 File No.: PS/00183/2022

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party) dated February 8,

2021 filed a claim with the Spanish Data Protection Agency. The

claim is directed against CAIXABANK S.A. with NIF A08663619 (hereinafter, the

claimed party or CaixaBank). The reasons on which the claim is based are the following:

following:

The claiming party states that it is a client of the claimed party, and that on 8

October 2017, he updated his address information through his online access, but

in the year 2020 verifies that there are documents in which his old

address, it points out that its only current address is ***ADDRESS.1.

Well then, he requested rectification of his postal address on July 10 and on

September 2020 through your Caixabank.es Mi Gestor space, without

response by the claimed party.

Subsequently, on October 14, 2020, with registration number 8-724587XXXX

requested rectification of his postal address through servicio.cliente@caixabank.com.

On October 30, 2020, the claimed party requested additional information from the

claimant in order to carry out the appropriate management.

Likewise, on November 6, 2020, the claimant received a response with an

claim reference 8-726689XXXX, in which they inform you that they will send your

request to the corresponding specialized department.

As of February 8, 2021, the claimant states that his address has not yet

has been rectified.

Relevant documentation provided by the claimant:

- Provide a screenshot of CaixabankNow where a receipt of

a loan in the name of the claimant with loan number ***CONTRACT.1,

dated January 31, 2021 and addressed to the old postal address in

***ADDRESS.2.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the claimed party, for

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on March 9, 2021 as

It appears in the acknowledgment of receipt that is in the file.

On April 9, 2021, this Agency received a written response indicating

that, in relation to the exercise of the right of rectification, the claimant was sent

a new letter informing of the channels through which you can exercise your

application.

Provide a copy of the letter addressed to the claimant to his email dated

11/06/2020 where the reference 8-72668XXXXX states the statement that "[...]

will forward your request to the corresponding specialized department […]".

Provide a copy of the letter addressed to the claimant at the postal address ***ADDRESS.1 and

dated 11/05/2020 where it is stated that after his request dated 10/31/2020

You are informed of the channels enabled for the modification of your data, which are

through the online channel CaixaBank Now or in person.

Copy of proof of Returned / Surplus by the Postal service on date

12/07/2020 regarding the sending of a certified letter addressed to the claimant to his

mailing address at ***ADDRESS.1. It also appears in said supporting letter

handwritten statement that on 12/01/2020 the addressee was absent.

Provide a copy of the letter addressed to the claimant at the postal address ***ADDRESS.1 and

dated 04/09/2021 where it is stated that after his request dated 10/31/2020

You are informed of the channels enabled for the modification of your data, which are

through the online channel CaixaBank Now or in person.

THIRD: On April 22, 2021, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

On 10/13/2021, the claimant sent this Agency a response to the request.

However, an Annex with the name "E046742021_Anexos.pdf" is provided with

.pdf extension that is unreadable by any conventional reader of pdf files. After

be required on successive occasions (03/10/2022 and 03/15/2022), dated

03/16/2022, the claimant presents the documentation that is correctly viewable:

1.

That the claimant's domicile for all his contracts is ***ADDRESS.1.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Provide screenshots with 4 contracts in the name of the claimant where it is stated, in

all contracts, the same postal address mentioned in the field "Destination of

correspondence".

2.

The claimant has maintained contact with the Entity through the Service of

CaixaBank Customer Service and the service for the exercise of rights in matters of

Data Protection. That the only claim related to the exercise of rights

at 8-72668XXXXX. That in this claim the claimant requests the rectification

from your tax address by mail dated 10/30/2020. that the service of

customer service sends a communication to the claimant stating that the claim is

will be managed by the specialized team. That once internally derived the

claim, is identified with the ID (...) in the exercise of rights service at

data protection matter. That in relation to this ID (...), a letter of

response dated 11/05/2020 to the postal address of the claimant, already provided

previously by the claimant.

A list is provided with various contacts between the claimant and the defendant where,

among others, it consists:

In the Customer Service:

SR number

Date

reception

Reason

Type Resolution

8-724587XXX

10/14/2020 Commission and

In favor of the Client

Spent

Cancellation/

sale and

Amortization

8-72668XXXX

11/02/2020 GDPR

Petitions

Derived to

ejercicio.derechos@caixabank.com

A copy of the email dated 11/04/2020 sent is provided

reclamaciones.traslado.colaborador@caixabank.com and sent to "EXERCISE OF

RIGHTS" where there is a note stating that through email

dated 10/31/2020 sent by the claimant to servicio.cliente@caixabank.com and

requesting the change of your mailing address from ***ADDRESS.2 TO

***ADDRESS 1.

A letter addressed to the claimant and dated 11/06/2020 has already been provided.

previously by the claimant.

3. Provide a list with various requests from the exercise of rights service in

data protection matters, among which are the ID (...) mentioned with

above and also:

to. That regarding application ID 588316 of the rights service in matters of

data protection request of the claimant is registered on 04/21/2021 in

www.aepd.es

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28001 – Madrid

sedeagpd.gob.es

4/20

relation to the cancellation of data. That on 04/23/2021 it proceeds to give

answer.

A copy of the response dated 04/23/2021 addressed to the claimant is provided to the

mailing address ***ADDRESS.1.

b. That regarding the request ID (...) of the protection rights service

of data, the claimant's request is registered on 04/21/2021 in relation to the

data rectification. That on 04/23/2021 an answer is provided.

A copy of the response dated 04/23/2021 addressed to the claimant is provided to the

mailing address ***ADDRESS.1.

4. In relation to the changes made to the correspondence data of the

claimant, a history of changes is provided that contains exclusively the date

of the change, a generic description of the movement, office and user. not provided

information on the detail of the change produced in the claimant's data.

On 04/01/2022, the defendant partially presents the additional documentation

required.

1. The defendant states that there are no communications between the claimant and the

Entity through the Mi Gestor channel between the dates 07/01/2020 and 09/30/2020.

It provides a screenshot of some searches in the channel Mi Gestor of the claimant

where it is stated that two searches are carried out, one for favorite documents and another

for messages in the time range from 07/01/2020 to date

03/22/2022 (documents) and 03/24/2022 (messages). There are zero results in

both searches.

2. That the mailing address ***ADDRESS.2 was provided by the claimant in the

contract *** CONTRACT.2 which is cancelled. That the address ***ADDRESS.1

was provided by the claimant in the rest of its contracts.

Provide screenshot with the contract canceled ***CONTRATO.2 and, associated with

this, the old postal address, as well as the contracts *** CONTRACT.3,

***CONTRACT.1, ***CONTRACT.4, ***CONTRACT.5, and associated with them, the new

mailing address at ***ADDRESS.1.

The required information is not provided in relation to how and when they occurred

the claimant's mailing address changes to ***ADDRESS.1.

CONCLUSIONS

In relation to the requests for rectification by the claimant and the responses

by the defendant:

1. There is no record, with the information provided by the claimed party, of communications to

through the My Manager channel.

2. There is a response from the defendant dated 11/05/2020 after request

by the claimant dated 10/31/2020. In this answer, only

explain the channels enabled for the exercise of rights. Said answer consists

sent but not delivered because the claimant is absent at home.

In relation to the origin of the different postal addresses and their effective rectification:

3. In the evidence provided by the claimant, on 01/31/2021 the

address ***ADDRESS.2 associated to the contract ***CONTRACT.1, contract that, in the

evidence provided by the claimant as of 10/13/2021, is associated with the

address ***ADDRESS.1.

4. In relation to the postal address of the claimant in ***ADDRESS.1, address to which

which he requested the rectification, the defendant does not provide the information requested in

regarding how and when the changes to that mailing address or the

reason for said change. The defendant does not provide information in relation to the fact that

There has been no change to this address at any time. Without

However, this address is used by the defendant in some communications

addressed to the claimant in November and December 2020 and in April 2021.

5. In relation to the postal address of the claimant in ***ADDRESS.1 the claimed

does not provide the requested information in relation to how and when they occurred

changes to that mailing address. It does state that the origin of that address is

contracts of the claimant and that the address was provided by the claimant, but not

provide evidence in this regard beyond the mere association of this address to

said contracts, as extracted from the screenshot of the party's systems

claimed.

FOURTH: On April 20, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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

of the Common Administrative Procedure of Public Administrations (in

hereafter, LPACAP), for the alleged infringement of Article 16 of the GDPR, typified in

Article 83.5 of the GDPR.

FIFTH: Once the initiation agreement has been notified, the defendant, by means of written documents

on May 6 and June 3, 2022, requests that, in accordance with article 32.1 of

the aforementioned LPACAP, the period initially granted for

make allegations in accordance with article 53.1.a) of the LPACAP, and be provided with a

copy of the documents that make up the administrative file.

It is agreed to extend the term to make allegations for the maximum allowed

legally and send the defendant a copy of the electronic file.

SIXTH: On May 13, 2022, the defendant presented her allegations to the

agreement to open the disciplinary procedure in which it requests that it be declared

the nullity of the procedure by operation of law for the reasons detailed in the

first allegation of his writing. Subsidiarily, it requests that the file be agreed

of the procedure for non-existence of infringement of the data protection regulations

of personal. And, as a subsidiary with respect to the previous claims, that

it is agreed to warn the defendant (article 58.2.b) GDPR.

In defense of their respective claims, they adduced the following arguments:

<<First. - Of the defenselessness caused to my principal as a consequence of the

fixing the amount of the penalty in the start-up agreement which, in our opinion, would vitiate

of nullity itself. Indeed, the first and fourth paragraphs of the operative part

of the Initiation Agreement of this disciplinary proceeding state verbatim

that the criteria to be taken into account to graduate the amount will be determined

of the sanction that, in the opinion of the Sanctioning Body, should be imposed in this case "without

detriment of what results from the instruction", pronouncing in the following

terms: "In accordance with the transcribed precepts, and without prejudice to what is

of the instruction of the procedure, in order to set the amount of the fine

to impose on the defendant as responsible for an infraction typified in article

83.5.b) of the GDPR, in an initial assessment, are considered concurrent in the present

case, as aggravating circumstances, the following factors: - The evident link of the

responsible for data processing. (art.83.2.k) of the GDPR in relation to art.

76.2 b of the LOPDGDD). - The time since the claimant requested the

rectification until it is carried out (art. 83.2 a) of the GDPR).

In this way, the Sanctioning Body comes to determine in the act that supposes the

start of the processing of the sanctioning procedure what is the sanctioning reproach

that, in his opinion, it is appropriate to impose on my principal, evaluating even the extenuating and

concurrent aggravating factors in the case, despite the fact that Caixabank has not had the opportunity in

no time to reveal before the aforementioned body what could be the

circumstances that could be applicable in the present case, given that,

obviously, he could not have known of the opening of the procedure until

has been notified of the agreement in which they are appraised unilaterally by the Body

Sanctioning the aforementioned circumstances. All this supposes, in the opinion of this

Entity, a conduct that significantly affects the application of the principles

principles of criminal law that, with certain specifications, are applicable to the

disciplinary administrative procedure, as has been revealed

reiterated jurisprudence of our Constitutional Court.

In summary, in this procedure the Sanctioning Body itself makes in the Agreement

Start an assessment (advance and lacking any motivation), of the

responsibility of this Entity, even indicating, even if only for its

mere mention, the concurrent aggravating factors in the case, even when formally

intends to leave safe whatever finally proceeds according to the instruction. Well

Well, from the foregoing we can only draw the conclusion that, said with the utmost

respect, the legality of the administrative action is seriously affected,

whenever the degree of culpability of the Entity in the

alleged commission of the infringing conduct, without the former being able in any way to

time to carry out any allegation that allows the Sanctioning Body

assess, even minimally, the circumstances in the case in light of

such allegations. All this leads to the generation of an absolute and total

defenselessness to this party, who at no time can make use of his right

in order to show the inaccuracy of the assessment carried out by the

Sanctioning Body when determining a limine the amount of the sanction that "could

correspond" for the still alleged violation of article 6.1 in relation to 5.1.

a) both of the GDPR, since it was not yet a party to the procedure, by the simple

reason that the sanction is fixed in the act by which it begins.

Well then, the fact that the Sanctioning Body establishes in the initiation agreement

the amount of the sanction that, in his opinion, should be imposed on this Entity, affects

substantially to the impartiality of the actions of the Examining Body, which is

knowledgeable, before initiating the processing of the procedure, of what is the criteria of the

Body to which it will finally submit the file for the imposition of the sanction that

"could correspond", with regard to the amount of the same and the circumstances

modifications of the responsibility that must be taken into account in its

determination. The scope of action of the body is thus substantially affected

competent for instruction.

On the other hand, the invocation that the Home Agreement makes of article 85 is not ignored

of the LPACAP. However, in the opinion of this party, the rules established in the

Article 85 are not applicable in the present case, since said norm

It is applicable to cases in which the sanctioning rule imposes a fine

of a fixed and objective nature for the commission of an offence, so that only

corresponds to the defendant to debate the effective concurrence of the typical behavior.

In consideration of the foregoing, this party understands that there is a radical vice in the

processing of this disciplinary file that affects the nullity of the

procedure, while the investigative phase has been contaminated by the

action of the Sanctioning Body that, when assessing the amount of the sanction that

proceeds to impose, has compromised the impartiality of the Instructor, of which he is superior

hierarchical, having evaluated the causes of aggravation of responsibility to his

concurrent judgment in the case and has quantified what should be, in his opinion, the

disciplinary reproach that should be imposed on this party.

The consequence of all the above is that there is a radical vice in the processing of

this disciplinary file, derived from an interpretation contrary to the

Constitution of articles 64 and 85 of the LPACAP, which affects the nullity of the

procedure, having violated the fundamental rights of my client, such

and as established in article 47.1 a) of the LPACAP.

Second. - Actions and facts object of the file.

The rights of rectification exercised by the claimant have been duly

serviced by CaixaBank, how it was already accredited in the response to the request for

information originating from this Commencement Agreement.

 On 11/04/2020 it was received in the mailbox ejercicio.de.derechos@caixabank.com

a rectification request through the CaixaBank Customer Service Department

(DOCUMENT NUMBER TWO)

 It was identified internally with the application number 459887

 A response letter was sent on November 5, 2020 (DOCUMENT

NUMBER THREE)

 The shipment was sent to the address that the claimant rightly claims as

notification address (***ADDRESS.1) and was returned (DOCUMENT NUMBER

4)

In relation to the right of rectification carried out on April 21, 2021:

 On April 21, 2021, the portal for the exercise of rights received a

data rectification request

 It was identified internally with the application number 588319

 A response letter was sent on April 23, 2021 (DOCUMENT

NUMBER FIVE)

 The claimant's acknowledgment of receipt dated April 30, 2021

(DOCUMENT NUMBER SIX)

It is up to us to state that such a statement does not conform to reality, since

It appears in our files that on May 3, 2021 the client appeared at

office 6435- STORE COSO and the address of the contract was changed. It

in accordance with the indications provided by the Entity in the response to the exercise

of the right of rectification requested. For this purpose, we enclose (DOCUMENT

NUMBER EIGHT and DOCUMENT NUMBER NINE, respectively) the receipts

corresponding to the interested contract, dated April 2021 and May 2021, where

You can see the change made.

In the case of my principal, CAIXABANK makes two

reinforced environments to carry out the modification of your postal address: your bank

digital (through electronic means) and your bank branch (in person):

As we have already indicated, following the information provided by my client, the

claimant went to his office on May 3, 2021 and requested in person

the change of address, which was made the same day.

That is why the right to rectification was executed without undue delay, once

duly identified the applicant, in accordance with regulatory obligations

and procedure that we have transferred to you.

Consequently, in the opinion of my principal, there is no delay in

the management and response to the exercise of rights raised by the claimant>>.

SEVENTH: On May 19, 2022, the instructor of the procedure agreed

perform the following tests:

1. The claim filed by

A.A.A. and its documentation, the documents obtained and generated during the phase

of admission to processing of the claim, and the report of previous actions of

investigation that are part of procedure E/04674/2021.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

initiation of the referenced sanctioning procedure, presented by

CAIXABANK S.A., and the accompanying documentation.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

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PROVEN FACTS

9/20

1. The claimant, client of the defendant, states that on October 8, 2017

updated your address information through your online access, but in the year 2020

checks that there are documents that show your old address

***ADDRESS.2.

2. According to what the defendant stated, he requested rectification of his postal address on the 10th of

July and September 28, 2020 through your Caixabank.es My Manager space,

No response from the claimed party.

3. On October 14, 2020, with registration number 8-724587XXXX, he requested

rectification of your postal address through servicio.cliente@caixabank.com.

On October 30, 2020, the claimed party requested additional information from the

claimant in order to carry out the appropriate management.

4. On November 6, 2020, the claimant receives a response with a telephone number

claim reference 8-72668XXXXX, in which they inform you that they will send your

request to the corresponding specialized department.

As of February 8, 2021, the claimant states that his address has not yet

has been rectified.

5. The claimed party provides a screenshot of CaixabankNow where

there is a receipt for a loan in the name of the claimant with a loan number

***CONTRACT.1, dated January 31, 2021 and addressed to your old postal address

at ***ADDRESS.2.

6. On January 31, 2021, the address ***ADDRESS.2 associated with the

contract *** CONTRACT.1, contract that, in the evidence provided by the defendant

As of 10/13/2021, it is associated with the address ***ADDRESS.1.

7. It appears in document 8 provided by the defendant dated April 30, 2021

appears as postal address ***ADDRESS.2 associated with the contract ***CONTRACT.1,

corresponding to the receipt dated April 30, 2021.

8. It appears in document 9 provided by the defendant dated May 31, 2021

appears as postal address C/

***ADDRESS.1 associated with the contract

*** CONTRACT.1, corresponding to the receipt dated May 31, 2021.

EIGHTH: On July 4, 2022, a resolution proposal was formulated,

proposing

that the Director of the Spanish Agency for Data Protection sanctions

CAIXABANK S.A. with NIF A08663619, for a violation of article 16 of the GDPR,

typified in article 83.5.b of the GDPR, with an administrative fine of €25,000

(twenty-five thousand euros).

On July 19, 2022, the defendant presented allegations to the proposal of

resolution in which it requests that the nullity of the

proceeding for the reasons detailed in the first allegation of his brief.

Subsidiarily, it requests that the file of the procedure be agreed due to non-existence

of infringement of the personal data protection regulations. And, with character

subsidiary with respect to the previous claims, that it be agreed to warn the

claimed (article 58.2.b) GDPR.

In defense of their respective claims, they reaffirm their allegations to the

start agreement and consider them reproduced, pointing out that there is no

any accreditation of the alleged "delay" in the response to the exercise of rights

and, consequently, any proof of charge that motivates a possible sanction to the

Entity.

Likewise, it states that the Resolution Proposal includes the same aggravating factors

that were indicated in the Commencement Agreement, without believing any of its allegations, and

insists on the arguments put forward in the Initiation Agreement, namely: "being

accredited that the defendant did not exercise any right of rectification through the

channel "Mi gestor" in 2017, in the opinion of my client there is no delay between the

request for rectification and the response provided, as you can already prove in the

exercises of rights on 11/4/20 and 04/21/21, both answered within the term

of one month indicated in article 12.3 of the GDPR. My client, as responsible for the

treatment of the claimant's data, proceeded in a timely manner to respond

motivated to exercise their rights, complying at all times with the regulations

applicable and facilitating the channels through which the claimant could modify their data.

Moreover, the modification of your address information was immediate at the time the

that the claimant, on 5/3/21, went to his office and requested the change”

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

The issues that the defendant has raised in her submissions are examined beforehand.

two pleadings and that are unrelated to the merits of the matter on which the

sanctioning procedure at hand.

In her allegations to the proposed resolution, the defendant, in addition to stating

that it "reiterates" in its entirety the allegations that it made against the agreement to open the

procedure, again affects the issues, unrelated to the merits of the matter, which

already raised in his first statement of allegations.

This Agency also reiterates what it stated in the motion for a resolution in

response to the allegations put forward by the defendant against the initiation agreement.

In the opinion of the defendant, the opening agreement is invalidated by the

defenselessness generated by the fact that the AEPD has set the amount for him

of the sanction, instead of expressing only the limits of the possible sanction; because I don't know

have motivated the aggravating circumstances and because through the initiation agreement a assessment of the guilt of the defendant without having had the opportunity to pronounce on it. It also adds that the initiation agreement exceeds the content provided for in article 68 of the LOPDGDD and that, having set the decision-making body the amount of the sanction in the agreement to open the procedure, it has been compromised the impartiality of the instructing body, which knows thus, before initiating the procedure, the criteria of the body to which the file must be submitted, which determines in his opinion a "clear breach of the principle of separation of the phase instructor and sanction".

The defendant understands that the rules of article 85 of the LPACAP are not applicable to the present case but to the cases in which the sanctioning norm imposes a fine of a fixed and objective nature and that the application that has been made of this precept in the initiation agreement does not respect its literal wording, according to which the amount of the pecuniary sanction may be determined "once the disciplinary procedure has started", so that, the entity maintains, "would be assimilating" "the very act of initiation with the fact that the procedure is started.

The arguments used by the defendant cannot be admitted.

The opening agreement conforms to the provisions of article 68 of the LOPDGDD, according to which it will suffice to specify the facts that motivate the opening, identify the person or entity against which the procedure is directed, the infringement that he could have committed and his possible sanction. In the same sense, the Article 64.2 of the LPACAP that refers to the minimum content of the agreement of initiation. According to this precept, among other details, it must contain "the facts that motivate the initiation of the procedure, its possible legal qualification and the sanctions that may correspond, without prejudice to what results from the instruction". Thus, In this case, not only the requirements mentioned in the precepts are met

quoted, but goes further, offering reasoning that justifies the possible

legal classification of the facts and mentions the circumstances that may influence

in determining the penalty.

It cannot be ignored that article 85 of the LPACAP - which contemplates the possibility of

apply reductions on the amount of the sanction in the event that the offender

recognizes its responsibility and in case of voluntary payment of the sanction- obliges

determine those reductions in the notification of the initiation agreement of the

procedure, which necessarily implies that said agreement must establish the

amount of the sanction corresponding to the alleged acts. extreme that justifies

amply that it refers to the modifying circumstances of the

responsibility, since these directly affect the determination of the amount of

The sanction.

Contrary to the thesis defended by the defendant, article 85 of the LPACAP does not provide

nor that the amount of the penalty is determined once the procedure has begun.

On the contrary, it is the recognition of responsibility and the voluntary payment of the

sanction what has to take place after that moment, but not the setting

of its amount.

Regarding the fact that article 85 LPACAP could only be applied to

cases in which the sanctioning norm imposes a fine of a fixed nature and

objective and that the application that has been made of this precept in the initiation agreement

does not respect its literal wording, it must be indicated that the AEPD has been applying article 85

LPACAP in the same way since the entry into force of the aforementioned law without the Chamber Administrative Litigation of the National Court, before which it is possible to appeal administrative litigation against its resolutions, has ever ruled in line with the criteria that entity defends.

Nor can it be accepted that having indicated in the initiation agreement the sanctions that could correspond to the one claimed for the imputed infractions is determinant of defenselessness or supposes a breach of the principle of separation of the investigation and resolution phases, since this Agency is limited to complying with this to one of the requirements set forth in the standards reviewed. to major abundance, articles 68 of the LOPDGDD and 64.2 of the LPACAP also require as content of the opening agreement that the sanction that could be established correspond.

Thus, the alleged rupture "of the principle of separation of the instructor phase and of sanction" that the defendant alleges -a point that this Agency denies- would be, if it existed, the consequence of the correct application that this Agency has been making of a legal precept, article 85 of the LPACAP.

Regarding what was stated by the defendant that, having established the opening agreement the amount of the sanction and the modifying circumstances of the responsibility that could be appreciated, she has not had the opportunity to comment, we limit ourselves to pointing out that the administrative procedure begins precisely with the opening agreement and it is from then -not before- when article 53 of the LPACAP recognizes the interested party a series of rights, including the one provided for in article 53.1.e).

Lastly, with regard to the defect of nullity which, in the opinion of the defendant, the procedure suffers as a consequence of the defenselessness that he claims to have suffered The following should be noted: First, the defendant does not specify in what section of article 47.1 of the LPACAP grounds the nullity that it invokes.

Secondly, the invoked nullity of the proceeding could in no case

based on section a) of article 47.1. of the LPACAP, in connection with the

alleged rupture of the separation between the investigative phase and the decisive one according to the

Article 24.2 of the E.C. This, because according to the SSTC 74/2004 and 175/2005, the

principle enshrined in article 24.2 of the E.C. according to which whoever instructs does not

resolves, it is not applicable to the administrative procedure, so that in this area

We are not before a right with constitutional status.

And finally, thirdly, in the event that the nullity of the

procedure on the grounds contained in section e) of article 47.1 of the LPACAP

It seems appropriate to bring up STC 78/1999, of April 26, which in its

Legal Basis 2, says:

"Thus, according to reiterated constitutional doctrine that is synthesized in the foundation

3º of the STC 62/1998, "the estimation of an appeal for amparo by the

existence of breaches of procedural rules 'does not result simply from the

assessment of the possible violation of the right due to the existence of a defect

procedural more or less serious, but it is necessary to prove the effective concurrence

of a state of material or real defenselessness' (STC 126/1991, 5th legal basis;

STC 290/1993, legal basis 4th). So that a helplessness can be estimated

with constitutional relevance, which places the interested party outside of any possibility of

claim and defend their rights in the process, a violation is not enough

merely formal, it being necessary that an effect be derived from that formal infraction

material defenselessness, an effective and real impairment of the right of defense (STC 149/1998, legal basis 3rd), with the consequent real and effective damage to the interested parties affected (SSTC 155/1988, legal basis 4, and 112/1989, legal basis 2)".

In view of the foregoing, the petition of the defendant to declare the nullity of the disciplinary administrative procedure at hand must be rejected.

To end the chapter on the alleged radical nullity of the procedure that the claimed adduces in its defense, it is worth adding the following considerations.

One of them related to the fundamental right to an impartial judge guaranteed in the Article 24.2 of the E.C. The defendant has referred in her two writings of allegations that the actions of the AEPD have determined that it has been "seen substantially affected the impartiality of the examining body", which is why

We take the opportunity to specify that this alleged affectation of the impartiality of the The instructor also does not fit into that fundamental right guaranteed by the article 24.2 of the C.E., therefore it could not base on it the nullity of the procedure under section a) of article 47.1 of the LPACAP.

Regarding the right to an impartial judge, it should be noted that, furthermore, it is not that this guarantee is not transferable to the instructor - who is the person who is claimed swings the much-desired nullity of the procedure - but it is not even recognizes this right within the framework of the administrative procedure. STC 76/1990, legal basis 8, could not be more clear:

“The right to [...] and to a process with all the guarantees -among them, the independence and impartiality of the judge - is a characteristic guarantee of the judicial process that does not extends to the administrative procedure, since the strict impartiality and independence of the organs of the judiciary is not, by essence, predicable with same meaning and to the same extent of the administrative bodies (SSTC

175/1987 and 22/1990...". (The underlining is ours)

Finally, regarding the minimum content of the opening agreement provided for in the

Article 64 of the LPACAP and the "manifest contradiction" in which, according to the entity,

would have been incurred by saying that it "goes beyond" that minimum content, enough

point out that article 64.2 indicates that "it must contain at least

", "b) [...] the

sanctions that may correspond, without prejudice to what results from the instruction".

So, as stated at the time, the opening agreement of this

procedure not only met the requirements of article 64.2 LPACAP - it established the facts

that motivate the initiation of the procedure, its possible qualification and the sanctions that

could correspond - but "went further" insofar as it detailed, among other things,

the circumstances modifying the responsibility that were appreciated at that stage.

With this, neither "a kind of benefit is granted to the company" nor are they "undermined"

"the rights enshrined in article 24 of the Constitution.", as we

reproaches the claimant. Comment that is still striking if we take into account

that one of the arguments used by the defendant in her allegations to the

opening agreement was the deficient argumentation of the circumstances

modifications of the responsibility exposed in the mentioned agreement.

In short, the guarantees recognized to the defendant in the administrative procedure

disciplinary system and the rules governing the procedure have been respected

scrupulously. The points mentioned by the defendant in her two briefs

of allegations do not involve the violation of any recognized fundamental right

in article 24.2 of the E.C. in which to support the concurrence of the reason for

Radical nullity of article 47.1.a) LPACAP.

In view of the foregoing, the claim of the defendant to declare the

nullity of the procedure.

II

Section d) of article 5.1. of the GDPR determine in terms of the "Principles

related to the treatment" that: "The personal data will be:

(…)

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the erasure or rectification without delay of the personal data

are inaccurate with respect to the purposes for which they are processed (<accuracy>)"

For its part, regarding the "Principles of Data Protection", article 4.1 of the

LOPDGDD determines:

"4. Data accuracy.

1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be exact

and, if necessary, updated.

IV.

Article 16 of the GDPR, regarding the "Right of rectification" establishes that:

"The interested party shall have the right to obtain without undue delay from the person responsible for the

processing the rectification of personal data concerning you. Having in

account the purposes of the treatment, the interested party shall have the right to complement

incomplete personal data, including through a statement

additional."

In turn, article 12.4 of the aforementioned LOPDGDD, establishes as one of the

"General provisions on the exercise of rights" that:

"4. Proof of compliance with the duty to respond to the request to exercise

their rights formulated by the affected party will fall on the person responsible".

For its part, article 14 of the LOPDGDD, under the heading, "Right of rectification",

provides that: "When exercising the right of rectification recognized in article 16 of the

Regulation (EU) 2016/679, the affected party must indicate in his request what data is used

referred to and the correction to be made. You must accompany, whenever

necessary, supporting documentation for the inaccuracy or incompleteness of the

data object of treatment."

Article 83 of the GDPR, under the heading "General conditions for the imposition of

administrative fines", he points out:

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

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the volume of

overall annual total business of the previous financial year, opting for the one with the highest

amount:

b) the rights of the interested parties in accordance with articles 12 to 22."

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 74.c) establishes that: "They are considered

minor and will prescribe after one year the remaining infractions of a merely formal nature of

the articles mentioned in sections 4 and 5 of article 83 of the Regulations (EU)

2016/679 and, in particular, the following: (...)

c) Failure to respond to requests to exercise the rights established in articles

15 to 22 of Regulation (EU) 2016/679, unless the provisions apply

in article 72.1.k) of this organic law.”

And, for these purposes, obviously, the fact that the complaining party requested the

rectification several times, and the claimed party did not proceed to carry out said

rectification, which is why the established exception is applicable.

Article 72.1k) of the LOPDGDD establishes that they are offenses considered very

Serious "The impediment or obstruction or repeated non-attention to the exercise of

the rights established in articles 15 to 22 of Regulation (EU) 2016/679.”

V

In accordance with the available evidence, it must be taken into account that the

lack of attention to the claimant's right to obtain, without undue delay, the

responsible for the treatment the rectification of the personal data that concerns him.

Taking into account the purposes of the treatment, the interested party will have the right to

supplement personal data that is incomplete, including by means of a

additional statement.

In the case analyzed here, it has been proven that the complaining party exercised

your right to rectification before the defendant entity, your request did not obtain the

legally required response.

Likewise, after the evidence obtained, it is verified in relation to the requests for

rectification by the claimant and the responses by the defendant:

1. There is no record, with the information provided by the defendant, of communications through

from the My Manager channel.

2. There is a response from the defendant dated 11/05/2020 after request

by the claimant dated 10/31/2020. In this answer, only

explain the channels enabled for the exercise of rights. Said answer consists

sent but not delivered because the claimant is absent at home.

In relation to the origin of the different postal addresses and their effective rectification:

3. In the evidence provided by the claimant, on 01/31/2021 the

address ***ADDRESS.2 associated to the contract ***CONTRACT.1, contract that, in the

evidence provided by the defendant as of 10/13/2021, is associated with the

address ***ADDRESS.1.

4. In relation to the postal address of the claimant in ***ADDRESS.1, address to which

which he requested the rectification, the defendant does not provide the information requested in

regarding how and when the changes to that mailing address or the

reason for said change. The defendant does not provide information in relation to the fact that

There has been no change to this address at any time. Without

However, this address is used by the defendant in some communications

addressed to the claimant in November and December 2020 and in April 2021.

5. In relation to the postal address of the claimant in ***ADDRESS.1 the claimed

does not provide the requested information in relation to how and when they occurred

changes to that mailing address. It does state that the origin of that address is

contracts of the claimant and that the address was provided by the claimant, but not

provide evidence in this regard beyond the mere association of this address to

said contracts, as extracted from the screenshot of the party's systems

claimed.

On May 13, 2022, the defendant presented her allegations to the

opening of this disciplinary procedure, stating: << Comply with us

state that said statement does not conform to reality, since it appears in

our files that on May 3, 2021 the client appeared at the office

6435- STORE COSO and the address of the contract was changed. it of

accordance with the indications provided by the Entity in the response to the exercise of the

right of rectification requested. For this purpose, we enclose (DOCUMENT

NUMBER EIGHT and DOCUMENT NUMBER NINE, respectively) the receipts

corresponding to the interested contract, dated April 2021 and May 2021, where

You can see the modification made>>.

Well then, contrary to what the defendant states, it is stated in the document

number 8 the former postal address of the claimant ***ADDRESS.2 associated with the

contract *** CONTRACT.1, corresponding to the receipt dated April 30, 2021.

In short, there is evidence in the file of the lack of attention to the right of

rectification of data, by Caixabank. It should be noted that on receipt of

dated April 30, 2021, provided by the defendant, there is still the old

postal address and only on the receipt dated May 31, 2021, is when it appears

and to the claimant's new mailing address.

The conduct described violates article 16 of the GDPR and is subsumable in the type

sanctioning of article 83.5.b of the GDPR.

V

The defendant has requested in her allegations that, instead of the fine

administrative procedure foreseen in the initiation agreement, this Agency notifies you and,

secondarily, reduce the amount of the fine established in the agreement of

opening at 25,000 euros.

Regarding the claim that a warning be addressed to him, we refer to the

Recital 148 of the GDPR which reads as follows:

"In order to reinforce the application of the rules of this Regulation, any

Violation of this must be punished with sanctions, including administrative fines,

in addition to appropriate measures imposed by the control authority in

under this Regulation, or in substitution of these. In case of minor infringement,

or if the fine likely to be imposed constitutes a burden

disproportionate for a natural person, instead of sanction by means of a fine it can

impose a warning. However, special attention should be paid to the

nature, seriousness and duration of the infringement, its intentional nature, the

measures taken to alleviate the damages suffered, to the degree of

liability or any relevant prior infringement, to the manner in which the

control authority has become aware of the infringement, compliance with

measures ordered against the person in charge or in charge, to adherence to codes of

conduct and any other aggravating or mitigating circumstances. the imposition of

sanctions, including administrative fines, must be subject to guarantees

sufficient procedural procedures in accordance with the general principles of Union law and

of the Charter, including the right to effective judicial protection and to a process with all

the guarantees."

It is clear that the elements that concern us do not concur in the case

they allow to substitute the sanction of administrative fine fixed by the article 83.5. of the

RPGD for a warning.

In the determination of the fine that should be imposed on the defendant for the infringement

of article 16 GDPR for which he is held responsible, typified in article 83.5.b)

GDPR, the provisions of articles 83.1 and 83.2 of the GDPR must be observed,

precepts that indicate:

"Each control authority will guarantee that the imposition of administrative fines

under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are effective in each individual case,

proportionate and dissuasive."

"Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

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 controller or processor;

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

extent;

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

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to 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."

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", establishes:

"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 data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party."

In the case analyzed, the concurrence of the following factors that

operate by aggravating the liability required of the entity inasmuch as they evidence a

greater illegality of his conduct or greater guilt:

- The evident link between the business activity of the defendant and the

processing of personal data (article 83.2.k, of the GDPR in relation to article

76.2.b, of the LOPDGDD) The activity of the defendant requires that numerous

personal data of its clients, therefore, given the huge volume

of business of the claimed financial institution when the events occurred, the

The importance that their infringing conduct may have is undeniable.

- The time from when the claimant requested the rectification until it was carried out.

out (art. 83.2 a) of the GDPR).

Thus, after assessing the circumstances provided for in article 83.2 of the GDPR,

paragraphs. a) and k), the latter in relation to article 76.2.b) LOPDGDD, as

of aggravating circumstances of the conduct examined, that the administrative fine to be imposed by the

violation of article 16 of the GDPR, typified in article 83.5.b GDPR, is established in

25,000 euros.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CAIXABANK S.A., with NIF A08663619, for an infraction

of Article 16 of the GDPR, typified in Article 83.5 of the GDPR, a fine of 25,000

euros (twenty-five thousand euros).

SECOND: NOTIFY this resolution to CAIXABANK S.A.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment term It will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

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