as there is identity of subject, fact and basis, without

that can accept the arguments of the AEPD, valuing as non-existent the

co-responsibility for lack of accreditation of the same, since carrying out a

treatment of personal data based on co-responsibility is a decision

of the entities that want to act as co-responsible parties, except in those

assumptions in which such circumstance is predefined in a norm.

He affirms that it generates an extraordinary confusion and insecurity not knowing how to identify

what other instruments of accreditation of the co-responsibility agreed between

some of the entities of the CaixaBank Group for some data processing

personal, for which they have jointly determined ends and means, all

included in the agreement and policies, should be provided in the opinion of the AEPD, and even more

we are surprised that the burden of proof is reversed on this issue as it should

be the AEPD who will provide evidence or proof that there is no

co-responsibility of the treatment object of the Sanctioning Procedure, since

CPC has provided solid and more than sufficient evidence that indeed

there is such responsibility.

Article 26 of the GDPR is very clear on this; the existence of co-responsibility

is based on a mutual agreement of two or more data controllers on

their respective responsibilities so that a specific treatment complies with the

Regulation, and that agreement must obey the factual reality of the treatments, in

insofar as those responsible jointly determine the objectives and the means

of the treatment; therefore, we are facing a decision that, in general,

may or may not adopt two or more data controllers, so that such

decision cannot be questioned at the discretion of third parties as long as

as long as there is a requirement that those responsible have determined

jointly the objectives and the means of treatment, as is the case of

treatment object of the Resolution Proposal.

And the confusion increases when, as an argument to refute the violation of the

non bis in idem principle, the AEPD refers to the fact that in the event of

co-responsibility, that is, it has gone from "not being accredited but, to

judgment of this Agency, its existence is not even admissible in the present

of course", to assess how one would act in the event that it existed, arguing that

Several co-responsible parties could be sanctioned for the same acts

taking into account that the responsibility does not have to apply to a single subject,

this last question with which we can agree but which, obviously,

If this is the case, it should have been processed in the same procedure or, at least,

taking into account at the time of graduating the sanction the share of responsibility

corresponding, and therefore calculating the sanction based on such co-responsibility,

issue that we are not aware of has been taken into account either, or perhaps it has, since the



duality of arguments, a priori contradictory used by the AEPD, leads us to not

know if the violation of the non bis in idem principle does not exist because there is no

co-responsibility or because the AEPD has considered that there is co-responsibility and has

opted to sanction according to the part of the treatment carried out by each

co-responsible; without a doubt a clearer pronouncement by the AEPD

would reduce the degree of defenselessness that as a whole generates for CPC the

procedure processed by the AEPD.

4. Regarding the allegation about the arbitrary action of the AEPD in this

procedure, none of the explanations and justifications developed by the AEPD

are convincing, since the discriminatory treatment with respect to

similar procedures, and we cannot admit that the AEPD resorts to an obvious and

simple generic reference to which it has applied the elements established in the article

83 of the RGPD and article 76.2 of the LOPDGDD, explaining that they are listed in the

motion for a resolution itself, thus responding to part of the argument, without

has come to assess the examples of specific procedures that CPC transferred in

their allegations to the Home Agreement, without giving an explanation about "resolutions of

AEPD sanctioning procedures in which the person responsible for/

treatment for violation of article 6 RGPD (vid, PPSS 00235/2019, 00182/2019,

00415/2019) and that, taking into account the condition of a large company and the volume of business, among others, not even remotely the sanctions reach the economic level of the sanction proposal contained in this Initiation Agreement, since they are sanctions that have ranged between €60,000 and €120,000"

It alleges that, as evidence of this differentiated treatment, it will focus on the "Plan of ex officio inspection on distance contracting in operators of telecommunications and energy marketers' whose results report was published by the AEPD on October 29, 2020; available at the following link https://www.aepd.es/es/prensa-y-comunicacion/notas-deprensa/aepd-publica-results-audit-contracting-telecommunications-energy.

According to CPC it is, to say the least, surprising that they have opted for the preventive instrument of audit plans, precisely for the sector telecommunications.

The Annual Report of the Spanish Data Protection Agency includes a table elaborated by the AEPD in which the 10 areas of activity with the greatest number of claims received in 2019 and its comparison with 2018. The information on the number of claims included in the aforementioned table of data, indicates that in both areas of activity the claims represent the same percentage, each of them 4% with respect to the total claims (for 2019), and, if we take into account the absolute data, the claims in relation to "Financial entities/creditors", there were a total of 576 in 2018, being for the "Telecommunications" sector in the same period 451 claims. And, in the case of 2019, the claims filed were 464 in relation to “Entities financial/creditors" and 424 for the "Telecommunications" sector, that is, a practically the same incidence of complaints, but surprisingly, in one case chooses to adopt a preventive measure ("Telecommunications"), and in another a measure

punitive ("Financial institutions/creditors"), which results in an obvious treatment

unequal, which is not justified, and which has also not been motivated by the AEPD.



of 9 of

February 2020,

Quite the contrary, the Director of the AEPD herself was right, in statements

public, has come to equate both sectors in terms of claims

received by the Agency, specifically in an interview published by "La Voz de

Galicia",

available in

https://www.lavozdegalicia.es/noticia/sociedad/2020/02/08/mar-espana-habra-

important sanctions-violate-data-protection/00031581176394099239215.htm, in

the one that when asked which were the sectors that received the most complaints, the

Director replied that: "There are many complaints from the sector of the

telecommunications, not because it is where data processing is worst, but

because it is one of the sectors where the consumer is more accustomed to

present claims, and also from financial entities, therefore, it is still

understands less the unequal treatment of one and another sector, for "Telecommunications"

ordering preventive measures, and for the "Financial entities/creditors"

acting with punitive measures, when in the opinion of the Director of the AEPD they are

equivalent sectors from the perspective of protection claims

data received at the Agency.

5. With regard to the alleged violation of the fundamental right to

presumption of innocence, CPC reiterates the allegations made to the initial agreement

of this sanctioning procedure, adding that "regarding the suggestion

made to us in the Motion for a Resolution that the lack of impartiality of the

administrative body alleged by CPC should have been accompanied by a

formal recusal of the Director of the AEPD, the truth is that CPC already valued in its

moment that the assumptions of abstention of article 23.2 of the Law

40/2015, and, consequently, requesting the challenge suggested in the

Motion for a Resolution, which does not invalidate the fact that we consider that rationally

there are indications of arbitrariness and defenselessness insofar as the aforementioned

resolutions of other procedures, including the Resolution Proposal,

seek notoriety and media impact, not said by us, but by the very

Director of the AEPD in the media, that if these are not true

statements, perhaps the Agency should have taken action against such media;

indeed, the regulation provides for appraised causes of abstention, which allow

formally raise a challenge, but it is no less true that the fact is that

such assumptions do not concur, does not prevent arbitrary actions or defenselessness, or

even misuse of power, for example, notoriety is sought, especially when the

The mandate of the current Director of the AEPD has ended since last July 27

of 2019."

6. Regarding the alleged artificial and unlawful extension of the previous actions

reiterates the allegations made to the agreement to initiate the sanctioning procedure

and affirms that the Initiation Agreement rests, practically in its entirety, on

elements of charge collected during the phase of previous actions, not complying

with the purpose attributed to them by the legal system, as will be explained later.

forward, so that in fact, and not in law, they were carrying out

instruction actions beyond the simple search for evidence to initiate

sanctioning procedure, almost reaching its expiration, that is, obviously as

As the instructor mentions in the Resolution Proposal, there was no agreement of

beginning on which such an instruction was based, therefore, these previous actions being



for its content contrary to law, and in fact that is precisely what we complain about,

Actions were advanced that could not yet be carried out.

It is especially striking in this case, the time elapsed between the

inadmissibility of processing the claim and the requirement of prior information, this

is, more than a year, without taking into account the aforementioned lack of information regarding the

appeal for reconsideration of inadmissibility, which was estimated by the AEPD, without having

knowledge of it this part; or the extension of the period of previous actions

research for a period of 14 months, yes, taking into account the incidence

of the pandemic.

The TS itself, in its Judgment of May 6, 2015, establishes the following: this Chamber

has declared that this period prior to the initiation agreement «(...) must be

necessarily brief and not conceal a contrived way of carrying out acts of investigation

and mask and reduce the duration of the subsequent file itself" (judgment of 6

May 2015, appeal 3438/2012, F. J 29; this is what we mean when

we use the expression of "artificial extension" of the previous actions in which

investigative acts related to the facts would have been carried out

object of the Resolution Proposal.

B. IN RELATION TO THE ALLEGED INFRINGEMENT COMMITTED BY CPC

The AEPD affirms that the information provided to the interested parties to obtain

consent "is incomplete and insufficient", identifying a series of

deficiencies in the aforementioned information in relation to the treatments whose purpose is

"the offer and design of products and services adjusted to the profile of the client"

Thus, regarding the treatment operation that implies carrying out "in an

proactive risk analysis and apply statistics and technical data to your data

customer segmentation" it is said that it does not indicate (i) what type of profile is going to

be made, (ii) the purpose of profiling.

Regarding "monitoring of the contracted products and services",

The AEPD observes the same deficiency, that is, "the purpose or type of

profile to be drawn up"; and with respect to operations to adjust measures

recoveries on defaults and incidents arising from products and services

contracted" initially only sees as a deficiency the fact that "it is not indicated

what type of profile is going to be carried out" since the AEPD expressly states that

"the purpose of the profile is indicated"

In relation to the lack of information on the type of profile, we must show our

surprise that the AEPD raises such a lack of information since, neither in the

CEPD guidelines nor in other documents consulted from the AEPD itself,

specifies that such "profile type" information should be provided, and how

In addition, it is worth mentioning that neither is it defined or specified in these documents what

listing or catalog of profile types or categories should be used to indicate that

intends to develop a specific "type of profile", nor is it argued that this serves so that the

interested party has information that is relevant to decide to authorize, or

no, the treatment.

It is clear that all the profiles that can be drawn up in the context of the relationship

of a client with a bank or financial entity will be related to that

activity. Therefore, there are no different "types of profile" to elaborate since they are all

related to the relationship established between the entity and the client; maybe the

AEPD, when referring to "type of profile" (we insist that it is a concept not used

in the guidelines of the CEPD and neither in the documents of the AEPD), you want to refer

to the "type of evaluation or judgment about a person", which in any case leads us into

this assumption to the same response, will be a profile derived from the relationship between the

entity and the interested party. It would be different in the case of a company whose main activity

is to create profiles, where perhaps there would be room for a distinction between types of profiles,

but it is not the case of CPC, whose main activities are derived from its object

social, not forming part of it the elaboration of profiles as an activity

general or main but rather instrumental and accessory within the framework of its

business activities.

In the Transparency Guidelines under Regulation (EU) 2016/679 (W P

260 rev.01), when detailing the information that must be provided on the

Profiling refers to the provisions of the GDPR; that is, it is obligatory

provide information about the use of profiles, as well as "significant information

about the underlying logic and the notable and anticipated consequences of the treatment

for the interested party", supported such affirmation in a part of the content of

Considering 60: "the interested party must also be informed of the existence of the

profiling and the consequences of such profiling

In any case, the WP260 refers to the already mentioned "Guidelines on decisions

automated individual information and profiling" in order to "get targeted

information on how to put transparency into practice in the circumstances

specific aspects of profiling

We must add that the annex to WP260 identifies the type of information that

must be provided to data subjects, depending on various circumstances that

they can participate in the processing of personal data; Thus, it is worth mentioning that

the first column does not make any reference to 'profile type' as a

information to be provided to the interested parties, referring exclusively to the "existence of

automated decisions, including profiling, and, where appropriate,

significant information about the applied logic, as well as the importance and

foreseen consequences of said treatment for the interested party", and sending in its

observations to the guidelines on Guidelines on individual decisions

automated and profiling.

Therefore, in the Transparency Guidelines under Regulation (EU)

2016/679 does not identify that the type of profile is information that in a way

must be provided to the interested parties, nor does it present it as an orientation or

a good practice; therefore, no mention is made of this type of information

to comply with the transparency principle of the RGPD. The EDPB does not consider that

it is necessary to provide such information that is now required by the AEPD in its Proposal

Resolution.

In the Guidelines on automated individual decisions and the preparation of

profiles for the purposes of Regulation 2016/679 (WP251rev.01), when they are developed

the general provisions on profiling and automated decisions,

in the section dedicated to the principle of legality, loyalty and transparency, in what

As far as transparency is concerned, he refers to the fact that in the "Guidelines on

transparency of the Article 29 Working Group" deals in greater detail with the

transparency, therefore makes a general reference to the document analyzed in the

previous section of our allegations.

The CEPD affirms that "people have different levels of understanding and can

difficult to understand the complex techniques involved in the production processes

profiles and automated decisions"; that is, the CEPD advocates for information

free of complexities, alluding to the provisions of article 12.1 of the RGPD: "the

data controller must provide data subjects with concise information,

transparent, intelligible and easily accessible on the processing of your data

personal", delves into this issue when, referring to a guide from the Office

of the Australian Information Commissioner, in which it is stated that: "The statements

of confidentiality must communicate practices on the handling of information of

clearly and simply, but also exhaustively and sufficiently

specificity to be meaningful" The bottom line is that it must be reported

"clear and simple"; More information does not necessarily mean more

transparency, and this needs to be balanced against being comprehensive and providing

exclusively the detail of what is really significant, avoiding, for

therefore, the well-known "information fatigue", for which the use of layers of information and

different moments in which information can be reported with greater or lesser exhaustiveness and

detail, must be taken into account as we will analyze later.

In this regard, the aforementioned guide from the Australian Information Commissioner also

states that the "technology itself that allows a greater collection of information

staff also provides the opportunity to develop confidentiality statements

more dynamic, multi-layered and user-centric". This last element

has been a common denominator in the information that CPC and the CaixaBank Group have

provided to its clients in relation to the processing of their personal data, and that

now with the resolutions already mentioned the AEPD has clearly put in crisis,

advocating for an information model towards the interested parties where it only has

present completeness and detail (whether useful or not), in which it is not clear where

the level of comprehension of the information provided must be located, pretending

that this adapts to the understanding of the AEPD itself, not so much of the people who

They really should get that information. Let us remember that the CEPD refers

expressly to the fact that "people have different levels of understanding and can

difficult to understand the complex techniques involved in the production processes

profiles".

The guidelines that we are analyzing, in terms of situations in which

data controllers "intend to rely on consent as the basis

for profiling' say that the data controller must

demonstrate "that data subjects understand exactly what they are consenting to". In

In this regard, the CaixaBank Group has proactively verified this understanding

through studies that have involved clients. But it is that, in addition, Group

CaixaBank has not received claims from interested parties that they have

evidence that the information that has been provided in the different layers

information has generated significant doubts, not even such a question is part
of the claim that gives rise to the Resolution Proposal. And it should be added that
In this matter, the AEPD is inverting the burden of proof, since it does not provide
some indication or evidence that the information provided is not understandable;
let us remember that the CEPD believes that "those interested must have sufficient
information about the intended use and consequences of the processing to ensure
that any consent they give constitutes an informed choice." This part
wants to emphasize that the CEPD refers to "sufficient information" (not information
exhaustive that would provoke a reaction of not reading the informative notices), and
that such information should be about "use and consequences"; not mentioning
the CEPD the "type of profile" that the AEPD now requires, considering that not reporting
this information supposes a deficiency that has partially led him to conclude that
the consent obtained by CPC is invalid.

When referring to the "right to be informed", the CEPD insists that "those responsible for
treatment should ensure that they explain to people, in a clear and simple way, the
operation of the elaboration of profiles"; fleeing, therefore, from complicated and
extensive explanations, adding that what is relevant is that it be clear "to the user
the fact that the processing is for the purposes of both a) profiling and
b) adoption of a decision based on the generated profile". Let us remember that, as
as has been proven, CPC informs the interested parties both that they are made
profiles, as well as the decision that is adopted from them, related to
exclusively with the sending of commercial offers.

And, in relation to other types of information that must be provided to the interested parties,
It is very important to mention the reference made by the CEPD in these guidelines
to the right of access (article 15 of the RGPD), so that as it is well expressed, "the

Article 15 gives the data subject the right to obtain details of any data

personnel used for profiling, including categories of data

used to create a profile adding that, in addition to the general information, "the

responsible for the treatment has the duty to make available the data used

as input data to create profiles, as well as to facilitate access to the

information about the profile and details about the segments to which it has been assigned

to the interested party" (perhaps by "type of profile" the AEPD refers to the "segments

assigned to the client"); that is to say, in no case is such informative detail required

by the AEPD of the information obligations of articles 13 and 14 but, in

In any case, such exhaustive information must be provided when the interested party has

exercised the right of access recognized by article 15 of the RGPD, and it is here

where the AEPD gets confused by demanding that, in the different layers of information that

are made available to all customers, must include types of information that

it is only reasonable and common sense that it be made available to customers

as a consequence of a request for a right of access in relation to the treatment

including the use of profiles.

In addition, the CEPD itself establishes limits to the scope of the information that must be

be provided in connection with profiling when you state that "the

recital 63 provides some protection for data controllers

affected by the disclosure of trade secrets or intellectual property, which

may be particularly relevant in relation to profiling." And it is

that recital 63 establishes that the right of access "must not affect

negatively to the rights and freedoms of third parties, including the secrets
commercial or intellectual property and, in particular, proprietary rights
intellectual property that protect computer programs. By extension, we interpret that
such protection extends to the algorithms used for profiling, which
include, among other issues, the specific data used, which is not
makes it difficult to provide information on categories of data
used, but not necessarily the exhaustive detail of such data, nor how it is
used, and it is not necessary to report on the result of the application of
the aforementioned algorithms or information analysis techniques, which could be
even protected by Law 1/2019, of February 20, on Business Secrets,
but yes of the consequences that it can have for the interested parties; that is, the
The regulation as a whole advocates a balanced model in terms of information
that must be provided in relation to profiling, which takes into account
both the rights and freedoms of the people whose data is processed
such as the rights of data controllers regarding certain information
that could constitute business secrets in general, and, in particular,
the trade secrets referred to in the RGPD itself.
In annex I of the guidelines on automated individual decisions and
profiling includes recommendations for good practices;
We emphasize that these are recommendations from a set of good
practices that should not be interpreted as mandatory or binding but, as
as expressly stated at the beginning of the aforementioned annex•. "The following
good practice recommendations will help data controllers to
meet the requirements of the GDPR provisions on profiling and
automated decisions"; that is, they are good practices that have

as a purpose "help" to comply with the provisions of the RGPD but, in no case, is it

pose as obligations for data controllers.

The good practices recommended by the CEPD, regarding the right of

information, propose that, in addition to taking into account in general the

foreseen in WP260 (guidelines on transparency), when carrying out the

processing of personal data involving automated individual decisions

or profiling, the data controller must provide information

significant on the applied logic, so that, as the CEPD exposes,

recommends that "instead of offering a complex mathematical explanation of

how algorithms or machine learning work, whoever is responsible for

treatment should consider the use of clear and comprehensive ways to offer

information to the interested party, for example :" (and here we add that it is

exclusively of some orientations, since they are only some examples):

the categories of data that have been used or will be used in the preparation of

profiles or the decision-making process; (and here we add, that I don't know

refers to the detail of all the data that will be used)

the reasons why

these categories are considered relevant;

how the profiles used are created

in the automated decision process, including statistics used in the

analysis;

why this profile is relevant to the decision process

automated; and how it is used for a decision regarding the data subject

It should be noted that these recommendations do not apply in their entirety to the

treatment affected by this Sanctioning Procedure since the object

of the Motion for a Resolution refers exclusively to the preparation of profiles,

not including decision-making based solely on treatment

automated that may produce legal effects on CPC clients or that

can significantly affect similarly since the purpose of profiling is not

is another to select customers to address offers of products and services, for

therefore, a purely commercial purpose and that, in any case, the fact that a

client is not included in a commercial campaign does not imply, in any way, that

is automatically excluded from the possibility of contracting or using the products or

services offered by CPC to some of its clients since it always has the

option to contact CPC for the purpose of being interested in or requesting the service or product

that is of your interest.

As can easily be gleaned from the information that the CEPD recommends

that are provided to the interested parties, it has not been mentioned, in any case,

report on the "type of profile", as the AEPD claims that it should have been

compulsorily informed by CPC, always without forgetting that, in any

case, we are facing recommendations of good practices.

As regards the "Guidelines 5/2020 on consent within the meaning of

Regulation (EU) 2016/679", reference is made to the CEPD "opinion" (once again

the scope of the guidelines as recommendations and criteria for

assist compliance) that at least the following information is required to

obtain valid consent:

i.

ii.

iii.

IV.

v.

saw.

the identity of the data controller,

the end of each of the processing operations for which

ask for consent,

what (type of) data will be collected and used,

the existence of the right to withdraw consent,

information about the use of data for automated decisions,

in accordance with article 22, paragraph 2, letter c), when applicable, and

information about the possible risks of data transfer due to

to the absence of a decision of adequacy and adequate guarantees, as

as described in article 46,”

Here we do not find any reference to that must be informed of the "type of

profile" referred to by the AEPD in the Resolution Proposal as a deficiency of the

information provided by CPC to its clients.

Finally, it affirms that it has analyzed documents published by the AEPD in relation to

to treatments involving the use of artificial intelligence, including

reference to the use of such techniques for profiling and the result has been

that neither in the document dedicated to the "Adaptation to the RGPD of treatments that

incorporate Artificial Intelligence" (February 2020), nor in the "Requirements for Audits

Treatments that include AI", you can find information on the types of

profiles that could be developed, nor is reference made, when

address issues related to the information to be provided to interested parties,

that the "type of profile" is an issue that should be reported on in an

specific to stakeholders.

Therefore, with regard to the aforementioned lack of information on the "type of profile",

we cannot agree that it is an information deficiency that may have

legal effects, since it is not obligatory to provide such information in

relation to the right to information, without prejudice to the fact that, based on the right to

access could be provided such information, everything and that is not the assumption

object of the Resolution Proposal. To all this must be added that there is no

classification or catalog of types of profiles to apply, so that different

managers could refer to the same profile in different ways, still creating

more confusion in stakeholders; Therefore, the absence of such information does not

can be considered an informational deficiency that leads to the conclusion that the

information provided by CPC is incomplete and insufficient and, consequently,

such circumstance cannot be used as a basis for declaring an infraction, nor the

illegality of consent.

Continuing with the treatments whose purpose is the "analysis, study and follow-up

for the offer and design of products and services adjusted to the client", it is affirmed by

part of the AEPD that the purpose is not indicated in the treatments of letter a) and b) of the

number 1. (according to the structure used in the "GENERAL CONDITIONS OF THE

APPLICATION-CREDIT CONTRACT). Nor can we share such a conclusion

since the main purpose is reported, which is none other than the "analysis, study

and follow-up for the offer and design of products and services adjusted to the profile of the client", along with a group of treatment operations that are carried out carried out to analyze the risks and segment customers based on their data personal, for the purpose of:

"study products or services that can be adjusted" to the profile of the clients of CPC and specific commercial or credit situation, for the purpose of "making offers commercial'

"monitor the products and services contracted"

The AEPD, in its guide "Risk management and impact assessment in treatment of personal data" (June 2021), states that, when accurately determining the purposes of processing personal data, it is possible to confuse the "purpose last of the treatment" with measures or processes (treatment operations) that are carried out in an instrumental way to achieve the purpose proposed by the responsible for the treatment.

The ultimate purpose of the treatment object of the Resolution Proposal is none other than the "Analysis, study and monitoring for the offer and design of products and services adjusted to the client", so that, to achieve this purpose, CPC has decided jointly, within the framework of co-responsibility of the aforementioned treatment, carry carry out various processing operations to achieve certain objectives intermediates. or, in his case, he has used what are still instrumental means to achieve the ultimate goal of treatment.

As a whole, CPC specifies and informs both of the main purpose pursued as well as everything that implies the use of the personal data of its clients to achieve such an end, in sufficient detail to be understood by the

customers, without causing them the typical information fatigue due to excess information without real relevance to authorize the use of your personal data.

There is no doubt that, as a result of the information that CPC provides to your customers, they know that their data will be used to offer them products of CPC based on your profile. We do not understand what doubts the way in which that the purpose has been informed; nor has the AEPD transmitted with clarify what is not understood or what could cause confusion for customers of CPC in relation to the use that will be made of their data, if they consent to it.

Clients know that for CPC to send them commercial offers, always prior consent, a profile will be created with your personal data, which includes assess your risks, so that the product offering is suitable for your financial capacity, which also implies that CPC takes into account what characteristics have the products and services that you have already contracted (follow-up and incidents).

Of course, any process that involves transferring information to a third party, in this case customers, is likely to be improved, both in the expression itself and in the techniques to be used to inform in the clearest and most efficient way possible; but hence to conclude that from the set of information that CPC provides to its clients derive deficiencies of such magnitude that they imply that the information is incomplete and insufficient there is an extraordinary margin of discretion on the part of the Agency, especially when it has not demonstrated, in any case, that the information about the end of the treatments is incomplete or insufficient, limiting to say that it is, without further argument, or at least not being adjusted their

arguments to law, as has been shown in these

allegations, demanding informative content in relation to transparency and

right to information that neither the RGPD nor the LOPDGDD requires, and that neither

they are only included in the CEPD recommendations.

Therefore, the information that has been provided to its clients by

CPC in relation to the treatments of "analysis, study and monitoring for the offer

and product design", complies with the obligations of transparency and information

provided for in the regulation, this being complete and sufficient for customers to be

aware of what use is going to be made of their personal data, as it has been

been revealed in the set of previous allegations, although, as

as already alleged to the Start Agreement, in the new "Privacy Policy" of the Group

CaixaBank, under the heading "A. Analysis of your data for the preparation of profiles

to help us offer you products that we think may interest you" has been

proceeded to incorporate improvements in relation to the information provided to the

stakeholders, precisely derived from the incidence that the AEPD is having

through the exercise of its sanctioning power in the CaixaBank Group.

Regarding the rest of the treatment operations that are carried out for the

"Analysis, study and monitoring for the offer and design of products and services

adjusted to the client's profile" (letters b, c, d and e), on which the AEPD maintains that

the categories of data used are not reported. In the initial agreement, the AEPD

maintains that the interested party cannot know the data that will be processed for the

profiling since the information provided includes data that is not

are going to be subject to such treatment and, however, according to the AEPD, they are not informed of the treatment of other data that will be the object of the same. reiterate here the allegations made to the initiation agreement that the categories of data object of the treatment are not among the minimum information described in the article 13 of the RGPD so that the consent is informed and that despite not being mandatory to inform about it the information provided as a whole does allow know the data to be processed for profiling.

The AEPD, in relation to the configuration of the mechanism for the provision of consent, states that "it has not been foreseen that the interested party expresses his option about all the purposes for which the data is processed. It is discussed in section (i) of treatments for "the offer and design of products and services adjusted to the profile of client", assuming that in itself already includes three different purposes"; in this sense, we refer to what has already been expressed in regard to the ultimate goal of treatment and the necessary distinction, in the opinion of the AEPD, with respect to different operations or processes that are carried out instrumentally or as intermediate goals.

As we argued at the time, "consent is only requested with the purpose of studying products or services that could be adjusted to the profile or specific commercial or credit situation of the clients to send them offers commercial adjusted to your needs and preferences.'

To what has already been alleged in relation to obtaining consent in the written response to the Initiation Agreement and the confusion arising from an error in the clause informative, we would like to add that such a circumstance is not due, in any case, to a intention to hide information or confuse CPC clients, or any other type of intentionality of CPC to fail to comply with its obligations in terms of protection

of data, not concurring the necessary requirement of guilt to be able to impose

an administrative sanction since, as the AEPD knows, the criterion

jurisprudence that any sanction should be ruled out regardless of conduct

faulty or negligent; so we want to show that, in no case,

CPC has sought a result of disinformation, concealment or generation of

confusion in their clients, considering that such consequences have not occurred,

since no complaints have been raised by their clients in this regard-,

starting the entire Sanctioning Procedure from a discretionary assessment, therefore,

neither substantiated nor accredited from the AEPD, insofar as the information

provided in relation to the treatments is not sufficient or clear, from which

would lead to an uninformed obtaining of consent, an opinion that we cannot

share, and that our clients have not formally raised either, not even in

the origin claim of this Sanctioning Procedure.

The AEPD refers in its Resolution Proposal to the changes introduced

in the Privacy Policy of the CaixaBank Group which, among other issues, adapts n

the information on the treatments to the requirements of the AEPD and try to

improve the information provided to CPC clients. To the AEPD such

changes do not satisfy him either, stating that they do not meet the demands

imposed by the data protection regulations, in particular with regard to the

treatment based on consent, identified as "analysis of your data

for the elaboration of profiles that help us to offer you products that we believe that

may interest you", which corresponds to the treatment object of the Proposal of

Resolution.

To reach the above conclusion, the AEPD has limited itself to analyzing a paragraph of the

new Privacy Policy, specifically the following: "Through this treatment

We will analyze your data to try to deduce your preferences or needs and thus

be able to make commercial offers that we believe may be of more interest than

generic offers from which it states that it only contains generic expressions,

that:

“they do not identify what kind of preferences or needs it refers to” “or what kind of

offers may give rise" "without being informed of the type of profile that

is going to take place.

It is simply unheard of for such informative content to be required. With respect to

"type of profile" we have already extended enough to show that it is not

It is information that CPC is obliged to provide to meet the

requirements of the data protection regulations and that, in addition, not only form

part of the recommendations made by the CEPD.

As the AEPD must know, profiling is still an activity

dynamic in terms of the results it can give. In this case, the "needs and

preferences" can be changeable, depending on many variables in the environment.

Of course, despite this, it is more than reasonable to think that it is, in any case,

of needs and preferences linked to the products and services offered by CPC,

that are perfectly delimited in its portfolio of products and services and in the

company's own corporate purpose, and which are known by its customers, since they are

They advertise through different media.

Consequently, it does not appear that detailing such "needs and preferences" can

provide anything relevant to CPC clients within the framework of a Policy of

Privacy, as long as they are aware of what the business activity of CPC is, as well

such as the products and services it can offer. In any case, it does not provide the

AEPD any legal basis to demand such specification since it does not refer to the

legal precept or recommendation that allows you to conclude that they should be detailed

such "needs and preferences that we insist can be deduced with character

overview of the relationship that CPC establishes with its clients.

In the same way, it happens with the alleged lack of information regarding the fact that

reports the "type of offers" that can be made to customers, which is

evident that they will be changing in terms of the type of offer and content, but that,

as it cannot be otherwise, they will always be related to the activity

CPC business. In this section, once again, the conclusion of the AEPD is

absolutely discretionary since it does not refer to the legal precept or the

recommendation that allows you to conclude that the u types of offers should be detailed",

which obviously will be commercial offers regarding the products and services of

CPC, something that is so obvious to CPC clients that it causes a lot of

surprise that the AEPD cannot understand and chooses to ask for a detail that the only thing

What I would do would be to add changing and unnecessary information in the framework of a

Privacy Policy. A different question would be that, faced with a right of access or

even a query to CPC by their clients, at any time they can be



provide more detailed information adapted to the reality of the moment in which

such request for information is made.

To all this it should be added that it is surprising that the AEPD has supported its analysis exclusively in a paragraph of the aforementioned policy; maybe with a reading complete and systematic could improve their perception of the contents of the new CaixaBank Group Policy, which undoubtedly complies with the requirements imposed by data protection regulations regarding transparency and information.

Therefore, we cannot agree that, in the words of the AEPD, the new Privacy Policy: "also does not meet the requirements imposed by the regulations of Data Protection "

We must state that, notwithstanding the negative assessment made by the AEPD of the Privacy Policy based on the analysis of a single paragraph thereof, in addition refers to the fact that such a policy is not sufficient to consider as remedied the deficiencies observed in the Initiation Agreement, based on the fact that the "GENERAL CONDITIONS OF THE CREDIT AGREEMENT REQUEST" does not reflect such changes, ignoring the difficulties that such changes may entail. in complex organizations such as CPC, which must analyze and assess meticulously the moment and way in which the opportune modifications, in particular when they affect the relationship with its clients, and that have an impact on both information systems and operating procedures of the organization, and even in compliance with other regulations that affect its business activity. In this sense, it should be added that the CPC is designing the necessary adaptations derived from the new Privacy Policy of the CaixaBank Group. Furthermore, there is the aggravating circumstance that the AEPD forgets complete that there is already a sanctioning procedure followed against CaixaBank, which affects this specific treatment (to the point that it has been alleged that there is a violation of the non bis in idem principle) since it is carried out under co-responsibility, which implies that changes must be coordinated with all

co-responsible since it is a configured and determined data treatment of

jointly, in particular as regards their ends and means.

With regard to the existence of a communication of data to the companies of the group,

We must point out that the AEPD should update the formulas it uses in its

writings, in particular those related to the resolutions since it affirms that such

communication of data to group companies, as it is an end in itself,

textually says that "it requires a manifestation of will of the interested party for the

that he agrees that it can be carried out"; so that for the AEPD the

Consent is still the only basis of legality that protects a communication of

data to third parties when it is well known that the RGPD does not establish as the only basis

legal for the communication of data to third parties the consent of the interested party,

being able to use, as long as it is appropriate, any of the conditions of legality

provided in article 6 of the RGPD, therefore, not only through consent,

concurring, once again, the lack of rigor of the AEPD in this Procedure

Punisher when in this matter he is relying on the provisions of article

11.1 of Organic Law 15/1999, of December 13, on Data Protection of

Personal Character, which provided that: "The personal data object of the

treatment may only be communicated to a third party for the fulfillment of purposes



directly related to the legitimate functions of the assignor and the assignee with

the prior consent of the interested party

Having said the foregoing, we reiterate what has already been alleged in that there is no communication of

data to third parties as long as there is a co-responsibility regime between various companies of the CaixaBank Group, which is based precisely on factual elements for which formal measures are now being adopted; hence it turns out place and irrelevant to refer to the co-responsibility agreement provided lacks date and signature since it is a subsequent action of formalization of a factual situation, which is also linked to regulatory requirements, as already has alleged.

Although it has been included in the Motion for a Resolution, we also transfer here the Reminder of Guidelines 7/2020 on controller and processor in the RGPD, while the CEPD considers that: "The evaluation of co-responsibility should be carried out on the basis of a factual, rather than formal, analysis of the real influence on the purposes and means of the treatment. all provisions existing or planned should be verified taking into account the circumstances of fact relating to the relationship between the parties to which it adds that a merely formal would not be enough. It is surprising that the first assessment of the AEPD for ruling that there is no co-responsibility is to say "that the agreement of co-responsibility provided lacks date and signature and, consequently, of validity any", therefore, prioritizing for the AEPD the formal element, separating from the opinion of the European data protection authorities, despite the fact that the AEPD It is part of the CEPD.

Certainly the CEPD, for the sake of legal certainty and in order to guarantee the transparency and accountability, given that the GDPR does not specify the way that should take the co-responsibility agreement, recommends that such an agreement be formalized by means of a binding instrument, which seems to us to be a good recommendation (remember that the guidelines do not impose legal obligations); for that the CaixaBank Group and, consequently, CPC forming part of it, has

elaborated an agreement for this purpose, following such recommendation that, in no case, assumes that the co-responsibility regime does not exist due to the fact that it is not signed, as affirmed by the AEPD.

Additionally, and taking into account that the existence of co-responsibility does not depends on such signature, as the CEPD believes, it is consistent with the situation not yet signed, as long as the existence of such a regime of co-responsibility is being questioned by the AEPD (although there is no provided any evidence of it, rather than his opinion), as well as timely and legitimate that the signing of the same depends on how it is finally resolved, now already on track jurisdictional, the sanctioning procedure against CaixaBank that affects the same processing of personal data object of the Resolution Proposal that is the origin of this brief of allegations by CPC and that is carried out based on a co-responsibility that, in the opinion of the AEPD, does not exist.

In the first part of this writing, allegations and statements have already been made in regarding that the treatment object of the Resolution Proposal is carried out carried out under co-responsibility, for which the intended communication of



data to third parties raised by the AEPD does not exist; Therefore, it cannot be declared any infringement in this regard. As we said, we refer to the pleadings already made in this and previous writings, showing that the AEPD has limited to denying that such co-responsibility exists, without providing any element, or factual or legal, that supports such an assertion, reversing the burden of proof that

there is co-responsibility in CPC and in the CaixaBank Group, when it should be the AEPD who provides evidence on the non-existence of such co-responsibility

Consequently, we cannot agree that the co-responsibility regime that affects the treatment object of the Resolution Proposal does not exist by the mere fact that it has not yet been signed. There are numerous factual elements presented, both by CPC and by CaixaBank, which show that the treatment of customer profiling to send them commercial offers is carried out on a co-responsibility despite the fact that the AEPD issues an opinion to the contrary substantiated. Therefore, it cannot be considered that there is a communication of data through third parties in this case.

Regarding the affirmation of the AEPD that the consent given for the profiling purposes is not in accordance with the provisions of article 4.7 of the RGPD, we refer to and reiterate the allegations already made to the Initiation Agreement, remembering what has already been stated in this Letter regarding the fact that there is no multiplicity of purposes that have not been specified but a purpose principal and a set of complementary or instrumental operations to achieve the ultimate goal, operations that have been properly reported, otherwise Thus, the AEPD would not have been aware of them, all of this without prejudice to the non-substantial errors that may have been made in the conditions and policies whose correction is being designed by the CaixaBank Group, while there is a co-responsibility regime regarding the treatment object of the Resolution Proposal. Of course, we must insist on the consideration that they must have the CEPD's recommendations, insofar as they are an opinion, for course authorized, which should not be confused with the obligations arising from the data protection regulations, collected in general in the RGPD and, in your case, in the LOPDGDD; so that the minimum content of information

required by the regulation are attended by CPC, notwithstanding that this (CPC)

considers of interest to attend, as it does, to the recommendations and good practices

proposed by the European data protection authorities, insofar as this results in

in improving the information that its clients receive in relation to the use of their data

personal by CPC.

As already stated in our arguments, we do not agree with the

conclusion of the AEPD that non-compliance with article

6.1 of the RGPD by CPC regarding the treatment object of the

Resolution Proposal. In our opinion, the legal foundations developed

by the AEPD do not sufficiently prove such non-compliance, or not to the extent that

intends to give the AEPD; That is why, in order to guarantee the defense of the

interests of CPC, we consider it appropriate to refer to and analyze the factors

which, according to the AEPD, influence the determination of the amount of the fine

proposed administration.

In the first place, we would like to express some general questions that we



seem relevant with respect to the use of graduation criteria for the sanction. on trial

this part, there has been a clear separation from the administrative precedent

since article 35.1 c) of the LP ACAP establishes that the acts that separate from the

criterion followed in previous actions must be motivated. This precept puts

manifest that the AEPD must expressly justify its changes in criteria since

that the principle of equality leads to the fact that "the Administration must maintain in its

resolutions an equal criterion when it comes to identical or similar cases" (Sic. STSJ of Catalonia, of January 15, 1999), this would affect a substantial change in the amount of the administrative fines, which has not been sufficiently accredited and which has no basis, as will be seen, in the fact that the RGPD has modified the amounts of the administrative fines.

In this sense, the PS 0070/2019 serves as an example where acts are sanctioned similar in relation to the obtaining and granularity of the consent of the stakeholders, in which a different application of the criteria that allow graduate the sanction, being, in both cases, financial entities, but with different volumes, both in number of interested parties and in business volume, among others.

Thus, while in the Resolution Proposal the AEPD estimates that the following graduation criteria:

The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operations in question.

The intentionality or negligence appreciated in the commission of the infraction.

The high link between the activity of the offender and the performance of treatment of personal information.

The condition of large company of the responsible entity and its volume of business.

The high number of data and treatments that constitute the object of the file.

The high number of interested parties.

In PS 0070/2019, we insist, regarding very similar acts charged against an important financial institution at the state level, surprisingly only take into account two graduation criteria, compared to the 6 of the Proposal for Resolution:

The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operations in question;

The intentionality or negligence appreciated in the commission of the infraction.

It is clear, then, in an obvious and objective way, that a

unequal treatment when establishing the amount of the administrative fine.

Regarding the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operations in question,

affirms the AEPD that it is the result of the procedure designed by CPC for the

collection of consent in order to create profiles to direct offers

commercial to its clients, we remind you again that the treatment is carried out in

co-responsibility regime and that, therefore, such procedure has been designed

jointly within the framework of the Caixa Bank Group.

The AEPD forgets to assess that, in any case, we start from a procedure

designed and implemented; that is, it has been the object of analysis and reflection

precisely to respond to the requirements of the regulations for the protection of

data. It would seem that the fact of having a procedure would imply a



aggravating circumstance, implying that the non-existence of such a procedure might have

led to not apply such an aggravating circumstance, an incongruous situation in light of the principle of

proactive responsibility established by the RGPD.

In addition, the AEPD states that the aforementioned treatment "involves a significant risk

for the rights of the interested parties, taking into account the especially

intrusive of such data processing' In this case, the AEPD does not argue in what

what this "significant risk" consists of, it only affirms it and adds that it is especially

intrusive, also without any reasoning, which leads to the question that if sending

of commercial communications to clients is especially intrusive' what

processing of personal data will not be particularly intrusive.

We insist that this is not a case in which CPC has dispensed

radically from the obligations related to obtaining consents,

without prejudice to the fact that the AEPD considers that it would be necessary to correct certain

issues, which could lead to improvements in the way data is collected.

consents. The evidence is that there is a procedure designed with the

willingness to comply with data protection regulations. In this sense, it is

of interest what is expressed in the Guidelines on the application and setting of fines

administrative provisions for the purposes of Regulation 2016/679 (WP 253) which indicates that "more than

be an obligation of result", these provisions introduce an obligation of

media; that is, the person responsible for the treatment must carry out the evaluations

necessary and reach the appropriate conclusions. Therefore, the question to which

supervisory authority must answer is to what extent the data controller

"did what could be expected to do" having regard to the nature, purposes or

the scope of the treatment operation, in light of the obligations imposed by the

Regulation". The AEPD has not assessed, at any time, whether there have been

efforts to comply, everything and that it has become clear that indeed, from

Before the full requirement of the RGPD, both CPC and the CaixaBank Group have

dedicated human and material resources to adapt to the requirements of the regulations

of data protection.

On the intentionality or negligence appreciated in the commission of the infraction, says the

AEPD that "the defects indicated in the procedure through which the

consent of their clients, given their evidence, they should have been warned and avoided

when designing said procedure by an entity with the characteristics of CAIXABANK

PAYMENTS & CONSUMER EFC, EP, S.A.U.

We cannot disagree more with the formulation made by the AEPD for the

application of this criterion, above all because it leaves in the air whether the AEPD considers that

the behavior of CPC is intentional or negligent, a very relevant difference as

We imagine that the AEPD will agree, to which we must add that, for

discounted, in no case has CPC considered intentionally failing to comply,

nor systematic, as the AEPD seems to suggest, with its obligations in terms of

personal data protection.

And, furthermore, in our opinion, CPC has acted diligently, establishing since

initiate clear procedures in relation to the information made available to the

clients and the procedures for obtaining their consent. CPC



has a desire for continuous improvement and transparency, not to hide or generate

confusion in its clients, a fact that is reflected in the evolution of the documents and

mechanisms used, and also in the improvement of the information contained in the

themselves.

With regard to the high link between the offender's activity and the performance

of personal data processing, nor do we agree that it results from

application to the case of CPC. The AEPD states something obvious, such as that "operations

that constitute the business activity carried out by CAIXABANK PAYMENTS &

CONSUMER EFC, EP, S.A. U. as an entity dedicated to the commercialization of

credit or debit cards, credit accounts and loans, involve operations

of personal data processing". We do not understand what value such an affirmation has in

in relation to the application of this aggravating circumstance as applied by the AEPD because, in

our opinion, is separated from the intention of the legislator, which is aimed at considering

aggravating the fact that the processing of personal data is the main activity

of a business nature, not that it is an instrument; hence it refers to "high

bonding", otherwise one would conclude that the mere fact of treating

personal data would always be an aggravating circumstance. If the legislator had so

intended would not have qualified that such link must be "high

Hence, we affirm that, in no case, the main activity of CPC is the

treatment of personal data of its clients, since data is used

personal in what is necessary for the development of its main activity of

business, nor that it benefits directly or indirectly in terms

economics of the commercialization of the personal data of its clients; no

We believe that the fact that, as the AEPD argues, "among its activities

commercial is the sending of commercial communications to its customers

of third-party entities with which it has commercial agreements" is an element

definition to apply such criterion of aggravation of the amount of the administrative fine

. In summary, the AEPD does not substantiate that the aggravating high connection of the activity

of the offender with the processing of personal data is applicable

to the assumption.

If the AEPD has assessed that it applies such a criterion taking into account the volume of data

and interested parties included in its treatments, then it would be reiterating the application

of aggravating factors since it also uses individually both that of

high volume of data and processing, such as the high number of interested parties;

as we have stated, the justification by the AEPD of the high

linking the activity of the offender with the performance of data processing

personal is insufficient, we do not know if the AEPD has taken into account the aforementioned

volume of data, processing and interested parties when applying such an aggravating circumstance and if,

therefore, it would be applying the same aggravating circumstance more than once.

Regarding the criterion of aggravation due to the entity's status as a large company

responsible and its volume of business, we are surprised that the AEPD uses both the

CPC turnover, and at the same time the turnover of the CaixaBank Group; no

we can agree that both business data are used since it implies

that the same turnover is taken into account twice, since the volume of

CPC business is, in turn, included in that of the CaixaBank Group. We are surprised that

yes, in the opinion of the AEPD, there is no co-responsibility in the treatment object of the



resolution proposal, taking into account the turnover figure of the Group

CaixaBank; therefore, we consider that the graduation criterion would be misapplied.

We want to state that we are radically in disagreement that the AEPD does not

has identified any mitigating factor in relation to the alleged infringement attributed to

CPCs; Therefore, we proceed to identify, reiterating what was already alleged in the brief of

response to the Initiation Agreement, some of the facts and circumstances that should

mitigate the graduation of the administrative fine proposed by the AEPD.

CPC has made a significant effort in recent years —and especially

since the entry into application of the RGPD and the merger carried out on July 11, 2019—

to provide its clients with relevant information on the treatment of their

personal data appropriately. The clearest example of this initiative

constitute n the different versions of the privacy policies and clauses, made

that reaffirms the proactivity and spirit of continuous improvement of CPC.

This behavior demonstrates a clear exercise of transparency and loyalty, as well as

proactive and diligent activity on the part of CPC in relation to compliance

of the data protection regulations, in addition to demonstrating its desire to repair

potential errors, if any.

The degree of cooperation with the control authority is not valued either, since CPC has

shown, at all times, its willingness to collaborate with the Agency in order to improve

those aspects of the treatments that can be improved. As has been

revealed in this Letter, CPC has launched a series of

measures aimed at this improvement in the collection of consents. That is how you are

Circumstances must be assessed by the Agency as mitigating.

Finally, it should be remembered that both CPC and its data protection delegate

have been available to cooperate, despite the dates on which the AEPD has

proceeded to notify the most significant administrative acts of this Procedure

Penalty (end of December 2020 and beginning of August 2021) and to the

operational difficulties derived from the still active pandemic situation, having

been proactive and diligent in responding to any requirements of the

Agency. Nor has such an effort deserved to be considered a mitigating factor.

PROVEN FACTS

FIRST: On November 6, 2018, you entered this Agency in writing

of D. A.A.A., denouncing that the entity CAIXABANK, CONSUMER FINANCE, EFC

had requested EMPRESA.1 information on the inscriptions related to its

person in the EMPRESA.2 file, without being a client of said entity, since the relationship

with it had been formally extinguished in 2014. The claim was transferred to the

Data Protection Delegate of the person in charge, a response is received in which

admits an error of a human and punctual nature, since although the claimant was a client

in the past, at the date of the claim it had already ceased to be so, however its

data was mistakenly included in a pre-granted credit campaign.

The claim was inadmissible for processing on February 6, 2019, without prejudice,



as stated in the Resolution itself, that the AEPD, applying the powers

of investigation and corrections that it holds, could carry out subsequent

actions related to the processing of data referred to in the claim.

The resolution of inadmissibility for processing was appealed by the claimant, alleging that no

Being a client of the entity, it has used the asset solvency files with

the purpose of creating a profile and offering you a financial service, without requesting your

consent, estimating said resource.

SECOND: It is stated in the information provided by CAIXABANK PAYMENTS &

CONSUMER, that there has been a merger operation by absorption between

CaixaBank Payments, E.F.C., E.P., S.A.U., absorbed company, and CaixaBank

Consumer Finance, E.F.C., S.A.U., absorbing company, remaining, as

As a result of this operation, CaixaBank Consumer Finance, E.F.C., S.A.

subrogated by universal succession in all the rights and obligations, acquired and

assumed by CaixaBank Payments, E.F.C., E.P., S.A.U., modifying its

company name to the current CaixaBank Payments & Consumer, E.F.C., E.P., S.A.”

This information also states that "the main activity of CAIXABANK

PAYMENTS & CONSUMER consists of the commercialization of credit cards or

debit (hereinafter called “Cards”), credit accounts with or without a card (in

hereinafter referred to as “Credit Accounts”) and loans (hereinafter referred to as

"Loans"), (all of them individually called "Product" and jointly,

“Products”), directly or through third parties –whether they are agents or

Prescribers-, with whom the corresponding agency contracts have been signed

or collaborative. Specifically: - Directly, CPC markets some of the

mentioned Products. - Indirectly, CPC markets through Prescribers

and agents.

It is understood by "Prescriptor" or "Prescriptors", those entities with which CPC

has signed a collaboration agreement, based on which they undertake to

offer its clients the possibility of contracting the CPC Products for,

mainly, finance the purchase price of the products and/or services

marketed by them (Specifiers) at their points of sale, either face-to-face

or online (for example, establishments such as ***ESTABLIMIENTO.1 or

***ESTABLISHMENT.2 and ***ESTABLISHMENT.3). In particular, the Products of

CPC marketed through Prescribers are the Cards, the Accounts of

Credit and Loans.

Agent means CaixaBank, S.A. (hereinafter, indistinctly the "Agent" or

“CaixaBank”), an entity with which CPC has an agency agreement, by virtue of the

which, CaixaBank promotes and concludes, through its channels, the CPC Cards,

as well as, where appropriate, debt refinancing loans derived from these

Cards.

It is also stated that the personal data processing activities that in the

development of its commercial operations imply the elaboration of profiles, according to the

definition set forth in article 4.4 of the RGPD, in particular with regard to the

economic situation of the interested parties, are the following:

I

II.

“Analysis of the repayment capacity or risk of non-payment of a

interested in your Request for a Product: It consists of the evaluation by

part of CPC of the Request for a Product (Card, Credit Account or

Loan, hereinafter the "Application") received from an interested party (in

hereinafter, “Applicant” or “Applicants”). This evaluation involves a

processing of personal data that is specified in the necessary assessment

of the repayment capacity or solvency of the Applicant (probability of

default risk). Said assessment is carried out, within the framework of the Application

received, in order to comply with what is established by the regulations that, in

quality of financial credit establishment and payment institution,

results from application to CPC (Prudential and Solvency Regulations and

Responsible Lending).”

“Analysis of the repayment capacity or risk of non-payment in the management

of credit risk granted to customers: It consists of monitoring

of the ability to return or risk of non-payment of customers to

who CAIXABANK PAYMENTS & CONSUMER has granted

financing and, therefore, with which it maintains a credit risk with two

purposes:

-

-

the management of the credit risk granted to them in compliance

of certain legal obligations (specifically, the Regulation

Prudential and Solvency and Responsible Lending,);

commercial management in accordance with the consents obtained from

the holders of the data (customers) with the subsequent purpose of

offer them products and services tailored to their needs, which

may include the assignment of “pre-granted” credit limits

(pre-granting of a loan based on the information available to the

Entity)."

I

“Analysis and selection of target audience: It consists of the analysis and selection,

prior to a certain commercial impact, of a target audience

(composed of those clients of CAIXABANK PAYMENTS &

CONSUMER that meet, where appropriate, the requirements designed to be

impacted by a potential campaign in order to offer you

Products). This treatment is carried out in accordance with the

consents obtained from the owners of the data (clients).”

Affirms regarding the categories of data owners that are treated in the execution

of the detailed treatments, which "only treats data of interested parties that are

clients of the Entity or applicants of its Products. Does not perform data processing

about interested parties that could be called “potential clients”, understanding by

these, holders of data that do not have a current relationship with CPC or that previously did not

have requested a Product through any of the established channels.”

THIRD: The following is stated regarding the activity called "analysis of the

repayment capacity or default risk for credit risk management

granted to clients during the contractual relationship”:

1. Regarding the purposes and bases of legitimacy of the treatment. It is stated that

It has two purposes:

I

II.

“The management of credit risk granted, in compliance with

certain legal obligations of the Prudential Regulations and of

Solvency and Responsible Lending, applicable when the Product is

a credit account since by allowing the availability of credit

granted on a constant basis, this (Product) must be adapted

constantly to the updated solvency capacity of the interested party.

As stated, the enabling title to carry out this purpose, give

compliance with regulatory requirements, is the legal obligation,

in accordance with article 6.1 c) of the RGPD.

The commercial management in the event that you have the consent of the

data owner. Said treatment foresees, among others, being able to label the

client with the purpose of granting him a "pre-granted" (granting of a

based solely on the information available to the Entity).

In this case, only the data of those clients who have

consented to profiling.”

2. Regarding the logic applied in the profiling and the foreseen consequences of

said treatment for the interested party, affirms that it uses a logic that has been

defined in the Entity's bankability process. (...).

3. Regarding the personal data subject to treatment, it is stated that they are the

following:

- Identification: DNI/NIE/Passport and date of birth.

- Financial: Internal CPC data obtained or derived from the relationship

existing contract between it and its client and consultation of solvency files and

the Risk Information Center (CIR) of the Bank of the Bank of Spain.

- Sociodemographic: postal code, country of birth and nationality, type of

housing and seniority and marital status.

- Socioeconomic: income and payments, employment status and profession, seniority

bank and domiciled entity.

- Others: risk score.

4. Details the following origins regarding the personal data object of

treatment indicated in the previous section:

- Data provided by the Applicant in the Product Application itself.



- CPC data in relation to the Applicant in the event that the Applicant is already

client and provided that CPC has data on their payment behaviour.

- Data from external sources: in accordance with the regulations that result from

application to CPC as a financial credit establishment and payment institution,

also includes the following information:

Information on the consolidated group of Group entities

CaixaBank

 Result of the query to credit information systems.

 Result of the query to the Risk Information Center

(CIR) of Bank of Spain.

- (...).

5. Regarding the means used to collect consent in the event

that the treatment activity is covered by article 6.1.a of the RGPD, affirms

that the channels through which it collects the consents for commercial purposes of

Their clients are the following:

a) Through the prescribers.

b) Through your CaixaBank Agent.

a) “Through the Prescribers.

In this channel there are three (3) different forms of collection:

The first is through the employees of the Prescriptors themselves,

which, at the time of formalizing the financing contracts

with customers who want to contract the Products offered by CAIXABANK

PAYMENTS & CONSUMER, they are asked about each of the

consents, to later capture the response given by you to

each of them in the Particular Conditions of the financing contract

signed for the purpose.

The three (3) tools provided by CAIXABANK PAYMENTS &

CONSUME the vendors of the Prescriptors so that they can carry out the

capture of the necessary information to process the operations of

financing and, therefore, also to collect the aforementioned

consents, are the Web “***WEB.1”, the collection App (its use is

carried out through a tablet carried by the vendors of the Prescriptors

that are constantly moving around the store) and the "Web Auto" (...), which are

the software provided by CAIXABANK PAYMENTS & CONSUMER to

the Prescribers, connected with the systems of that (CAIXABANK

PAYMENTS & CONSUMER), so that its vendors process the

financing operations by entering personal data and

economic data of the clients and the contractual data of the operations (TIN,

APR, months of amortization, etc.), as well as obtain the consents, which

later they will be reflected in the Particular Conditions of the contracts

of financing that are formalized and delivered to customers.”



There are three screenshots in the file that correspond to

with these three tools. In them it is observed that it is requested the

consent for the following purposes, being able to choose yes or no in each

modality:

- “I authorize the CaixaBank Group to use my data for study purposes

and profiling”

- "I authorize to be sent advertising and commercial offers of the Group

CaixaBank by the following means”, which in turn allows consent or not by

each of the following headings):

- Telemarketing

- Electronic means such as SMS, email and others

- Post mail

- Commercial contacts through any channel of my manager

- “I authorize my data to be transferred to third parties with whom the CaixaBank Group has

agreements”

- “I authorize the CaixaBank Group to use my biometric data (image, fingerprint

fingerprint, etc.) in order to verify my identity and signature. This authorization

It will be complemented with the registration of the biometric data to be used in each

moment"

The file also contains a screenshot of the tool

AUTO website where you can consult more details. according to print

The detail in the file consists of the following:

“Consent and protection of personal data

The authorizations that you provide now or have previously provided may

be revoked at any time through www.caixabankpc.com/ejerciciode

Rights.

If you grant authorization (1) the offers sent to you will be adapted to

your profile

The authorizations (2) (3) (4) and (5) refer to the channels through which

You agree to be contacted by the CaixaBank group either by phone, by

electronically, by post and/or in person.

If you do not authorize any channel, the CaixaBank group will not be able to contact you to

offer you products of your interest.

If you provide authorization (6) at the time the data is transferred, you will be

will inform which third party is the receiver of your data and if you do not agree

You can revoke that authorization.

The authorization (7) is to be able to verify your identity/signature since in the group

CaixaBank uses biometric recognition methods such as systems

facial recognition, fingerprint reading and the like."

The second form of recruitment within this group is through the

□

CAIXABANK PAYMENTS & CONSUMER web portal enabled to process

the financing operation by the client himself, who will have been redirected

by clicking on a link included on the Prescriber's website that is



try. Thus, for example, the interested party who decides to apply for the card (...) will initiate

the request on the Prescriber's own portal (...) and it will immediately be

redirected to the web portal enabled for this purpose by and from CAIXABANK PAYMENTS &

CONSUMER where the entire contracting procedure will take place.

In this case, it is the client himself, through his computer/tablet, who marks

the response for each of the planned treatments, which after

will be transcribed in the Particular Conditions of the financing contract

formalized.

It is stated in the document sent to this Agency as ANNEX No. 13, the

screen that the client visualizes and in which the consents are collected

that coincide with those described above in the point relating to the channel

prescribers.

The document sent as ANNEX 14 shows an example of how

reflect the consents granted by the client in the Conditions

Particulars of the financing contract. This document is called

REQUEST-CREDIT CONTRACT and is structured in various sections

related to personal data of the owner and co-owner, to the purchase, to the plan of

financing etc

The SUMMARY OF TREATMENTS section of said document contains the

Next information:

“the treatments of your data with respect to which you can facilitate your

authorization in the terms established in this contract are the

following:

“COMMERCIAL PURPOSES:

Processing of data by Caixabank Payments

TO.

& Consumer and the companies of the CaixaBank Group with

study and profiling purposes to inform you of the products

that suit your interests/needs, as well as for the

monitoring of contracted services and products, carrying out

surveys and design of new services and products.

b.

Processing of data by Caixabank Payments

& Consumer and the companies of the CaixaBank Group with the

purpose of communicating offers of products, services and

promotions marketed by them, their own or third parties whose

activities are included among the banking, services of

investment and insurance companies, share holdings, venture capital,

real estate, road, sale and distribution of goods or services,

consultancy, leisure and charitable-social services.

Transfer of data by Caixabank Payments &

c.

Consumer and the companies of the CaixaBank Group to third parties with the

so that they can send you commercial communications.

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Said third parties will be dedicated to banking activities,

investment and insurance services, holding of shares, capital

risk, real estate, roads, sale and distribution of goods and

services, consultancy, leisure and charitable-social services.

OTHER PURPOSES

Processing of the biometric data you provide by Caixabank

Payments & Consumer and the companies of the Caixabank Group, such as

facial image, voice, fingerprints, graphs, etc., in order to

verify your identity and signature with the help of methods of

biometric recognition.

In the section AUTHORIZATIONS FOR DATA PROCESSING

there are a series of sections in each of which, both for the holder

As for the co-owner, two boxes appear, one to mark yes and another to

mark no, the various authorizations to carry out data processing.

These authorizations are the following:

“I authorize the processing of my data for the purpose of study

TO.

and analysis by Caixabank Payments & Consumer and the

companies of the Caixabank group.

“I consent to the processing of my data by Caixabank

b.

Payments & Consumer and the companies of the Caixabank group with the

in order for them to communicate offers of products, services and

promotions through the channels that you authorize.” In this case, the boxes

yes/no are broken down for each of the following channels:

Telemarketing, Electronic means such as SMS, email and others, Mail

Postcard. Commercial contacts through any channel of my manager

“I authorize Caixabank Payments & Consumer and the

c.

companies of the Caixabank group transfer my data to third parties.”

The third way is through telephone recruitment in which

□

the vendors of the Prescriptors and the managers of CAIXABANK interact

PAYMENTS & CONSUMER. In this case, the Prescriber's seller provides

by phone to the manager of CAIXABANK PAYMENTS & CONSUMER all

the customer data necessary to formalize the financing operation and

he processes it. Once the contract has been approved, the client, through the

Particular Conditions of the contract that must be signed, defines the

granting your consents by handwriting your

option on the boxes enabled for this purpose. Such particular conditions are

contained in the document sent as annex 14 described in point

previous.

a) Through your CaixaBank Agent.

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States that, additionally, CPC is the beneficiary of the consents

granted, where appropriate, by customers before CaixaBank. He claims that the collection of

consents at CaixaBank branches is carried out by interacting with the

own client with the device that the employee gives him (Tablet), pointing

your preferences in relation to data processing.

In the screen print that he incorporates in his writing, it can be seen that

request various authorizations for each of which there is the option of

Mark yes or no in the respective box. The authorizations refer, as in the

previous cases:

– To the use of the data for study and profiling purposes,

clarifying that if the offers sent to it are authorized, they will be

adapted to the profile of the interested party.

– To receive advertising and commercial offers. At this point it is also allowed

choose the channels to receive advertising by checking the respective box.

– To transfer the data to third parties with whom the Caixabank group has

agreements.

– To the use of biometric data in order to verify my identity and

firm.

6. Regarding the procedure followed to comply with the duty of

information to the interested party (articles 13 and 14 of the RGPD) it is stated that "It is attached,

as ANNEX DOCUMENT No. 12, copy of the general conditions provided

to the interested party in the framework of the contracting of a product and in which it is informed

of the provisions of article 13; not resulting from application, therefore, the provisions

in article 14 of the RGPD."

The document contained in annex 12 called "CONDITIONS

GENERAL TERMS OF THE APPLICATION-CREDIT AGREEMENT" contains various

sections, referring to section number 26 to the "Processing of data of

personal nature based on the execution of contracts, legal obligations and

legitimate interest and privacy policy". This point is structured in turn in 10

sections. The following information is included in points 26.1 and 26.4

"26.1 Processing of personal data for the purpose of managing

Business Relations.

The personal data of the Holder, both those that he himself provides, as well as

those derived from commercial, business and contractual relations

established between the Account Holder and CaixaBank Payments & Consumer either in

the marketing of its own products and services, either in its capacity as

mediator in the commercialization of products and services of third parties (in

hereinafter all referred to as Business Relations), or of the

Business relations between CaixaBank Payments & Consumer and the companies

of the CaixaBank Group with third parties and those made from them, are

incorporated into files owned by CaixaBank Payments & Consumer and

the companies of the CaixaBank Group holding the Commercial Relations,

to be treated in order to comply with and maintain them,

verify the correctness of the operation and the commercial purposes that the Holder

accept in this contract.

These treatments include digitization and registration of documents

identifiers and the signature of the Holder, and its availability to the internal network

of CaixaBank Payments & Consumer, to verify the identity of the

Holder in the management of its Commercial Relations.

The indicated treatments, except those that have a commercial purpose whose

acceptance is voluntary for the Holder, they are necessary for the

establishment and maintenance of Business Relationships, and

will necessarily be understood to be in force while said Relationships

Commercials remain in force. Consequently, at the time of

Cancellation by the Holder of all Business Relationships with CaixaBank

Payments & Consumer and/or with the companies of the CaixaBank Group, the

mentioned data processing will cease, being your data canceled

in accordance with the provisions of the applicable regulations, keeping them

CaixaBank duly limits its use until the prescriptions have expired.

actions derived from them."

"26.4. Treatment and transfer of data for commercial purposes by

CaixaBank and the CaixaBank Group companies based on the

consent.

In the Particular Conditions of this contract it will be collected, under the heading

of authorizations for data processing, the authorizations that you

grant or revoke us in relation to:

(i) Data analysis and study processing for commercial purposes by

CaixaBank Payments & Consumer and companies of the CaixaBank Group.

(ii) The treatments for the commercial offer of products and services by

CaixaBank Payments & Consumer and the companies of the CaixaBank Group.

(iii) The transfer of data to third parties.

In order to put at your disposal a global offer of products and

services, your authorization to (i) data analysis and study processing, and

(ii) for the commercial offer of products and services, if granted,

shall include CaixaBank Payments & Consumer and the companies of the Group

CaixaBank detailed at www.caixabank.es/empresasgrupo (the "companies of the

CaixaBank Group") who may share and use them for the purposes

indicated.

The detail of the uses of the data that will be carried out in accordance with your

authorizations is as follows:

(i) Detail of the analysis, study and monitoring treatments for the offer

and design of products and services adjusted to the client's profile. bestowing his

consent to the purposes detailed here, you authorize us to:



a) Proactively carry out risk analysis and apply it to your data

Statistical techniques and customer segmentation, with a triple purpose:

one)

Study products or services that can be adjusted to your

specific profile and commercial or credit situation, all for

make commercial offers tailored to your needs and

preferences,

2) Track the contracted products and services,

to)

3) Adjust recovery measures on non-payments and incidents

derived from the contracted products and services.

Associate your data with that of other clients or companies with which you have

some type of link, both family or social, as well as due to their property relationship

and administration, in order to analyze possible interdependencies

in the study of service offers, risk requests and

contracting of products.

b) Carry out studies and automatic controls of fraud, defaults and incidents

derived from the contracted products and services.

c)

Carry out satisfaction surveys by telephone or electronically

in order to assess the services received.

d) Design new products or services, or improve the design and usability of the

existing, as well as define or improve the experiences of users in their

relationship with CaixaBank Payments & Consumer and the companies of the Group

CaixaBank.

The treatments indicated in this point (i) may be carried out in a

automated and entail the elaboration of profiles, with the purposes already

marked. To this effect, we inform you of your right to obtain the

human intervention in the treatments, to express their point of view, to

get an explanation about the decision made based on the treatment

automated, and to challenge said decision.

(ii) Detail of the treatments for the commercial offer of products and services

of CaixaBank Payments & Consumer and the companies of the CaixaBank Group.

By granting your consent to the purposes detailed here, you

authorizes:

Send commercial communications both on paper and by means

electronic or telematic, related to the products and services that, in each

time: a) markets CaixaBank Payments & Consumer or any of its

CaixaBank Group companies b) market other companies

owned by CaixaBank Payments & Consumer and third parties whose

activities are included among banking, investment services and

insurer, shareholding, venture capital, real estate, road,



sale and distribution of goods and services, consultancy services, leisure and

charitable-social.

The Holder may choose at any time the different channels or media by

those who do or do not want to receive the indicated commercial communications through

of your internet banking, through the exercise of your rights, or through your

management in the CaixaBank branch network.

The data that will be processed for the purposes of (i) data analysis and study,

and (ii) for the commercial offer of products and services will be:

a) All those provided in the establishment or maintenance of

commercial or business relationships.

b) All those generated in the contracting and operations of

products and services with CaixaBank Payments & Consumer, with

the companies of the CaixaBank Group or with third parties, such as,

movements of accounts or cards, details of direct debits,

payroll direct debits, claims arising from insurance policies

insurance, claims, etc.

c) All those who CaixaBank Payments & Consumer or the companies

of the CaixaBank Group obtain from the provision of services to

third parties, when the service is addressed to the Holder, such

such as the management of transfers or receipts.

d) Whether or not you are a CaixaBank shareholder, as stated in the

records of this, or of the entities that according to the

regulations governing the stock market must carry the

records of the values represented by means of annotations in

bill.

e) Those obtained from social networks that the Holder authorizes

Consult.

f) Those obtained from third parties as a result of requests

data aggregation requested by the Owner.

g) Those obtained from the navigations of the Holder by the service of the

CaixaBank Payments & Consumer website and other websites this and/or

CaixaBank Group companies or mobile phone application

of CaixaBank Payments & Consumer and/or of the companies of the Group

CaixaBank, in which it operates duly identified. These dates

may include information related to geolocation.

h) Those obtained from chats, walls, videoconferences or any other

means of communication established between the parties.

The Holder's data may be supplemented and enriched by data

obtained from companies providing commercial information, by data



obtained from public sources, as well as by statistical data,

socioeconomic (hereinafter, "Additional Information") always verifying

that these comply with the requirements established in the regulations in force

on data protection."

7. In the information provided by CaixaBank Payments & Consumer, E.F.C.,

E.P., S.A. it is stated that "the number of interested parties (clients) whose data

were treated in the development of the profiling activity associated with the

Proactive Scoring activity for commercial purposes, amounts to (...)."

FOURTH: The information provided contains the following regarding the third

activity carried out called "Analysis and selection of target audience":

"one. Regarding the definition of the logic applied in the profiling and the

anticipated consequences of such treatment for the interested party, states that "The

processing activity known as Commercial Profiling responds to the

need for CPC to analyze, select and extract, prior to its impact

commercial, the target audience to which the commercial communications will be directed

associated with a potential campaign.

For this purpose, CPC selects and extracts the information of the clients to whom

potentially they will be sent the commercial communications of the campaign in question.

For this, personal data from internal sources of CPC are processed.

(Host, DataPool and DataWareHouse) of those of its clients who have authorized expressly the treatment of commercial profiling and, subsequently, they have not revoked. About the mentioned repositories (Host, DataPool and DataWareHouse), a list of clients is taken based on the result obtained once carried out carry out the treatment based on the consent of the client, detailed in the section above (“II. Analysis of the repayment capacity or risk of non-payment for the credit risk management granted to customers”) and on said list of clients, selection filters are applied based on identifying data such as age ranges, language of communication, sex, location or address, with the objective of proceeding to the extraction of the target audience to which the Bell. Ultimately, the system generates a file with the selection of the target audience that meets the conditions set once the filters have been applied.

It should be noted, however, that the selection criteria that, in essence, constitute the logic applied to profiling, they do not become standardized parameters but they are segments that vary and adjust to the needs of the Product or characteristics associated with the commercial or promotional initiative of which its launch is intended, as well as the type or volume of the data that CAIXABANK PAYMENTS & CONSUMER has with respect to each of the stakeholders.

For its part, the consequence that the profiling activity carried out by CAIXABANK PAYMENTS & CONSUMER generates on the client, it is circumscribed to the fact that it will become, or not, part of a list that may be potentially used in the framework of a commercial campaign.”

2. Regarding the description of the purpose of the treatment and detail of the basis of legitimacy of article 6.1 of the RGPD on which it is based, states that

“CAIXABANK PAYMENTS & CONSUMER processes the personal data of interested parties associated with the Commercial Profiling activity in order to know if they meet the necessary conditions for their inclusion in a potential commercial campaign and improve the impact of your campaigns commercial. In short, although expressed in different terms, the process of profiling linked to this treatment activity is carried out with the aim of generate the list with the target audience that, at later times, may be exploited to impact customers through communications with content commercial. For its part, in terms of the qualifying title, it is the one provided for in art. 6.1.a) of the RGPD (consent).

3. Regarding the procedure followed to comply with the duty of information to the interested (articles 13 and 14 of the RGPD) and the means used for the collection of consent when the processing activity is covered by article 6.1.a of the RGPD, refers to what is stated in the treatment activity "Analysis of the repayment capacity or default risk for credit risk management granted to clients” in which reference was made to annexed document nº12.

4. Regarding the categories of interested parties and personal data subject to treatment states the following:

“The category of data subjects subject to processing called Profiling

Commercial is that of clients with a current contract with CPC. the category of

potential clients in no case is the object of this treatment activity”

“The personal data subject to treatment are the following:

- Identification: client identifier, NIF/NIE/Passport, name and surnames,

date of birth, gender, postal address, email, telephone (landline or

mobile) and language of communication.

Financial:

contracted products and services and condition of

owner/beneficiary/proxy and the label resulting from the treatment described in the

previous section II).”

5. Regarding the origin of the personal data subject to treatment (with

indication of the basis of legitimacy that supports, states that "The origin of the

personal data object of treatment is the interested party and the

internal sources of CAIXABANK PAYMENTS & CONSUMER, already described

in point 1 of this section (III. Treatment: "Commercial Profile"), as well as

the labels detailed in the previous section (Analysis of the capacity of

repayment or risk of non-payment for credit risk management granted to

customers). In this case, the basis of legitimacy is the consent of the interested party.

(art. 6.1.a RGPD)."

6. Regarding the number of interested parties whose personal data has been processed

in the development of the profiling activity by category (client, potential client)

and year (2018 and 2019), points out that "First of all, it must be indicated that the numbers reflected below refer only to the category of clients, since in this profiling activity data of potential clients, in accordance with what is stated in point b) of the Preliminary Considerations. (...)."

FIFTH: It consists of the information obtained on the volume of sales of the entity that the result of the turnover during the year 2019 is €872,976,000. The share capital amounts to €135,155,574

SIXTH: The file shows that CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U. has modified the privacy policy on its website.

It is stated that point 6 of said privacy policy under the title "What treatments we carry out with your data", indicates the following:

"The treatments that we will carry out with your data are diverse, and respond to different purposes and legal bases:

> Processing based on consent

> Treatments necessary for the execution of the Contractual Relations

> Treatments necessary to comply with regulatory obligations

> Processing based on the legitimate interest of CaixaBank Payments & Consumer"

Section 6.1 of said privacy policy contemplates the following treatments based on consent:

A. Analysis of your data for the elaboration of profiles that help us to offer you products that we think may interest you.

B. Commercial offer of products and services through the selected channels.

C. Transfer of data to companies that are not part of the CaixaBank Group.

d

Identification of clients and signature of documentation through the use of biometrics.

In point 6.1 of the aforementioned privacy policy, the following is stated:

“TREATMENTS BASED ON CONSENT.

These treatments have your consent as a legal basis, as established in the

art. 6.1.a) of the GDPR.

We may have asked you for that consent through different channels, for example,

through our electronic channels or in any of the companies of the Group

If for any reason, we have never requested your

CaixaBank.

consent, these treatments will not apply to you.

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www.aepd.es

sedeagpd.gob.es

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You can consult the authorizations that you have consented or denied us, and

modify your decision at any time and free of charge on the website of

CaixaBank Payments & Consumer (www.caixabankpc.com) and in each of the

companies of the CaixaBank Group, or in your private area of the website or mobile applications of

CaixaBank Payments & Consumer and at CaixaBank offices.

The treatments based on your consent are indicated below in order of the

(A) to (D). We will indicate for each of them: the description of the purpose (Purpose),

whether or not they are treatments carried out under co-responsibility with other companies

of the CaixaBank Group (Joint Controllers/Data Controller), and the categories of

data used (Categories of data processed).”

Below is the following information regarding the content in letter A.

“Analysis of your data for the elaboration of profiles that help us to offer you products that we think may interest you”

Purpose: The purpose of this data processing is to use the categories of data that we indicate below, to create profiles that allow us to identify you with customer segments with similar characteristics to yours and suggest products and services that we think may interest you, as well as establish the frequency with which we interact with you.

Through this treatment we will analyze your data to try to deduce your preferences or needs and thus be able to make commercial offers that we create that may have more interest than generic offers.

When the offers that we want to transmit to you consist of products that imply payment of installments or financing, we will carry out a pre-assessment of solvency to calculate the appropriate credit limit to offer you, in accordance with the principles of responsibility in the offer of financing products required by the Bank of Spain.

It is important for you to know that this treatment, including the pre-screening for solvency in products with risk, is limited to the indicated purpose of suggesting products and services that we think may interest you, and is not used, in any case, for denial of any product or service or credit limit.

You always have at your disposal our complete catalog of products and services, and this treatment does not prejudge, limit or condition your access to the same, which, if you request them, will be evaluated with you in accordance with the ordinary procedures of CaixaBank Payments & Consumer.

We will only carry out this processing of your data if you have given us your consent to it. Your consent will remain in effect as long as you don't remove it.

If you cancel all your products or services with the Group companies

CaixaBank, but you forget to withdraw your consent, we will do it

automatically.



Categories of processed data: The categories of data that we will process for this

purpose, whose content is detailed in section 5, are:

> data that you will have provided us

> data observed in the maintenance of products and services, with

sensitive data exception

> data inferred or deduced by CaixaBank Payments & Consumer.

> data that you have not provided us directly.

Co-responsible for the treatment: The treatment of your data of the categories

indicated, with the purpose of analysis for the elaboration of profiles that

help offer you products that we think may interest you, they do so in

co-responsibility regime for the following companies of the CaixaBank Group:

> CaixaBank, S.A.

> CaixaBank Payments & Consumer, E.F.C., E.P., S.A.U.

> CaixaBank Electronic Money, EDE, S.L.

> VidaCaixa, S.A.U., insurance and reinsurance

> New Micro Bank, S.A.U.

> CaixaBank Equipment Finance, S.A.U.

> Promo Caixa, SAU,

> Comercia Global Payments, E.P. SL

> Buildingcenter, S.A.U.

> Imagintech S.A.

You will find the list of companies that process your data, as well as the aspects essentials of treatment agreements in co-responsibility in:

www.caixabank.es/empresasgroup."

It is stated that the information provided regarding co-responsibility accessing this link is as follows:

"To carry out the processing that we indicate below, CaixaBank and CaixaBank Group companies will jointly process your data, deciding jointly the objectives ("what the data is used for") and the means used ("how the data is used") being, therefore, co-responsible for those treatments (Jointly Responsible Entities).

The treatments for which CaixaBank and the companies of the CaixaBank Group will process your data together, are the following (you can see the details of the companies of the Caixabank Group that make up the perimeter of each of the treatments that are carried out in co-responsibility by clicking on each of the following links):

 Carry out the commercial activities of: (i) analysis of your personal data for the elaboration of profiles that help us to offer you products that we think they may interest you; (ii) commercial offer of products and services

through the selected channels, and (iii) transfer of data to companies that do not

they are part of the CaixaBank Group;

 Comply with the following regulations applicable to the companies of the Group

CaixaBank: (i) the money laundering prevention regulations and

terrorist financing; (ii) tax regulations; (iii) the

obligations arising from sanctions and countermeasures policies

international financial institutions, as well as (iv) the concession obligations and

management of credit operations and the consultation and communication of risks to the

Risk Information Center of the Bank of Spain (CIRBE).

 Carry out the analysis of the solvency and the repayment capacity of the

applicants for products that involve financing.

In accordance with the provisions of the applicable regulations, the Entities

Co-responsible parties have signed a co-responsibility agreement for

certain treatments, the essential elements of which are the following:

(i) That, for certain treatments identified in the Privacy Policy,

the Jointly Responsible Entities will act in a coordinated or joint manner.

(ii) That they have proceeded to determine the security, technical and

organizational, appropriate to guarantee a level of security appropriate to the risk

inherent to the processing of personal data subject to co-responsibility.

(iii) That they have a single window mechanism for the exercise of rights

rights of the interested parties, assuming the commitment of the duty of collaboration

and assistance in those cases in which it is appropriate.

(iv) That they comply with the obligation to respect the duty of secrecy and keep due

confidentiality of the personal data that are processed within the framework of the

reported data processing activities.

(v) Regardless of the terms of the co-responsibility agreement, the

Interested parties may exercise their rights in terms of data protection against

to each of those responsible."

It is stated that point 5 of the privacy policy, entitled categories of data,

reports the following:

"5. Data categories

At CaixaBank Payments & Consumer we will process different personal data

to be able to manage the Contractual Relations that you establish with us,

to carry out the rest of the data processing that derives from your condition

of client and, if you have given us your consent, to also carry out the treatment

of your data for the activities detailed in section 6.1.

To make it easier to understand, we have ordered the data we process in the

categories listed below.



Not all categories of data that we detail are used for all

data treatments. In section 6, where we detail the treatments of

data that we carry out, you can consult specifically for each treatment

specifically the categories of data that are used, thus counting on the information

necessary to allow you to exercise, if you wish, your rights recognized by the

RGPD, especially those of opposition and revocation of consent.

The categories of data used by the different treatments exposed in the

heading 6 are as follows:

> Data that you have provided us when registering your contracts or during your

relationship with us. These data are:

- 
- 
- 
- 

identification and contact data: your identification document, name and surnames, gender, postal, telephone and electronic contact information, residence address, nationality and date of birth, and language of communication.

socioeconomic data: detail of the professional or work activity, income or remuneration, family unit or circle, educational level, assets, data taxes and tax data.

financial data: contracted products and services, relationship with the product (condition of holder, authorized or representative), MiFID category.

biometric data: facial pattern, voice biometrics or fingerprint pattern.

> Data observed in the maintenance of products and services. These dates are:

- 

financial data: the information of the notes and movements that are made in current accounts, including the type of operation, the issuer, the amount, and the concept, information on investments made and their evolution, information on financing, extracts of operations with credit cards debit and credit, contracted products and payment history.

It is important that you know that we will not treat data observed in the maintenance of products and services that may contain information that reveals their origin racial or ethnic background, your political opinions, your religious or philosophical convictions, your

union affiliation, the processing of genetic data, biometric data aimed at

uniquely identify you, data relating to health or data relating to your

life or sexual orientation (“Sensitive Data”).

□

□

their status as a shareholder, or not, of CaixaBank.

digital data: the data obtained from the communications that we have

established between you and us in chats, walls, video conferences,

telephone calls or equivalent means and the data obtained from your

browsing our web pages or mobile applications and the

navigation that you carry out in them (device ID, advertising ID, address

IP and browsing history), in the event that you have accepted the use of

cookies and similar technologies on your browsing devices.



□

geographic data: the geolocation data of your mobile device

provided by the installation and/or use of our mobile applications,

when you have authorized it in the configuration of the application itself.

> Data inferred or deduced by CaixaBank Payments & Consumer from the analysis and

treatment of the rest of the data categories. These data are:

□

□

grouping of customers into categories and segments based on their age,

assets and estimated income, operations, consumption habits, preferences or

propensities to contract products, demographics and relationship with others

clients or categorization according to the regulations on Instrument Markets

Financial (“MiFID”).

scoring scores that assign probabilities of payment or default or

risk limits.

> Data that you have not provided us directly, obtained from sources

accessible to the public, public records or external sources. These data are:

- 
- 
- 
- 
- 
- 

capital and credit solvency data obtained from Asnef files and

Badexcug.

data on risks held in the financial system obtained from the database

of data from the Risk Information Center of the Bank of Spain

(CIRBE).

data of persons or entities that are included in laws, regulations,

guidelines, resolutions, programs or restrictive measures regarding

international economic-financial sanctions imposed by the United Nations

Nations, the European Union, the Kingdom of Spain, the United Kingdom and/or the U.S.

Department of the Treasury's Office of Foreign Assets Control (OFAC).

cadastral or statistical data obtained from companies that facilitate studies

socioeconomic and demographic statistics associated with geographical areas or

ZIP codes, not specific people.

digital data obtained from your browsing through third-party web pages (ID

device, advertising ID, IP address, browsing history), in the case of

that you have accepted the use of cookies and similar technologies in your

navigation devices.

data from social networks or the internet, that you have made public or that we

authorize to consult."

CaixaBank Payments & Consumer, E.F.C., E.P., S.A.U. states that the date

publication of the new privacy policy is dated January 18, 2021 and that said

privacy policy replaces the previous one, which had been in force since the 21st of

July 2019 until January 17, 2021.

SEVENTH; It also states in its response brief to the request for

information made during the test period that the information is provided

provided to carry out treatment for commercial purposes, previously

provided in the response to the request for information received on the 6th of

February 2020. It also states that "Although they have been planned, they have not yet been

made changes to the aforementioned information since its contribution in the

response to the request for information, pending the resolution of the request



of application of precautionary measures related to the Sanctioning Procedure to

CAIXABANK, which could affect the modifications of the aforementioned

documentation, planned at this time."

It is stated that said information is provided in the document called CONDITIONS
GENERAL OF THE APPLICATION-CREDIT CONTRACT, in whose header
The entity CaixaBank Payments & Consumer appears and the date April 10, 2020.
The content of said document coincides with the one sent after the request of the
Data Inspection carried out on February 6, 2020 as annex 12.
This document is structured in various sections, of which number 26
contemplates in different sections various aspects of data processing such
as the different treatments according to their basis of legitimacy, the exercise of rights
by the interested parties or the period of conservation of the data among others
issues. Thus, section 26.1 refers to the Processing of personal data
personnel for the purpose of managing Business Relations; section 26.3 to
processing of personal data for regulatory purposes, this
section in turn is divided into various subsections such as those relating to
Treatments for the adoption of due diligence measures in the prevention of
money laundering and financing of terrorism (26.3.1), treatment for the
compliance with financial sanctions and countermeasures management policy
International (26.3.2), communication with credit information systems (26.3.3.),
communication of data to the Risk Information Center of the Bank of Spain
(26.3.4), etc Section 26.4 refers to the Treatment and transfer of data with
commercial purposes by CaixaBank and the companies of the CaixaBank Group based
in consent. Sections 26.1 and 26.4 are transcribed in point
6 of the third proven fact.

EIGHTH: It is stated that attached to the brief in response to the request for
information made during the trial period a document called
Framework Agreement in whose header appears "CaixaBank", and in whose section 4.1 it is

indicates that “the person responsible for processing your personal data in their relationships

contractual and business contracts is CaixaBank, S.A. with NIF A08663619 and address at

Calle Pintor Sorolla, 2-4 Valencia. Adding the following:

“Co-responsible for treatment: In addition, for certain treatments that are

reported in detail in the aforementioned policy, CaixaBank and the companies of the Group

CaixaBank will jointly process your data, jointly deciding the

objectives (“what the data is used for”) and the means used (“how the data is used”).

data"), being, therefore, co-responsible for these treatments. Treatments for

which CaixaBank and the companies of the CaixaBank Group will treat jointly

your data is the following: > carry out the commercial activities of: (i) analysis of

your personal data for the elaboration of profiles that help us to offer you

products we think may interest you; (ii) commercial offer of products and

services through the selected channels, and (iii) transfer of data to companies that do not

they are part of the CaixaBank Group; (…)

You will find the list of companies that process your data, as well as the aspects

essentials of treatment agreements in co-responsibility in:

www.caixabank.es/empresasgroup.”



On the point. 4.5 of said document under the title "What treatments do we carry out with

your data, indicates regarding the treatments based on consent the

following purposes:

“− Analysis of your data to create profiles that help us offer you

products that we think may interest you.

− Make our commercial offer of products and services available to you for the

selected channels.

− Transfer of data to companies that are not part of the CaixaBank Group so that they can

make commercial offers of products that they commercialize.

− Identification of clients and signature of documentation through the use of biometrics.

− Application of personal conditions in co-ownership contracts.”

This document is not dated. It is stated in the reply brief to the

request for information made during the trial period that has been

included among the documentation sent “the information provided to the

Interested parties to obtain their consent to carry out treatments

for commercial purposes, when the consent is collected from the banking channel

(CAIXABANK). This documentation, provided previously in the course of the

CAIXABANK Penalty Procedure, was modified in March 2021, in the

framework of the aforementioned actions aimed at the implementation of the new policy

Of privacy."

NINTH: It is stated that during the trial period the following have been provided

documents:

 Screenshots in which the consent of the clients is obtained:

~

A screenshot of the prescriber channel, which exactly matches the

the one described for said channel in point 5 of the third proven fact of the

this motion for a resolution.

~

New office client registration screen capture (face-to-face onboarding, in the

that the following is stated: "deliver the tablet to the client so that he can complete

himself the consents” and screenshots of the new client Portal

Web (digital onboarding). In both modes, information is provided

basic for the client on the treatment of personal data indicating that the

responsible for the treatment is: “Caixabank, with NIF A08663619 and address at

Calle Pintor Sorolla, 2-4 Valencia. Co-responsible for the treatment “For

certain activities Caixabank, S.A. and the companies of the Group

Caixabank will jointly process your data. You will find the list of

companies that process your data, as well as the essential aspects of the

agreements

in

treatment

www.caixabank.es/empresasgroup.”

co-responsibility

of

in

Regarding the consents, it is indicated in both modalities that

“You authorize the companies of the CaixaBank group to:

Analyze your data to create profiles that help us offer you

products that we think may interest you. If we have your consent,



we will configure or design an offer of adjusted products and services

to your characteristics as a client, through the analysis of your data and the

profiling with your information.”

Below are two boxes where you can check yes or no. In

other sections consent is requested to communicate the commercial offer

of products and services through the channels that are selected and to transfer the data

to companies that are not part of the Caixabank Group with which they have

agreements.

Regarding the analysis treatments for profiling, it is provided

also in both modalities the following information: These treatments

have your consent as a legal basis, as established in article

6.1.a of the General Data Protection Regulation. It is reiterated to

Below is the information offered in the privacy policy relating to this

type of treatment regarding the purpose, categories of data processed and

co-responsible for the treatment. However, regarding the data

Processed indicates: “the categories of data that we will process for this purpose

whose content is detailed in section 5 of our Privacy Policy

(www.Caixabank.es/privacy policy) are: data that you will give us

provided, data observed in the maintenance of products and services

with the exception of sensitive data, data inferred or deduced by Caixabank,

data that you have not provided us directly.” not listed in any of

the screens the description of this data.

 Co-responsibility agreement.

Said Agreement is undated and unsigned. Number 4 of said agreement,

Regarding the duration, it states that “This Agreement shall enter into force on the date

of your signature and will remain in force indefinitely, without prejudice to the revision

and necessary modifications of its terms and content for its adaptation in its

case, to the current regulations that are applicable at all times...”

Said agreement contains the following definition: “Co-responsible for the Treatment or

Co-responsible: Means those responsible who jointly determine the

objectives, purposes and means of Treatment detailed in Annex 1.” At

The aforementioned annex mentions the following treatments subject to co-responsibility

Regarding “commercial activities”:

indicated in

analysis of personal data for the preparation of profiles that

to)

help offer products that we believe may be of interest to the customer F

Purpose: The purpose of this data processing is to use the categories of

data

CaixaBank's Privacy Policy

(www.caixabank.com/politicaprivacidad) to create profiles that allow users to

Co-responsible identify the customer with similar customer segments

characteristics to be able to offer you products and services that may interest you,

as well as, to establish the periodicity with which the Joint Controllers

relate to him.

Legitimizing basis: The legitimizing basis of this treatment is the consent

granted by the interested parties.



Commercial offer of products and services through the selected channels.

b)

Purpose: The purpose of this data processing is to make available to the client communications of commercial offers related to products and services own or of third parties marketed by CaixaBank and/or the entities of the Group CaixaBank. These communications will only be sent to the client by the channels that he has previously authorized us by giving his consent.

Legitimizing basis: The legitimizing basis of this treatment is the consent granted by the interested parties.

c)

transfer of data to entities that are not part of the CaixaBank Group

Purpose: The purpose of this treatment is to transfer the data of the interested parties to entities that are not part of the CaixaBank Group with which Co-responsible parties have agreements, with the purpose that they carry out commercial offers of the products they sell.

Legitimizing basis: The legitimizing basis of this treatment is the consent granted by the interested parties.

Then list the co-responsible parties, which would be the following:

CAIXABANK, S.A.

CAIXABANK PAYMENTS & CONSUMER, E.F.C., E.P., S.A.U.

CAIXABANK ELECTRONIC MONEY, EDE, S.L

VIDACAIXA, S.A.U., OF INSURANCE AND REINSURANCE

NEW MICRO BANK, S.A.U.

CAIXABANK EQUIPMENT FINANCE, S.A.U

PROMO CAIXA, S.A.U.

COMERCIA GLOBAL PAYMENTS, E.P. SL

BUILDINGCENTER, S.A.U.

IMAGINTECH, S.A.

In successive annexes other treatments subject to

co-responsibility, whose legitimate basis is found in the fulfillment of

legal obligations or the execution of contractual relationships.

□

Contract signed with the entity ***EMPRESA.3 for the risk score activity.

As indicated in said contract, dated June 2, 2020, the

contract signed on May 2, 2017, extended in turn on May 2,

May 2019 to incorporate the services listed in Annex I (which do not

Attached). CAIXABANK and CAIXABANK PAYMENTS are parties to said contract

& CONSUMER and the entities (...), designating the latter two

jointly as SUPPLIER.

This document contains two clauses:

The first clause of said contract regarding the modifying novation does not

termination of clause 15 of the contract, replaces the aforementioned clause with effect

retroactive to May 25, 2018, with new elements related to the person in charge

of treatment, in order to adapt the risk score services to the obligations

regulations contained in the LOPDGDD and in the RGPD.

In the second of the clauses, it is agreed to include in Annex I (Annex of

services) a clause relating to specific aspects of data processing of

personal nature of the risk score service. This clause refers to the

description of the treatment, indicating that for the sole purpose of providing the

risk score service CAIXABANK AND CAIXABANK PAYMENTS & CONSUMER

make the following information available to the supplier “(…).” are pointed to

then the following treatments by the supplier: exploitation,

query and destruction; the typology of the data (DNI (NIE/Passport) and categories

of interested parties affected (customers, non-customer participants). Refering to

purpose of the treatment it is indicated that the provider will use the data of a

personal object of treatment solely and exclusively for the fulfillment of the

ANNEX I, not being able to use them, in any case, for their own purposes. Said annex

not attached.

TENTH: In the written response to the request for information made

during the trial period it is stated that the turnover of the Group or

CAIXABANK as of December 31, 2020 is estimated at twelve thousand one hundred and seventy-two

millions of euros.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679,

of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of

Natural Persons with regard to the Processing of Personal Data and the Free

Circulation of these Data (General Data Protection Regulation, hereinafter

RGPD) recognizes each Control Authority, and according to what is established in the articles

47, 48, 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 Agency for Data Protection is competent to initiate and

resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Previously, it is considered appropriate to analyze the allegations made by

CAIXABANK PAYMENTS & CONSUMER, E.F.C., E.P., S.A.U. (hereinafter CPC) in

based on which the declaration of nullity of the proceedings is requested.

1. In the first of them, an insufficient reasoning of the initiation agreement is alleged.

It is alleged by CPC that there is no direct connection between the content of the claim

inadmissible and the initiation of preliminary proceedings.

This Agency cannot share such an allegation, the connection between a

claim in which consultation treatment is alleged to a system of

credit information and a commercial offer of a product, for which it has been

profiling, all without the consent of the claimant, and the initiation of



investigation actions of the AEPD on the procedures for obtaining the

consent in the profiling procedures carried out by CPC when

that constitutes the legal basis that legitimizes said treatments.

Regarding the fact that relevant information for the defense has been omitted, since in the

initial agreement no reference was made to the fact that the interested party filed an appeal

of reinstatement to the inadmissibility of his claim and that it was estimated by the

AEPD, it should be noted that in the initial agreement no reference was made to such fact, to the

that the relevance granted by the CPC is not attributed to it, since the resolution itself of inadmissibility of the claim, of which the claimant is notified, warns that without prejudice to this result "the Agency, applying the powers of investigation and corrective actions that it holds, can carry out subsequent actions related to the treatment of data referred to in the claim".

Notwithstanding the foregoing, said information was included in the proposed resolution for greater clarity of the background that gave rise to the initiation of proceedings research, so that CPC has been aware of it within the framework of the procedure, being able to allege whatever it has deemed convenient.

2. The second refers to the alleged breach of article 55.1 of the LPACAP, in connection with article 53 of the LOPDGDD, considering that the data inspection has gone beyond the limits, without this being its function, by expanding the scope of the previous investigation actions defined by the head of the body administrative. This allegation is based on the fact that the field of investigation determined by the Director of the AEPD refers to clients, while the document for which information is required from CPC refers to "potential clients". It states CPC that although the Agency acknowledges that there has been a transcription error and that there are no such treatments, the fact that there are no such treatments does not decrease the overreach initially raised, since although he does not know what would have happened if such treatments had existed, "it is reasonable to think that the research would have been carried out outside the scope specified by the Director of the AEPD"

Again, this Agency cannot share such reasoning. This agency has acknowledged in the motion for a resolution that there has been an error of transcription in the requirement of the Subdirectorate of Inspection by which requested information from CPC, when referring not only to clients, but also also to "potential customers". However, no action has been taken on

data processing not included in the scope of research set by the Director

of the AEPD, the CPC itself has stated, in the information provided on the occasion of

such a requirement, that such treatments are not carried out with "potential clients" and

Consequently, it has not provided any information in this regard. On the other hand, the

CPC's assertion that although it does not know what would have happened if such treatments

would have existed, but “it is reasonable to think that the investigation would have been carried out

carried out outside the scope specified by the Director”, lacks the most absolute

basis. In the opinion of this Agency, in no way can it be admitted that a

unfounded assumption constitutes a cause for annulment of the procedure.

3. The third of the allegations refers to an alleged violation of the

principle non bis in idem, considering that the same collection of consents

for the elaboration of profiles was investigated and sanctioned in the



Penalty procedure against CAIXABANK, S.A, number PS/00477/2019.

Understands that there is identity of subject, fact and foundation, since CPC forms

part of the CaixaBank group, which means that many treatments are carried out in

co-responsibility regime, in particular the treatment based on the

consent, described as “Analysis of your data for profiling

to help us offer you products that we think you may be interested in”, which

It appears in letter 6.1.A of the privacy policy of Caixabank, S.A.

This Agency cannot accept such an allegation either. The resolution of PS/00477/2019,

limits its action to certain actions of the entity CAIXABANK, S.A.,

expressly excluding “the action that may be carried out by companies that

make up the so-called "CaixaBank Group" to comply with the principle of

transparency or the specific procedures that have been enabled to collect the

consent of its clients for the processing of personal data that they carry or

intend to carry out, or in relation to the other aspects outlined.”

To this must be added that the co-responsibility regime referred to

not only is it not accredited but, in the opinion of this Agency, it is not even

admissible its existence in the present case, as will be seen later. In this

sense, it cannot be admitted that the Agency has reversed the burden of proof as

alleges CPC, it is CPC who affirms the existence of co-responsibility to exonerate

of her responsibility, and therefore it is up to her to prove her

existence.

On the other hand, even assuming that there is co-responsibility in the

treatment, which in the opinion of this Agency does not happen in the present case as

As indicated in the previous paragraph, the sanction for each of those responsible for

itself would not imply a violation of the non bis in idem principle. regimen

co-responsibility does not determine that all responsibility applies to a single

subject, but each co-responsible will be responsible for the part of the treatment that takes

finished. In this sense, what is indicated by the CJEU in the

Judgment of June 5, 2018, in case C-210/16. (Wirtschaftsakademie)

“… the existence of joint liability does not necessarily translate into

an equivalent responsibility of the various agents involved in a

treatment of personal data. Instead, those agents can file a

involvement at different stages of that treatment and to different degrees, so that

the level of responsibility of each of them must be evaluated taking into account

all the relevant circumstances of the specific case.”

4. Fourthly, an arbitrary action by the AEPD is alleged, proscribed by the

article 9.3 of the Spanish Constitution. CPC affirms that it is an action

arbitrary that does not objectively pursue the general interest, also evidencing a

discriminatory treatment with other administrators.

It states that CAIXABANK, S.A. shared with the AEPD aspects for which now

intends to sanction CPC, requesting a meeting or contacts in order to obtain and

adopt criteria and recommendations that the AEPD would have wanted to transfer to the

In this regard, efforts that did not work despite the insistence of

CAIXABANK, S.A., therefore understands that this group adopted a diligent and



preventive, the effect being that the AEPD has adopted an exclusively

punitive with the CAIXABANK group.

Such allegations are not admissible.

The GDPR introduces the principle of

proactive responsibility as a fundamental element of compliance with its

forecasts, incumbent said obligation to the person in charge. As established by the

article 24 of said rule, it is up to the data controller to apply the

appropriate technical and organizational measures to ensure that the treatment is

in accordance with the RGPD, or, in the terms of recital 74 of the same standard:

“In particular, the person responsible must be obliged to apply timely measures and

effective and must be able to demonstrate compliance of processing activities with

this Regulation, including the effectiveness of the measures”. This is not required

Agency to issue any opinion or assessment on compliance with the regulations of data protection of the treatments carried out by a person in charge at the request of this, except in the case of prior consultation provided for in article 36, case before which we are not in this proceeding. On the other hand, although this The Agency has various channels so that those responsible can present their Doubtless, the reports that could be issued through such channels lack binding nature, so it cannot be justified in the absence of an opinion of the AEPD on the treatments of the person in charge, the breach of the obligations of this.

The allegations concerning the alleged unequal treatment between entities from one sector and another that focuses on the ex officio plan on contracting distance in telecommunications operators and energy marketers. What the very name of the plan indicates, its objective is remote contracting and not only in the telecommunications sector, but also in the energy sector in the This type of contracting is also used. The implementation of this plan proceedings does not derive from the percentage of claims received during a year in one sector or another, but that its realization was included in the strategic plan 2015-2019 of the AEPD, in view of the problems that this type of hiring raises, particularly in aspects such as identity theft or fraudulent hiring, as the plan itself exposes. It is a general problem, which justifies an ex officio action by this Agency and not by a specific breach of data protection regulations by a entity, as in the present case. On the other hand, the fact that it is carried out carry out a plan ex officio by the AEPD does not imply that the entities of the sector object of the same are not sanctioned in the event that a claim is received that determines the origin of investigative actions and, where appropriate

sanctioning. In this sense, it should be remembered that this Agency has the obligation to publish their resolutions, just by looking at the ones that appear on their website, to verify that it does not limit its punitive action to certain sectors of activity.

CPC also bases the alleged discrimination of treatment with respect to other interested parties in the affirmation that the resolutions of procedures are reiterated sanctions of the AEPD in which the person responsible for the treatment is sanctioned for violation of article 6 RGPD (vid. PPSS 00235/2019, 00182/2019, 00415/2019) and that, taking into account the condition of a large company and volume of business, others, the sanctions are far from reaching the economic level of the proposed sanction contained in the Home Agreement, since they are sanctions that have ranged



between €60,000 and €120,000. He also states that it is not understood on what is based the Agency to modulate the economic sanctions since the Initiation Agreement neither motivates or minimally explains the application of the graduation criteria of the sanction, nor the fact of deviating from them in the proposed sanction, in the case of very similar events. He alleges that the proposed resolution has not entered into Evaluate these concrete examples.

Nor can these claims be accepted. To determine the sanction to be imposed in In each case, this Agency takes into account the elements established in article 83 of the RGPD, as well as those established in article 76.2 of the LOPDGDD, said elements, as is known, not only refer to the offending type, the condition of large company or turnover, so the CPC claim that other

procedures in which these three elements coincide and the sanction is less,
carried out without greater precision that justifies the alleged discrimination of treatment
With respect to other interested parties, it cannot be taken into account as a cause that
determine the nullity of a procedure. However, it should be added that such
elements are the only thing these procedures have in common with the one now
processed, since the other elements of graduation of the sanction that have been
considered to determine the sanction in this procedure and the contents
in the resolutions to which CPC refers are not comparable, nor for the
nature and seriousness of the infraction, nor by the number of those affected (only the
claimant in the cases mentioned), to mention only some of the
aggravating factors taken into account in this proceeding and that were not present in the
assumptions to which CPC refers.

With regard to what was stated by CPC regarding the agreement to initiate this
procedure, it should be remembered that the initiation agreement itself lists the
circumstances that could influence the determination of the sanction. In this sense,
the agreement to initiate the procedure is in accordance with the provisions of article
64.2.b of the LPACAP, according to which the initiation agreement must contain at least:
b) “the facts that motivate the initiation of the procedure, its possible qualification and the
sanctions that may correspond, without prejudice to what results from the investigation.”
In this sense, article 68 of the LOPDGDD is also expressed, according to which
it will suffice for the agreement to initiate the procedure to specify the facts that
motivate the opening, identify the person or entity against which the
procedure, the infraction that could have been committed and its possible sanction. At
present course the initiation agreement goes even further by mentioning the possible
circumstances that could influence the determination of the sanction, always without
prejudice to what results from the instruction, which is why they are not

developed in the aforementioned agreement, although they are indicated for the sake of a better possibility of defense by the entity against which the procedure is directed and, where appropriate, to be able to make use of the provisions of article 85 of the LPACAP, paying voluntarily and obtaining the reductions of the sanction established by said precept.

5.Fifth, it is alleged that CPC is defenseless by violating its presumption of innocence, which is based on the following way "we are before the beginning of a sanctioning procedure, preceded by a request for prior information of February 6, 2020. Well, before the administrative deadline expired mandatory to respond to said request, specifically, on March 3, in an act of ISMS Forum held in Madrid, as already described in



detailed above, the Director of the AEPD, the highest authority of the institution, and competent person to resolve this file, publicly stated about the existence of two or three high-impact sanctioning procedures that were going to have a lot of media coverage in relation to the financial sector." reiterate in another paragraph, after considering that in accordance with articles 24.2, 103. 1 and 3 EC –and art. 6.1 of the European Convention on Human Rights-, any action of the Public Administration must obey the principles of objectivity and impartiality; "However, in this case, without having yet assessed the response to the information request, since it was submitted on June 2, 2020 (almost three months after the aforementioned declarations of the Director), the person who has to resolve, and on whom, in addition, as the highest authority, depend

hierarchically inspectors and instructors of the AEPD, far from keeping any

appearance of justice decided (publicly) that there would be a sanction, and this without just

having agreed to initiate sanctioning proceedings."

In this regard, it should first be noted that CPC's assertion that

there was a decision already taken before the procedure itself was processed

sanctioning party lacks the slightest factual support. Such an interpretation cannot be accepted.

the Director's statements made in the context of statements on the

significance of the ongoing sanctioning procedures due to the amount of

the fines, nor did it predetermine the decision to be taken in said procedures, nor much

could at least refer to an entity such as CPC, with respect to which not only

had initiated a sanctioning procedure, but had not even presented

still the documentation that later justified the opening of this

process.

It should be remembered here that, in the sanctioning administrative sphere, impartiality

of the decision-making body is linked to the right of the interested party to a process with all

the guarantees. It is guaranteed with the reasons for abstention or recusal and with the due

separation between the phases of investigation and resolution of the procedure

sanctioning, separation between phases that is scrupulously respected in all

procedures of this nature followed in the AEPD.

For the sake of legal certainty, the grounds for abstention or recusal have been

regulated through an exhaustive list of circumstances that respond to reasons

objective, thus avoiding that the interested parties can appreciate causes of

abstention or recusal based on own or particular criteria. In our

administrative order, the appearance of partiality is estimated by the

concurrence, objectively justified, of the reasons regulated in articles 23 and

24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector

(LRJSP):

“Article 23. Abstention.

1. The authorities and personnel at the service of the Administrations in which they occur.

Some of the circumstances indicated in the following section will refrain from

intervene in the procedure and notify their immediate superior, who

will resolve the issue.

2. The following are grounds for abstention:



a) Have a personal interest in the matter in question or in another whose resolution

could influence his; be an administrator of an interested company or entity, or have

pending litigation with an interested party.

b) Have a marriage bond or assimilable de facto situation and the kinship of

consanguinity within the fourth degree or of affinity within the second, with

any of the interested parties, with the administrators of entities or companies

interested parties and also with the advisers, legal representatives or agents that

intervene in the procedure, as well as sharing a professional office or being

associated with them for advice, representation or mandate.

c) Having close friendship or open enmity with any of the persons

mentioned in the previous section.

d) Having intervened as an expert or as a witness in the procedure in question.

e) Have a service relationship with a natural or legal person directly interested in

the matter, or have provided in the last two years professional services of

any kind and in any circumstance or place.”

“Article 24. Challenge.

1. In the cases provided for in the previous article, a challenge may be filed by the stakeholders at any time during the processing of the procedure.

2. The challenge will be raised in writing in which the cause or causes will be expressed in which is founded”.

It is, ultimately, that the person making the decision has no personal interest in the matter and has not intervened in the procedure as an expert or witness, so that it can decide according to the general interest, without any type of influence outside that interest that can lead you to decide in a certain way.

On the other hand, in accordance with the doctrine of our Constitutional Court, that is demanded of public servants is not personal and procedural impartiality that is required of judicial bodies, but that they act with objectivity and subjection to the right.

Thus, in the STC 174/2005, of July 4, the following is declared: "In this regard, recall that although this Court has reiterated that, in principle, the requirements derived from the right to a process with all the guarantees apply to the sanctioning administrative procedure, however, it has also been made special incidence in which said application must be carried out with the required modulations to the extent necessary to preserve the essential values found in the basis of art. 24.2 CE and the legal certainty guaranteed by art. 9.3 CE, as long as they are compatible with its own nature (for all, STC 197/2004, of November 15, FJ 2). More specifically, and with regard specifically to the guarantee of impartiality, it has been pointed out that it is one of the cases in which it is necessary modulate its projection in the sanctioning administrative procedure, since said guarantee “cannot be predicated of the sanctioning Administration in the same

sense than with respect to judicial bodies" (STC 2/2003, of January 16, FJ 10), therefore, "without prejudice to the prohibition of all arbitrariness and the subsequent review of the sanction, the strict impartiality and independence of the organs of the The judiciary is not, by essence, predicable to the same extent as an organ administrative" (STC 14/1999, of February 22, FJ 4), concluding that the independence and impartiality of the judge, as a requirement of the right to a trial with all the guarantees, it is a characteristic guarantee of the judicial process that is not extends without more to the sanctioning administrative procedure (STC 74/2004, of 22 of April, FJ 5)".

And the STC 14/1999, of February 22, states the following: "An erroneous understanding of the content of the constitutional requirements of judicial impartiality and its purported transfer in totum to who intervenes in the administrative procedure sanctioning officer as an Instructor, leads the appellant to affirm the injury of his right to a process with all the guarantees. (...) It is worth reiterating here again, as we did in the STC 22/1990 (4th legal basis), that "without prejudice to the interdiction of all arbitrariness and the subsequent judicial review of the sanction, the strict impartiality and independence of the organs of the judiciary is not, essence, predicable to the same extent of an administrative body". What of the Instructor can be claimed, ex arts. 24 and 103 C.E., it is not that he acts in the situation of personal and procedural impartiality that is constitutionally required of the organs courts when they exercise jurisdiction, but rather act objectively, in the sense

that we have given to this concept in SSTC 234/1991, 172/1996 and 73/1997, is

that is, performing their functions in the procedure with personal disinterest. TO

This purpose addresses the possibility of recusal established by art. 39 of the Law

Organic 12/1985, of the Disciplinary Regime of the Armed Forces (hereinafter

L.O.R.D.F.A.) that refers to art. 53 of the Military Procedural Law, whose catalog of

causes bears, in this area, an obvious similarity, with that provided for in the Organic Law

of the Judiciary, although those listed in one and the other obey, as

exposed, on a different basis. (...) None of the reasons given can be

taken care of, not only because, in general, and as stated before, there is no

the doctrine can be transferred without further ado to the administrative sanctioning sphere

constitutional drafted about the impartiality of the judicial organs, but

because in the present case, and in attention to the configuration of the legal causes of

challenge, it is not possible to appreciate the concurrence of any element that demanded the

withdrawal of the Instructor due to loss of the necessary objectivity. not seen in

the Instructor questioned, nor has the interested party provided any justified data to the

respect, the presence of direct or indirect personal interest in the resolution of the

disciplinary record (…)".

In this regard, it should be borne in mind that, in order to declare the nullity of the

actions for the alleged reasons, it is necessary to fully demonstrate the

concurrence of one of those reasons that could have effectively influenced

in the decision adopted by the present resolution.

It is considered appropriate to record in this act the non-attendance of any

of the causes of abstention or recusal established in the transcribed precepts,

which allows us to conclude that the alleged lack of impartiality does not exist. not interested

personnel in the object of the procedure; no bond, friendship or enmity with the

interested; nor has he intervened as an expert or witness in the proceeding.

In the present case, although CPC alleges lack of impartiality of the body resolution, has not formally raised the challenge of the Director of the AEPD, acknowledging in his allegations that "he already assessed at the time that they did not attend the assumptions of abstention of article 23.2 of Law 40/2015, and, consequently, requesting the challenge suggested in the Proposed Resolution was not considered."

On the other hand, this resolution is adopted in accordance with Law, according to criteria objectives, and without the decision-making body having prejudged the matter in question through previous formal actions or through their intervention in previous phases of the procedure. This intervention has not taken place in any way, beyond the adoption of the agreement to open the procedure as established by the regulations applicable procedure.

Neither the statements of the Director of the AEPD referred to by CPC, nor any other circumstance, have broken the impartiality of the investigating body, which has disposed of all the powers attributed to it by the regulations in question and fully freedom to dictate its motion for a resolution.

On the other hand, the instruction of the procedure has been in accordance with the regulations procedural, without any irregularity being detected in the processing of the procedure, in which, in addition, all the guarantees of the concerned, including the presumption of innocence.

The intervention of the Director in the event held on 03/03/2020 is related, with the adoption of the agreements to open the procedures referred to

CPC in their allegations, both from the financial sector. Reference to these agreements as having a broad impact for the affected sectors and with media relevance has to do with the novelties regulated in the RGPD and, in particular, those related to the new compliance and supervision model. In relation to the latter, they highlight the important amounts contemplated in the Regulation in order to what, how intended by said rule, may have a dissuasive nature.

6. Sixthly, it is stated that there is a breach of the principle of legitimate expectations in the administrative action, which is based on the fact that as a result of the complaint to which refers to the factual background first of the initiation agreement, the AEPD gave transfer of the same on November 29, 2018 to the Protection Delegate of Data, and that on February 7, 2019, agreed to the non-admission for processing of the claim filed fact that generated on CPC the legitimate confidence of its acting in accordance with the law; months later, preliminary actions of investigation, allegedly based on the Complaint, resulting in the Home Agreement.

In this regard, as stated in the first factual record, the The claim presented constitutes a fact that gives rise to the action of investigation of the inspection, not on the specific fact denounced, but on the way in which said entity carries out the profiling treatment in its treatments based on consent. The decision of inadmissibility itself shows that the AEPD can carry out other actions with respect to the treatments object of complaint. It is thus stated in said resolution that "This is without prejudice to the fact that the Agency,

applying the investigative and corrective powers that it holds, can carry out

subsequent actions related to the processing of data referred to in the claim.”

On the other hand, CPC forgets that the resolution of inadmissibility can be appealed by the

claimant, as happened in this case and be estimated. To this it should be added that

At no time did this Agency state that the treatments carried out by

CPC were in accordance with the provisions of the data protection regulations,

limiting itself to initially accepting the allegation that it was a punctual error,

without prejudice to the fact that the Director of the AEPD, in view of the claim, ordered

an investigation into the way in which CPC carried out the treatments of

profiled when its legitimate basis is consent.

7. The last of the allegations refers to an alleged artificial extension of

the previous actions affirming that “The previous investigation actions

agreed by the AEPD supplanted the instructor activity, having been

prolonged until almost their expiration. And that the “The Home Agreement rests,

practically in its entirety, in cargo elements collected during the phase of

previous performances.”

As stated in the ruling of the Supreme Court of May 6, 2015

brought up by CPC “Article 69.2 prescribes, by regulating the procedures

initiated ex officio, that "prior to the initiation agreement, the body may

authority to open a period of prior information in order to know the

circumstances of the specific case and the advisability or not of initiating the procedure".

The meager regulation of said period highlights that the legal purpose is limited to

frame an administrative verification activity without setting a specific deadline

of duration and without regulating or limiting the actions that the

Administration in said period. Strictly speaking, the only meaning of declaring open

a period of prior information is to legally frame an action

administrative that in any case could be carried out by the Administration under its

powers of control or supervision in the area in question. This is the

Administration can initiate ex officio procedures of a very diverse nature, among

those that are intended to verify compliance with requirements

-as in the present case- or the sanctioners, and prior to the initiation of one

of such files can carry out checks whose scope will depend on the

existing material regulation in said area, that is, of the obligations to which

the individual is subject and of the specific powers of control that are attributed

to the Administration in said matter in order to verify if there are indications that

may lead to the convenience of initiating a formal non-compliance file,

sanctioning, or of another nature. Well, if that checking activity

initial is possible under the powers of inspection or control held by the

Administration in various material fields, all the more you will be able to do it if

formally opens a period of prior information whose only meaning would be, as

It has been indicated before, framing said verification action in a legal framework

explicit."

It should be noted here that although article 69.2 of Law 39/2015 referred to in the

sentence, does not set a specific term for such actions, article 67.2. of the

LOPDGDD does, setting it at 12 months from the date of the agreement by

the one who decides his initiation; there is no consequence that the Administration does

use of all the time available to carry out such actions as long as they do not

exceeds the same, assumption in which the expiration of the actions of

research.

As for the fact that the previous investigative actions superseded the activity

instructor does not explain CPC what specific procedure carried out within the framework of the

preliminary investigation actions is actually an administrative procedure that

should have been held within the sanctioning procedure, nor what procedure or procedures

specific of the sanctioning procedure have been supplanted by the actions

previous, nor what steps of the procedure have been avoided because of the

previous actions carried out.

On the contrary, prior investigative actions were carried out perfectly

justified, in order to achieve a better determination of the facts and

circumstances (article 67 LOPDGDD), during which information was collected

necessary for the determination of the facts, without carrying out during the course of

the same procedure any of the sanctioning procedure, which began in

based on the evidence obtained and for the sole purpose of applying the regulatory provisions

established.

During the investigation phase, a request for information was sent to CPC

requesting a list of personal data processing carried out in

development of its commercial activity that imply the elaboration of profiles,

providing the following information with respect to each treatment: definition of the

logic applied to profiling and the anticipated consequences of such processing for the

interested; description of the purpose of the treatment and basis of legitimacy in which it is

sustains; procedure followed to comply with the duty of information to the

interested; means used to collect consent in the event that the

treatment activity is covered by article 6.1.a of the RGPD; categories of

interested parties and personal data subject to treatment; origin of personal data object of treatment; if applicable, list of managers who participate in the activity treatment and copy of the contracts that govern the order; description of the technical and organizational security measures applied under article 32 of the GDPR to profiling activity; if applicable, a copy of the impact assessment of protection of personal data and the number of interested parties whose personal data have been treated in the development of the profiling activity by category (customer, potential client) and year (2018 and 2019).

In view of the foregoing, it cannot be said that in this case the previous actions were not necessary or were not carried out to collect data and evidence on the acts committed and those responsible.

III

The actions outlined in the background of this resolution have as purpose of analyzing the procedure for obtaining consent in the profiling procedures carried out by CaixaBank Payments & Consumer, E.F.C., E.P., S.A (CPC) when it constitutes the legal basis that legitimizes said treatments.



Therefore, the conclusions that could be derived from this procedure they will not imply any pronouncement on other aspects related to said treatment, such as the intervention of treatment managers, the adequacy of the impact assessments provided to the provisions of the RGPD or the measures of

security established with respect to said treatment, nor about other treatments of

profiled whose legal basis, according to CPC, is to comply with

regulatory requirements.

IV

Article 4.4 of the RGPD defines “profiling” as “all forms of

automated processing of personal data consisting of using personal data

to assess certain personal aspects of a natural person, in particular

to analyze or predict aspects related to professional performance, situation

financial, health, personal preferences, interests, reliability, behavior,

location or movements of said natural person.

As all data processing must comply with the principles established in the

article 5 of the RGPD. Said article provides that “1. The personal data will be: a)

processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness,

loyalty and transparency»);

In accordance with the provisions of letter a) of said precept, the personal data

must be treated lawfully. In this regard, the above is taken into account.

in recital 40 of the RGPD, according to which: “In order for the treatment to be lawful, the

personal data must be processed with the consent of the interested party or

any other legitimate basis established in accordance with Law, either in the present

Regulation or by virtue of another Law of the Union or of the Member States to which

referred to in this Regulation, including the need to comply with the legal obligation

applicable to the data controller or the need to perform a contract in the

that the interested party is a party or in order to take measures at the request of the interested party

prior to the conclusion of a contract.

The provisions of the Guidelines on individual decisions are taken into account

automated and profiling for the purposes of Regulation 2016/679,

adopted by the Working Group on Data Protection of article 29 on the 3rd of

October 2017, last revised and adopted on February 6, 2018 and

approved by the European Data Protection Committee at its first meeting

plenary, that when referring to consent as a legal basis for processing

recalls that “Profiling can be opaque and is often based on

on data derived or inferred from other data, rather than on information provided

directly by the interested party. Those responsible for the treatment that intend

rely on consent as the basis for profiling shall

demonstrate that data subjects understand exactly what they are consenting to, and

should remember that consent is not always an adequate basis for

treatment. In all cases, the interested parties must have sufficient

information about the intended use and consequences of the processing to ensure

that any consent they give constitutes an informed choice.”



Number 11 of article 4 of the RGPD defines consent as “Any

manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either by means of a declaration or a clear affirmative action, the

processing of personal data concerning you”

For their part, articles 6 and 7 of the RGPD refer, respectively, to the “Legality

of treatment” and the “Conditions for consent”:

Article 6 of the RGPD.

"one. The treatment will only be lawful if at least one of the following is met

terms:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

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

data controller;

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

Physical person;

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

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

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

by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

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

interested is a child.

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

carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with regard to the

treatment in compliance with section 1, letters c) and e), setting more

specifies specific treatment requirements and other measures that guarantee a

lawful and equitable treatment, including other specific situations of

treatment under Chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be

established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, in what

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regarding the treatment referred to in section 1, letter e), will be necessary for the

fulfillment of a mission carried out in the public interest or in the exercise of powers

data conferred on the data controller. Said legal basis may contain

specific provisions to adapt the application of rules of this

Regulation, among others: the general conditions that govern the legality of the treatment

by the controller; the types of data object of treatment; the interested

affected; the entities to which personal data can be communicated and the purposes

of such communication; purpose limitation; the retention periods of the

data, as well as the operations and procedures of the treatment, including the

measures to ensure lawful and fair treatment, such as those relating to other

specific treatment situations under chapter IX. Union Law

or of the Member States will fulfill a public interest objective and will be proportional

to the legitimate end pursued.

4. When the treatment for another purpose other than that for which the data was collected

personal data is not based on the consent of the interested party or on the Law

of the Union or of the Member States which constitutes a necessary and

proportionate in a democratic society to safeguard the stated objectives

in article 23, paragraph 1, the data controller, in order to determine

if processing for another purpose is compatible with the purpose for which they were collected

initially the personal data, will take into account, among other things:

a) any relationship between the purposes for which the data was collected

data and the purposes of the intended further processing;

b) the context in which the personal data have been collected, in particular by what

regarding the relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when categories are processed

special personal data, in accordance with article 9, or personal data

relating to criminal convictions and offences, in accordance with article 10;

d) the possible consequences for data subjects of the envisaged further processing;

e) the existence of adequate safeguards, which may include encryption or

pseudonymization".

Article 7 of the RGPD.

"one. When the treatment is based on the consent of the interested party, the person in charge

You must be able to demonstrate that you consented to the processing of your data

personal.

2. If the data subject's consent is given in the context of a written statement

that also refers to other matters, the request for consent will be presented in

in such a way that it is clearly distinguishable from other matters, in an intelligible and

easy access and using clear and simple language. No part will be binding

of the statement that constitutes an infringement of this Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The

Withdrawal of consent will not affect the legality of the treatment based on the
consent prior to withdrawal. Before giving their consent, the interested party
will be informed of it. It will be as easy to withdraw consent as it is to give it.
4. When assessing whether the consent has been freely given, it will be taken into account in the
greatest extent possible whether, among other things, the performance of a contract,
including the provision of a service, is subject to consent to the processing of
personal data that is not necessary for the execution of said contract".
It takes into account what is expressed in recitals 32, 40 to 44 and 47 of the RGPD in
in relation to the provisions of articles 6 and 7 above. From what is stated in
These considerations include the following:
(32) Consent must be given through a clear affirmative act that reflects a
free, specific, informed, and unequivocal manifestation of the interested party's
accept the processing of personal data that concerns you, such as a
written statement, including by electronic means, or an oral statement.
This could include checking a box on an internet website, choosing parameters
technicians for the use of services of the information society, or any
other statement or conduct that clearly indicates in this context that the data subject
accepts the proposal for the processing of your personal data. Therefore, the silence
pre-ticked boxes or inaction should not constitute consent. The
Consent must be given for all processing activities carried out with the
same or the same ends. When the treatment has several purposes, the
consent for all of them. If the data subject's consent is to be given to
As a result of a request by electronic means, the request must be clear, concise and not
unnecessarily disrupt the use of the service for which it is provided.
(42) When the treatment is carried out with the consent of the interested party, the

The data controller must be able to demonstrate that the data controller has given

consent to the treatment operation. In particular in the context of a

written statement made on another matter, there must be guarantees that the

interested party is aware of the fact that he gives his consent and the extent to which

that makes. In accordance with Council Directive 93/13/EEC, you must provide

a model declaration of consent previously prepared by the

responsible for the treatment with an intelligible and easily accessible formulation that

use clear and simple language, and that does not contain abusive clauses. So that

consent is informed, the interested party must know at least the

identity of the person in charge of the treatment and the purposes of the treatment to which they are

intended personal data. Consent should not be considered freely

lent when the interested party does not enjoy true or free choice or cannot

deny or withdraw your consent without prejudice.

(43) (...) It is presumed that consent has not been given freely when it is not

allows separate authorization of the different data processing operations

despite being appropriate in the specific case, or when the fulfillment of a

contract, including the provision of a service, is dependent on the consent,

even when this is not necessary for such compliance.

It is also appropriate to take into account the provisions of article 6 of the LOPDGDD:



“Article 6. Treatment based on the consent of the affected party

1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679,

consent of the affected party is understood as any manifestation of free will,

specific, informed and unequivocal by which it accepts, either through a

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

concern.

2. When it is intended to base the processing of the data on the consent of the

affected for a plurality of purposes, it will be necessary to state

specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the

processing of personal data for purposes unrelated to the

maintenance, development or control of the contractual relationship".

The provisions of the European Committee for Data Protection are also taken into account.

in the document "Guidelines 05/2020 on consent under the

Regulation 2016/679" approved on May 4, 2020, which updates the Guidelines

on consent under Regulation 2016/679, adopted by the Group

of Work of article 29 and that were approved by the European Committee of

Data Protection in its first plenary meeting. From what is stated in said

document, it is interesting here to highlight some of the criteria related to the validity

of consent, specifically on the "specific" and "informed" elements:

"3.2. Specific declaration of will

"Article 6, paragraph 1, letter a), confirms that the consent of the interested party to

the processing of your data must be given "for one or more specific purposes" and that a

The interested party can choose with respect to each of said purposes. The requirement that the

consent must be "specific" is intended to ensure a level of control and

transparency for the interested party. This requirement has not been modified by the GDPR and

remains closely linked to the consent requirement

"informed". At the same time, it must be interpreted in line with the requirement of

"dissociation" to obtain "free" consent. In short, to meet the

character of "specific" the person in charge of the treatment must apply:

i.

ii.

iii.

the specification of the purpose as a guarantee against deviation from use,

dissociation in consent requests, and

a clear separation between the information related to obtaining the

consent for data processing activities and information

regarding other issues.

Ad. i): In accordance with article 5, paragraph 1, letter b), of the RGPD, obtaining

of valid consent is always preceded by the determination of a purpose

specific, explicit and legitimate for the intended treatment activity. The need

of specific consent in combination with the notion of limitation of

purpose that appears in article 5, paragraph 1, letter b), works as a guarantee against

to the gradual expansion or blurring of the purposes for which the



processing of the data once an interested party has given their authorization to the

initial data collection. This phenomenon, also known as deviation of the

use, supposes a risk for the interested parties since it can give rise to a use

unforeseen of the personal data by the person in charge of the treatment or of

third parties and the loss of control by the interested party.

If the data controller relies on article 6, paragraph 1, letter a), the

Interested parties must always give their consent for a specific purpose for the

data processing. In keeping with the concept of purpose limitation,

with article 5, paragraph 1, letter b), and with recital 32, the consent

may cover different operations, provided that these operations have a

same end. It goes without saying that specific consent can only be obtained

when the interested parties are expressly informed about the purposes foreseen for the

use of data concerning them.

Without prejudice to the provisions on the compatibility of purposes, the

Consent must be specific to each purpose. Those interested will give their

consent understanding that they have control over their data and that these will only be

processed for those specific purposes. If a controller processes data based on the

consent and, in addition, you want to process said data for another purpose, you must obtain the

consent for that other purpose, unless there is another legal basis reflecting

better the situation.

(…)

Ad. ii) Consent mechanisms should not only be separated for the purpose of

to meet the “free” consent requirement, but must also comply with

that of "specific" consent. This means that a data controller

seeking consent for several different purposes should facilitate the possibility of

opt out for each purpose, so that users can give specific consent

for specific purposes.

Ad. iii) Finally, data controllers must provide, with each request

separate consent form, specific information about the data to be processed

for each purpose, in order that the interested parties know the repercussion of the

different options they have. In this way, interested parties are allowed to give a

specific consent. This issue overlaps with the requirement that

managers provide clear information, as stated above in

section 3.3".

3.3 Manifestation of informed will.

"The GDPR reinforces the requirement that consent must be informed. From

In accordance with article 5 of the GDPR, the transparency requirement is one of the

fundamental principles, closely related to the principles of loyalty and

legality. Providing information to data subjects before obtaining their consent is

essential for them to make informed decisions, understand what

are authorizing and, for example, exercising your right to withdraw your consent. If he

controller does not provide accessible information, user control will be illusory and

consent will not constitute a valid basis for data processing.

If the requirements for informed consent are not met, the



consent will not be valid and the person in charge may be in breach of article 6

of GDPR.

3.3.1 Minimum content requirements for consent to be "informed"

In order for the consent to be informed, it is necessary to communicate to the interested party

certain elements that are crucial to be able to choose. Therefore, the EDPB is of the opinion that

At least the following information is required to obtain valid consent:

the identity of the data controller,

the end of each of the processing operations for which

ask for consent,

what (type of) data will be collected and used,

the existence of the right to withdraw consent,

information on the use of data for automated decisions

in accordance with article 22, paragraph 2, letter c), where relevant,

and

information about possible data transfer risks

due to the absence of an adequacy decision and guarantees

adequate, as described in article 46."

i.

ii.

iii.

IV.

v.

saw.

1. In this so-called CPC requests consent in the various communication channels

prescribers and agents for study and profiling purposes. So the consent

is requested in the following terms: "I authorize the CaixaBank Group to use my data

for study and profiling purposes". Regarding the information on the

purposes of said treatment, the documentation provided is that contained in the

screenshots sent and the document provided as annex 12

called "GENERAL CONDITIONS OF THE APPLICATION-CONTRACT OF

CREDIT" whose content at this point has already been transcribed in the proven facts

of this resolution of the sanctioning procedure, and that, as stated,

facilitates the interested party in the framework of contracting a product.

As expressed in said document, the details of the uses of the data that are

will carry out in accordance with its authorizations is as follows:

(i) "Detail of the analysis, study and monitoring treatments for the offer and

design of products and services adjusted to the client's profile. bestowing his

consent to the purposes detailed here, you authorize us to:

a) Proactively carry out risk analysis and apply it to your technical data

statistics and customer segmentation, with a triple purpose:

1) Study products or services that may be adjusted to your profile and

specific business or credit situation, all to make offers

commercials tailored to your needs and preferences,

2) Track the contracted products and services,

3) Adjust recovery measures on non-payments and incidents derived from

the contracted products and services.

b) Associate your data with that of other clients or companies with which you have any



type of link, both family or social, as well as by their relationship of ownership and

administration, in order to analyze possible economic interdependencies in the

study of service offers, risk requests and product contracting.

c) Carry out studies and automatic controls of fraud, defaults and incidents

derived from the contracted products and services.

d) Carry out satisfaction surveys by telephone or electronically with the

objective of assessing the services received.

e) Design new products or services, or improve the design and usability of the

existing, as well as define or improve user experiences in their relationship

with CaixaBank Payments & Consumer and the companies of the CaixaBank Group."

In the opinion of this Agency, the information contained in the document CONDITIONS

GENERAL INFORMATION OF THE APPLICATION-CREDIT AGREEMENT, transcribed above

provides the interested party with enough information so that he can know the

scope of the profiling treatments that are carried out.

In this regard it should be recalled that the Guidelines on Individual Decisions

automated and profiling for the purposes of Regulation 2016/67, by

Analyzing the relevant legal bases for the elaboration of profiles indicates the

following with respect to the provisions of Article 6, paragraph 1, letter a) – Consent

"Data controllers who claim to rely on consent as

basis for profiling should demonstrate that data subjects understand

exactly what they are consenting to, and they should remember that consent is not

always a suitable basis for treatment . In all cases, the interested parties

must have sufficient information about the intended use and consequences of the

processing to ensure that any consent they give constitutes a

informed choice."

Also the same document when referring to the rights of the interested parties,

first mention:

"one. Articles 13 and 14 – Right to be informed

Taking into account the basic principle of transparency that underpins the GDPR,

Data controllers must ensure that they explain to individuals in a way that

clear and simple operation of profiling or decisions

automated."

However, in the present case, the interested party is only provided with information

generic information on the different profiling treatments. So the first one does

reference to the "study of products or services that can be adjusted to your profile and specific commercial situation, to make commercial offers adjusted to your needs and preferences. With this information the interested party cannot know exactly what the treatment you are consenting to consists of. of such information It cannot be deduced that the products to be offered are exclusively those of CPC, as said entity alleges, so it could include offers from other entities of the group or other types of products or services not related to the activity of said entity. Nor does it appear from such information that the supply of products and services may include the assignment of “pre-granted” credit limits, as



as stated in the information provided by CPC to the AEPD on the occasion of the information request made by the Inspection. Neither, as analyzed later, you are properly informed of the data to be used for carry out profiling treatment. With the information provided, the interested party may know the scope of the treatment you are consenting to or the level of detail of the profile to be elaborated nor its exhaustiveness. The same information gaps that is provided to the interested party are observed in other profiling treatments listed in the above transcribed information provided in said document.

CPC alleges that the CaixaBank Group has proactively verified this understanding through studies that have involved clients, however it does not prove it.

Secondly, as the mechanism for the provision of the consent, it has not been foreseen that the interested party expresses his option on all the

purposes for which the data is processed, it is spoken in section (i) of treatments for

“the offer and design of products and services adjusted to the customer profile”, assuming that

in itself already comprises three different purposes:

1. Study products or services that can be adjusted to your profile and situation

concrete commercial or credit, all this to make adjusted commercial offers

to your needs and preferences,

2) Track the contracted products and services,

3) Adjust recovery measures on non-payments and incidents derived from

contracted products and services.

To this are added other purposes such as "analyzing possible interdependencies

economic in risk requests and contracting of products”, “assess the services

received” or “design new products or services, or improve the design and usability of

the existing ones, as well as define or improve the experiences of the users in their

relationship with CaixaBank Payments & Consumer and the companies of the CaixaBank Group”.

The enumeration of the treatments that the aforementioned entity carries out, in reality supposes

an extension of the purposes, which in some cases are not even identified, so

the consent given cannot be considered specific as it has not been dissociated

consent requests sufficiently.

It is alleged by CPC that this confusion is due to a slight error in the clause

informative, to list treatment operations that are not carried out based on the

consent obtained for profiling; points out that this incident, after being

detected, has been corrected by the CaixaBank Group and, therefore, also by CPC,

through the preparation of a new Privacy Policy detailing

correctly and precisely the treatments carried out for the analysis and study

for commercial purposes.

However, said privacy policy, regardless of whether it is

adjusted or not to the provisions of the data protection regulations, on what this

Agency does not pronounce itself in this procedure,

is valid from

on January 18, 2021 with no changes to other information documents

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to the interested party, as reported by CPC in its response to the request for information

of this Agency during the trial period, in particular the CONDITIONS

GENERAL REGULATIONS OF THE APPLICATION-CREDIT CONTRACT, to which it has previously been made

reference and that constitute the mechanism to provide information to the interested parties.

2. In the various documents in which consent is requested, it is requested

for "the CaixaBank group", which constitutes a communication of data to the

group companies, communication that constitutes a specific purpose in itself

considered, which requires a manifestation of will of the interested party by which

he agrees that it can be carried out.

It is alleged by CPC that no data communication takes place since there is

a system of co-responsibility between the companies of the CaixaBank Group, for

there must be an agreement for the joint determination of the objectives and means of

treatment object of this procedure, as provided in article 26 of the

GDPR. It is also alleged that such co-responsibility is also due to

regulatory needs. In this sense, he cites articles 29.1 of Law 2/2011, of 4

March, Sustainable Economy. and 14 of Law 16/2011, of June 24, of

consumer credit agreements.

In this regard, it should be remembered that Guidelines 7/2020 on responsible and

in charge of the treatment in the RGPD, adopted on July 7, 2021, indicate that

Article 26 GDPR, which mirrors the definition in Article 4 paragraph 7 GDPR,

provides that “When two or more responsible persons jointly determine the

objectives and the means of treatment, will be co-responsible for the treatment”.

In general terms, there is co-responsibility with respect to an activity of

specific treatment when different parties jointly determine the

purpose and means of this processing activity. Therefore, evaluate the

existence of co-responsible parties requires examining whether the determination of the purposes and

means that characterize a person in charge is decided by more than one party. "Together"

should be interpreted in the sense of "along with" or "not only", in different ways and

combinations, as explained below.

The assessment of co-responsibility must be carried out on the basis of a

factual analysis, more than formal, of the real influence on the ends and means of the

treatment. All existing or planned provisions should be verified against

taking into account the factual circumstances relating to the relationship between the parties. A

merely formal criteria would not suffice for at least two reasons: In some

cases, the formal appointment of a co-controller, for example, provided for by law

or in a contract, it would be absent; In other cases, it may be that the appointment

formal does not reflect the reality of the arrangements, by formally entrusting the role of

accountable to an entity that is not really in a position to "determine" the

purposes and means of treatment.

Not all multi-entity treatments result in

co-responsibility The general criterion for co-responsibility to exist is the

joint participation of two or more entities in determining the purposes and

means of a treatment. More specifically, co-responsibility must include the

determination of the objectives, on the one hand, and determination of the means, on the other.

other. If each of these elements is determined by all entities



interested parties, they should be considered co-responsible for the treatment in question."

In the present case, the co-responsibility agreement provided lacks a date and

signature and, consequently, of any validity. In this sense, the agreement itself, in its

Number 6 regarding its duration states that "This Agreement shall enter into force on the

date of its signature". In this sense, the aforementioned Guidelines 7/2020 point out that "The

GDPR does not specify the legal form of the agreement between joint controllers. In

for the sake of legal certainty, and in order to ensure transparency and accountability

of accounts, the European Committee for Data Protection recommends that said agreement

is in the form of a binding document, such as a contract or other legal act

binding in accordance with the law of the EU or of the Member States to which

that the controllers are subject to." It should also be added that there is no excuse

the absence of signing the agreement in the supposed wait for the Agency to make a

pronouncement on the measures to be adopted within the framework of another procedure

sanctioning against another entity (CaixaBank) in case it had to be modified, as

indicated in the arguments to the initial agreement or, as now indicated in the

allegations to the proposed resolution, that said signature be made depend on the

resolve the same sanctioning procedure against CaixaBank in court.

Nor is any factual element provided that allows considering that they are determined

jointly by all group companies the purposes and means of processing

specific to which this procedure refers, that is, the operations of

profiled for the offer to CPC clients of certain products, which

are part of its commercial activity, as indicated by said entity in the

information provided.

Nor is it admissible that such co-responsibility is due to reasons

regulatory. Article 29 1, of Law 2/2011, of March 4, on Economy

Sustainable, provides that "Credit institutions, before the contract is signed

of credit or loan, they must evaluate the solvency of the potential borrower, on the

based on sufficient information. To this end, said information may include the

provided by the applicant, as well as the result of the consultation of files

automated data, in accordance with current legislation, especially in

matter of protection of personal data." Article 14 of Law 16/2011,

of June 24, on consumer credit contracts It establishes that "1. the lender,

Before the credit agreement is concluded, you must evaluate the creditworthiness of the

consumer, on the basis of sufficient information obtained by the media

suitable for this purpose, including the information provided by the consumer, at the request

of the lender or intermediary in granting credit. For the same purpose, you can

consult the capital solvency and credit files, to which the article refers

29 of Organic Law 15/1999, of December 13, on Data Protection of

Personal Character, in the terms and with the requirements and guarantees provided in said

Organic Law and its implementing regulations.

In the case of credit institutions, to assess the solvency of the

consumer will also take into account the specific rules on management of

risks and internal control that are applicable to them according to their specific legislation."

From the literal tenor of both precepts it is evident that such obligations refer

at the time a credit or loan agreement is concluded, not to the activity

commercial by which an entity offers such credits or loans to its customers,



products that these, moreover, have not requested. Not much less can be accepted

that such regulatory obligations justify a communication of data to all

companies of the group, from the moment in which the interested party consents to such

profiling treatment regardless of whether it is carried out afterwards or not.

On the other hand, as has been pointed out previously, this Agency has not invested the

burden of proof as CPC alleges, it is said entity that has alleged the existence

co-responsibility in the treatment corresponding to said entity to accredit it,

the mere allegation of its existence and the presentation of a document is not enough

lacking validity to prove that there is co-responsibility. This agency has

sufficiently clarified the reasons why it considers that there is no

co-responsibility in the previous paragraphs, so it is not a mere

unsubstantiated contrary opinion.

3. Among the crucial elements for consent to be valid, the aforementioned

Guidelines on consent under Regulation 2016/679 make

reference to the information to the interested party about what types of data will be collected and

be used.

In the information that CPC has provided to this Agency, specifically in the

GENERAL CONDITIONS OF THE APPLICATION-CREDIT AGREEMENT,

indicates that the personal data subject to treatment are the following:

“The data that will be processed for the purposes of (i) data analysis and study, and (ii)

for the commercial offer of products and services will be:

a) All those facilitated in the establishment or maintenance of relationships

commercial or business.

b) All those generated in the contracting and operations of products and services

with CaixaBank Payments & Consumer, with the companies of the CaixaBank Group or with

third parties, such as account or card movements, receipt details

direct debits, payroll direct debits, claims arising from insurance policies,

claims etc

c) All those that CaixaBank Payments & Consumer or the companies of the Group

CaixaBank obtain from the provision of services to third parties, when the service has

as recipient to the Holder, such as the management of transfers or receipts.

d) Whether or not you are a CaixaBank shareholder, as recorded in the records of

this, or of the entities that, in accordance with the regulations of the market of

securities must keep records of the securities represented by means of

book entries.

e) Those obtained from the social networks that the Holder authorizes to consult.

f) Those obtained from third parties as a result of requests for aggregation of

data requested by the Owner.

g) Those obtained from the Holder's navigation through the web service of



CaixaBank Payments & Consumer and other websites of this and/or of the companies of the Group

CaixaBank or CaixaBank Payments & Consumer mobile phone application and/or

the companies of the CaixaBank Group, in which it operates, duly identified. These

Data may include information related to geolocation.

h) Those obtained from chats, walls, videoconferences or any other means of

communication established between the parties. The Holder's data may be

complemented and enriched by data obtained from companies that provide

commercial information, by data obtained from public sources, as well as by data

statistical, socioeconomic (hereinafter, "Additional Information") provided

verifying that these comply with the requirements established in the current regulations

on data protection."

From this information it follows that the interested party cannot know the data that

are going to be processed for profiling, the information provided includes data that,

in accordance with the information provided on the data to be used for the treatment

profiling and its origin, will not be subject to such treatment and, however, will not

You are informed of the processing of other data that will be subject to it, such as the

consultation of solvency files and the Risk Information Center of Banco de

Spain or the so-called Risk score.

CPC's allegations cannot be shared when it states that it is fulfilled

adequately with the duty to inform the interested parties in relation to the data

that are processed for profiling, noting, first, that the categories of data

object of treatment are not among the minimum information described in the

article 13 of the RGPD so that the consent is informed.

In this regard, it should be reiterated here what was stated by the European Committee for the Protection

of Data in the document "Guidelines 05/2020 on consent in accordance with the

Regulation 2016/679", to which reference has been made above, in particular not

it is only possible to reproduce again what is indicated in point Ad. iii) according to which

"Finally, data controllers must facilitate, with each data request,

separate consent, specific information about the data to be processed for each purpose, in order that the interested parties know the repercussion of the different options they have. In this way, interested parties are allowed to give a specific consent. This issue overlaps with the requirement that managers provide clear information, as stated above in section 3.3". The aforementioned point 3.3, which is also transcribed above points out that "the requirement of transparency is one of the fundamental principles, closely related to the principles of loyalty and legality. Supply information data subjects before obtaining their consent is essential so that they can make informed decisions, understand what they are authorizing and, therefore, example, exercise your right to withdraw your consent", in point 3.1.1. enumerate the minimum content requirements for consent to be "informed", one of them being related to "what (type of) data will be collected and used".

Nor can the allegation that the information provided does allow interested parties to know the data that will be processed for profiling, since the fragment transcribed by the AEPD corresponds to point 26.4. (ii) of the general conditioning, but the rest of the conditioning has not been taken into account.



It points out that in section 26.3 of the general conditions (prior to 26.4.ii transcribed in the Home Agreement) specifies in greater detail what data will be processed for the establishment or maintenance of business relationships.

CPC points out that point 26.3 informs that "CaixaBank Payments & Consumer and,

in its case the companies of the CaixaBank Group, is bound by different regulations and agreements to carry out certain data processing of people with which it maintains commercial relations, as indicated in the sections following of this clause (hereinafter, “Processing for the Purposes of Regulatory”). These treatments are necessary for the establishment and maintenance of commercial relations with CaixaBank Payments & Consumer and/or with the companies of the CaixaBank Group, and the Card Holder's opposition to them would necessarily entail the cessation (or non-establishment, as the case may be) of these relations. In any case, Processing for Regulatory Purposes will be limited exclusively for the stated purpose, without prejudice to other purposes or uses that the Holder authorizes according to the provisions of clause 26.4. of this document.”

CPC adds that point 26.3.3 informs about the query to files of credit information (among which are those necessary to obtain the “Risk Score”, as will be explained later) and point 26.3.4. reports about the consultation to the Risk Information Center of the Bank of Spain, transcribing both of them:

“26.3.3 Communication with credit information systems.

The Account Holder is informed that CaixaBank Payments & Consumer, in the study of the establishment of Commercial Relations, you can consult information in credit information systems. Likewise, in the event of non-payment of any of the obligations derived from the Commercial Relations, the data related to the non-payment may be communicated to these systems.

26.3.4. Communication of data to the Risk Information Center of the Bank of Spain

The Holder of the right is informed that he assists CaixaBank Payments & Consumer to Obtain reports from the Risk Information Center of the Bank of Spain (CIR).

about the risks that could be registered in the study of the establishment of

Business relationships. […]”

In this regard, it should be noted that the first of the fragments mentioned by

CPC in its allegations, this is point 26.3 of the general conditions refers

as it mentions in its title to the processing of character data

for regulatory purposes, being also clear in its content that it is

refers to them and not to commercial purposes, for which the information

it is offered in number 26.4. In the same way, points 26.3.3 and relative to the

communication with credit information systems, and 26.3.4, referring to the

communication to the Risk Information Center of the Bank of Spain,

included in the general section on processing for purposes

regulations, without any reference being made in them to the fact that such data may be

subject to processing within the framework of processing for commercial purposes

based on consent.



Point 26.4 is entitled precisely "Processing and transfer of data for purposes

commercial by Caixabank and the companies of the Caixabank Group based on the

consent”, and from that point the information related to such

treatments. Thus, in point ii of the aforementioned point 26.4, it is expressly indicated "The

data that will be processed for the purposes of (i) data analysis and study, and (ii) for the

commercial offer of products and services will be:

a) All those facilitated in the establishment or maintenance of relationships

commercial or business.

b) All those generated in the contracting and operations of products and services

with CaixaBank Payments & Consumer, with the companies of the CaixaBank Group or with

third parties, such as account or card movements, receipt details

direct debits, payroll direct debits, claims arising from insurance policies,

claims etc

c) All those that CaixaBank Payments & Consumer or the companies of the Group

CaixaBank obtain from the provision of services to third parties, when the service has

as recipient to the Holder, such as the management of transfers or receipts.

d) Whether or not you are a CaixaBank shareholder, as recorded in the records of

this, or of the entities that, in accordance with the regulations of the market of

securities must keep records of the securities represented by means of

book entries.

e) Those obtained from the social networks that the Holder authorizes to consult.

f) Those obtained from third parties as a result of requests for aggregation of

data requested by the Owner.

g) Those obtained from the Holder's navigation through the web service of

CaixaBank Payments & Consumer and other websites of this and/or of the companies of the Group

CaixaBank or CaixaBank Payments & Consumer mobile phone application and/or

the companies of the CaixaBank Group, in which it operates, duly identified. These

Data may include information related to geolocation.

h) Those obtained from chats, walls, videoconferences or any other means of

communication established between the parties. The Holder's data may be

complemented and enriched by data obtained from companies that provide

commercial information, by data obtained from public sources, as well as by data

statistical, socioeconomic (hereinafter, "Additional Information") provided

verifying that these comply with the requirements established in the current regulations

on data protection."

Therefore, CPC's allegations can in no way be accepted, they cannot be

adequately informs about the data that may be processed in the

framework of commercial activities based on consent, information

provided by the person in charge expressly lists the alleged data that may

be used for such treatment for commercial purposes based on the



consent, without making any reference to data as relevant as the query to

solvency files and the treatment called risk score. The information must

be provided as stated in article 12 of the RGPD in a concise, transparent,

intelligible and easily accessible. It is inadmissible that the interested party should interpret the

information that is provided, to know what data will be processed for a

operation based on your consent by going to the information related to other

types of processing whose basis is not consent.

The allegations point out that the legitimizing basis for the treatment of these two

data, the query to solvency files and the risk score, is found in the

consent of the interested party. CPC affirms that the fact that certain treatments

carried out based on the consent of the interested party does not exclude that they must comply with the

legal obligations established in the Prudential and Solvency Regulations and

Responsible Loan given that the products sold are accounts of

credit and loans. Therefore, even when the treatment is carried out on the basis of the

consent of the interested party, CPC must comply with the legal obligations established
in the Prudential and Solvency and Responsible Lending Regulations; so, at
make a personalized offer to an interested party, CPC must assess their ability
return and solvency, consulting for this the data contained in systems of
credit information.

Such an allegation is not admissible, the offer of such products constitutes an activity
exclusively commercial, without article 20 of the LOPDGDD, relative to the
credit information systems, enable the query to such systems without the
consent of the interested party rather than in the case contained in letter e) of its
first number, according to which the data referring to a specific debtor only
can be consulted when “who consults the system maintains a relationship
contract with the affected party that implies the payment of a pecuniary amount or the latter
had requested the conclusion of a contract involving financing, payment
deferred or periodic billing, as happens, among other cases, in the
provided for in the legislation on consumer credit contracts and credit contracts
real estate.” This is not a request for such services, but an offer
that CPC makes of them, without the interested party previously requesting it.

Therefore, the absence of consent of the interested party for access to the
credit information systems determines an illegitimate treatment. And in this sense
It must be remembered that consent must be informed, so that without due
information, among which is knowing the data to be processed, the
consent becomes invalid.

Regarding the data called "risk score", from the information provided it seems
It can be inferred that this is another data profiling operation, carried out by a
in charge of the treatment, (...). This Agency considers that the
concerned about this new profiling operation, nor about the legal basis that

allows its realization, nor on the data used to carry it out.

CPC alleges that the data called “Risk Score” is obtained from the analysis

carried out by the supplier ***EMPRESA.3, (...), pointing out that when informing the

interested parties about the processing of their data, there is no mention of obtaining this

specific data since, even if it is obtained with the intervention of a person in charge

of the treatment, it does not differ from the simple analysis and study of data carried out



both for regulatory purposes and for commercial purposes and that its basis

legal, when it is carried out for commercial purposes, it will be the consent of the

interested, taking into account that to carry out the treatment of analysis and

study of data for commercial purposes, it will also be necessary to observe the

prudential and solvency regulations. It is added that regarding the data used

to obtain the "Risk Score", it is about the workers in information systems

credit.

This Agency does not share this allegation either, it cannot be considered to be

duly informs the interested parties when said treatment operation is integrated

within the analysis and study of data carried out for commercial purposes. The

called risk score constitutes in itself a profiling operation, without

inform the interested parties neither of the data used for said operation nor of their

result, which constitutes data to be used in other profiling operations

carried out by the controller for commercial purposes. Regarding the data

used to carry out the profiling operation called risk score, which

As indicated, they are those that work in the credit information systems,

nor is it possible to process it without the consent of the interested party, unless there are

the circumstances provided for in article 20.1.e of the LOPDGDD, which has previously been

made reference, which does not happen in the present case in which its

use for profiling for commercial purposes. Consequently, said

treatment becomes invalid insofar as it lacks a legitimizing basis by not requesting the

informed consent of the interested party so that it can be carried out.

In this sense, the Guidelines on automated individual decisions and

preparation of profiles for the purposes of Regulation 2016/679 indicate that "The

Transparency of processing is a fundamental requirement of the GDPR.

The profiling process is often invisible to the data subject. It works

creating derived or inferred data about individuals ("new" personal data

that have not been directly provided by the interested parties themselves). People

have different levels of comprehension and may find it difficult to understand

complex technical profiling and decision processes

automated.

According to article 12, paragraph 1, the data controller must provide the

stakeholders concise, transparent, intelligible and easily accessible information on the

treatment of your personal data.

With respect to the data obtained directly from the interested party, these must

be provided at the time they are obtained (article 13); regarding the data

obtained indirectly, the information must be provided within the time limits established

in article 14, section 3”

More specifically, it should be reiterated that the aforementioned guidelines, in the point relating to

the legal bases of the treatment, in particular that related to consent, indicate

that “The WG29 guidelines on consent generally address the

consent as the basis of the treatment. Explicit consent is one of the

exceptions to the prohibition on automated decisions or the preparation of

profiles defined in article 22, paragraph 1.



Profiling can be opaque and is often based on data

derived or inferred from other data, rather than information provided directly

by the interested party.

Data controllers who claim to rely on consent as

basis for profiling should demonstrate that data subjects understand

exactly what they are consenting to, and they should remember that consent is not

always a suitable basis for treatment. In all cases, the interested parties

must have sufficient information about the intended use and consequences of the

processing to ensure that any consent they give constitutes a

informed choice."

From all this it can be concluded that the consent given for the purposes of

profiling described in the facts of this agreement is not in accordance with the provisions

in article 4.7 RGPD. It is not specific, because it does not meet the requirement of

separation of the purposes and provision of consent for each of them, nor is it

duly informed. The absence of such requirements determines that it does not

is valid in such a way that the treatments based on it lack legitimacy

thus contravening the provisions of article 6 of the RGPD.

Consequently, in accordance with the above findings, the aforementioned

facts could suppose a possible violation of article 6 of the RGPD, in relation to

with article 7 of the same legal text and article 6 of the LOPDGDD, which gives rise to the

application of the corrective powers that article 58 of the RGPD grants to the Agency

Spanish Data Protection.

v

In the event that there is an infringement of the provisions of the RGPD, between

the corrective powers available to the Spanish Agency for the Protection of

Data, as a control authority, article 58.2 of said Regulation contemplates the

following:

“2 Each supervisory authority shall have all of the following corrective powers

listed below:

(…)

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

(…)

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each

particular case;".

According to the provisions of article 83.2 of the RGPD, the measure provided for in the letter

d) above is compatible with the sanction consisting of an administrative fine.

SAW

In the present case, non-compliance with article 6.1 has been proven.

of the RGPD with the scope expressed in the previous Legal Foundations, which

which, supposes the commission of an infraction typified in article 83.5 of the same rule that under the heading "General conditions for the imposition of fines administrative" provides the following:

5. "Infractions of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9"

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

For the purposes of the limitation period, article 72 of the LOPDGDD indicates:

Article 72. Infractions considered very serious

"one. Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(…)

a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.

(…)”

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"one. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.

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

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question as well



such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

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

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

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

measure;

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

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

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

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement."

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

has:

"one. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of

personal information.

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

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

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party."

In this case, considering the seriousness of the infringement found, the

fine imposition.

The request made by CAIXABANK PAYMENTS &



CONSUMER EFC, EP, S.A.U so that other corrective powers may be imposed,

specifically, the warning, taking into account the provisions of recital

148 of the RGPD according to which "In order to reinforce the application of the rules of this

Regulation, any infraction of this must be punished with sanctions, including

administrative fines, in addition to appropriate measures imposed by the

control authority under this Regulation, or in substitution of these. In

case of a minor offence, or if the fine likely to be imposed constituted

a disproportionate burden on a natural person, rather than sanction by

fine, a warning may be imposed. However, special attention must be paid
attention to the nature, seriousness and duration of the infringement, to its
intentional, to the measures taken to alleviate the damages suffered, to the degree
liability or any relevant prior violation, to the manner in which the
control authority has become aware of the infraction, compliance with
measures ordered against the person in charge or in charge, adherence to codes of
conduct and any other aggravating or mitigating circumstance."

For the same reasons, and considering the graduation criteria of the
sanctions indicated below, the request for
imposition of a sanction in its minimum degree.

Nor can the allegation be admitted that, in the use of the criteria of
graduation of the sanction, this Agency separates itself from the administrative precedent
must motivate the change of criteria according to article 35.1.c) of the LACAP. According
CPC serves as an example PS/0070/2019 stating that an application is appreciated
different from the criteria that allow the sanction to be graded, since being, according to CPC
similar imputed acts are only taken into account two criteria of
graduation compared to those contained in the proposed resolution of this
process. This Agency, to determine the sanction to be imposed in each case,
takes into account the elements established in article 83 of the RGPD, as well as the
established in article 76.2 of the LOPDGDD, justifying the application of each one
depending on the circumstances of each specific case.

In accordance with the precepts transcribed, in order to set the amount of the
sanctions of a fine to be imposed in this case on the defendant, as responsible for
offenses typified in article 83.5.a) and b) of the RGPD, the fine should be graduated
that would correspond to impose for the infraction imputed as follows:

Infraction due to non-compliance with the provisions of article 6 of the RGPD, in relation to

with article 7 of the same legal text and article 6 of the LOPDGDD, typified in the

article 83.5.a) and classified as very serious for prescription purposes in article

72.1.b) of the LOPDGDD:

It is estimated that the following factors concur as aggravating factors:

reveal greater unlawfulness and/or culpability in the conduct of the entity

CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U.:

-

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

nature, scope or purpose of the processing operations in question;

the infraction results from the procedure designed by said entity for the collection

of the consent to carry out profiles for commercial purposes to its clients, which



that entails a significant risk for the rights of the interested parties taking into account

account the particularly intrusive nature of such data processing.

Said entity alleges that “We are not facing a case in which CPC has

radically dispensed with the obligations related to obtaining

consents, without prejudice to the fact that the AEPD considers that it would be necessary to correct

certain issues, which could lead to improvements in the way in which

obtain consent." It also alleges that the Agency does not argue that

consists of that important risk nor the intrusive nature of the treatment, which leads to

wonder if sending commercial communications to customers is

particularly intrusive, what processing of personal data will not be

especially intrusive

This Agency considers that it is an infraction that affects the procedure

through which consent is obtained and which affects in particular two

essential elements of it, that is, that the consent be specific and

informed. It is therefore not a question of mere improvements in the procedure, but that the

Failure to comply with these two requirements determines that the consent becomes

invalid. Nor is it a mere sending of commercial communications, but

of performing profiling treatments.

-

The intentionality or negligence appreciated in the commission of the infraction;

the defects indicated in the procedure through which the

consent of their clients, given their evidence they should have been warned and

avoided when designing said procedure by an entity with the characteristics of

CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U.

The high link between the activity of the offender and the performance of

-

personal data processing. The operations that constitute the activity

business developed by CAIXABANK PAYMENTS & CONSUMER EFC, EP,

S.A.U. as an entity dedicated to the marketing of credit cards or

debit, credit accounts and loans, imply treatment operations of

personal information.

Said entity affirms that in no case, its main activity is the treatment of

personal data of its clients beyond what is necessary

for the development of that main activity, nor does it benefit

economically from the processing of the personal data of its clients. To this

In this regard, it must be taken into account that among its commercial activities

finds the sending of commercial communications to its clients of entities

third parties with whom it maintains commercial agreements.

It also affirms that the AEPD separates itself from the intention of the legislator that is directed

to consider aggravating the fact that the processing of personal data is the

main activity of a business nature, not that it is an instrument; hence

refers to "high bonding", otherwise it would be concluded that the

The mere fact of processing personal data would always be an aggravating circumstance. If he

legislator would have intended so, would not have qualified that such relationship should

be "high



This Agency does not share such an interpretation. Article 76.2.b of the LOPDGG

establishes as a criterion for grading the infraction “the connection of the

activity of the offender with the performance of personal treatment”. Saying

precept does not make any reference to its being high, as CPC affirms, but to the

fact that there is such a link, an element that this Agency has assessed as

high for the reasons stated.

-

The condition of large company of the responsible entity and its volume of

business. The business volume of the entity according to the information obtained has

been €872,976,000 in 2019. For information purposes, you must also

It should be noted that the turnover of the CaixaBank Group as of December 31, 2020

is estimated at twelve thousand one hundred and seventy-two million euros.

This Agency does not share the allegation that they have been used for the determination

tion of the fine both the turnover figure of CPC and that of the Group

CaixaBank, in which that would already be included. Group turnover

CaixaBank is mentioned for informational purposes to highlight that the fine is pro-

portional and dissuasive, as required by article 83.1 of the RGPD.

High volume of data and processing that constitutes the object of the

-

proceedings. It deals with a large volume of data and of the following typologies: data

identifying, financial, sociodemographic and socioeconomic, which allow

carry out an exhaustive profile of the interested parties.

-

High number of interested parties. The number of interested parties (clients) whose

data were treated in the development of the profiling activity associated with the

Proactive Scoring activity for commercial purposes, amounts to (...).

He requests that the effort made during the

recent years, especially since the entry into application of the RGPD, to

provide your customers with relevant information on the processing of their data

adequately and the implementation of a series of measures aimed at this improvement

in the collection of consents. It also alleges that CPC has been proactive and

diligent in responding to any requirements of the Agency.

In the opinion of this Agency, providing information to its clients is an obligation that

derives from the RGPD and that it must be done in the manner required by it, therefore, the fact

to provide information to its clients, that with regard to the treatment object of the

this procedure this Agency considers precisely that it is not adequate, not

can be considered as a mitigating factor. Regarding the measures adopted, these

they focus on the modification of the privacy policy on their website, without

However, the information provided to the client when obtaining consent is

found in the document called GENERAL CONDITIONS OF THE

APPLICATION-CREDIT CONTRACT, document that has not been modified as the

CPC itself acknowledges in its response to the request made during the period

evidence, so it cannot be considered that sufficient measures have been taken

to remedy the infringement or mitigate its possible adverse effects. For him

Otherwise, different information is provided in said document and in the privacy policy.

privacy, so that the information provided to the interested party is not uniform.

On the other hand, meeting the information requirements of the Administration does not



constitutes a mitigating factor contemplated in the data protection regulations.

Considering the exposed factors, the valuation reached by the fine for the

infringement charged is 3,000,000 euros.

7th

In accordance with the provisions of article 58.2.d) of the RGPD, each authority

of control may “order the person responsible or in charge of the treatment that the

processing operations comply with the provisions of this Regulation,

when appropriate, in a certain way and within a specified period…”.

In this case, considering the circumstances expressed in relation to the

observed breaches, it is appropriate to require CAIXABANK PAYMENTS &

CONSUMER EFC, EP, S.A.U. so that, within the term indicated in part

device, adapt to the personal data protection regulations the

procedures by which consent is obtained to create profiles

for commercial purposes with the scope and in the sense expressed in the

Foundations of Law of this act.

It is warned that not meeting the requirements of this organization may be

considered as a serious administrative infraction by “not cooperating with the Authority

of control” before the requirements made, being able to be valued such behavior to the

time of the opening of an administrative sanctioning procedure with a fine

pecuniary

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES

FIRST: Impose on the entity CAIXABANK PAYMENTS & CONSUMER EFC, EP,

S.A.U., with NIF A08980153, for an infringement of Article 6.1 of the RGPD, typified in

Article 83.5 of the RGPD, and classified as very serious for the purposes of prescription in the

article 73 of the LOPDGDD, with a fine amounting to 3,000,000 euros (three

millions of euros).

SECOND: Require the entity CAIXABANK PAYMENTS & CONSUMER EFC, EP,

S.A.U within a period of 6 months adopt the necessary measures to adapt to the

personal data protection regulations the procedures by which

obtains its clients' consent to create profiles for purposes

commercial, with the scope expressed in the Foundation of Law VII. within the term

indicated, CAIXABANK PAYMENTS & CONSUMER EFC, EP, S.A.U, must justify

before this Spanish Data Protection Agency the attention of this

request.

THIRD: NOTIFY this resolution to CAIXABANK PAYMENTS &

CONSUMER EFC, EP, S.A.U.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once
Once this resolution is enforceable, in accordance with the provisions of the
art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure
Common Public Administrations (hereinafter LPACAP), within the payment term
voluntary established in art. 68 of the General Collection Regulations, approved
by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,
of December 17, through its entry, indicating the NIF of the sanctioned and the number
of procedure that appears in the heading of this document, in the account
restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency
Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case
Otherwise, it will be collected in the executive period.
Received the notification and once executed, if the date of execution is
between the 1st and 15th of each month, both inclusive, the term to make the payment
voluntary will be until the 20th day of the following month or immediately after, and if
between the 16th and last day of each month, both inclusive, the payment term
It will be until the 5th of the second following month or immediately after.
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 in accordance with art. 48.6 of the
LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the
Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

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

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

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

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

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

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

aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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