



File No.: EXP202204998

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., in the name and representation of D. B.B.B. (hereinafter, the part
claimant) on September 26, 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:

The claimant states that the entity claimed, through collection companies,
You are demanding the payment of a debt that was annulled by court ruling, and
about which CaixaBank indicated that it was proceeding to cease the claims of the
same.

And, provide the following relevant documentation:

Letter from CaixaBank, dated December 24, 2020, addressed to reply to
the claim filed by the claimant, informing that they verified the
nullity of the contract, for which reason they have given orders for the cessation of the claims
of non-payment that he received.

Screenshot of the SMS received from the collection company on behalf of the
claimed, dated July 23, 2021, claiming payment of the debt.

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 November 5, 2021 as it appears in the acknowledgment of receipt that is in the file.

On December 17, 2021, this Agency received a written response in which they limit themselves to attaching a copy of the contract of the particular conditions of the Star Passbook, Pension Club Now Account and related contracts and judgment of the First Instance Court (...).

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In the Judgment of the First Instance Court (...) Ordinary Procedure 000026X/XXXX claimant the claimant and defendant Caixabank dated ***DATE.1. In its Basis of Law Fifth provides for the radical nullity of the card contract (...) and the consequence is that the actor will only be obliged to return to the party demanded the capital effectively disposed of discounting any amount that exceeds of said capital.

THIRD: On March 10, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On June 22, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR.

FIFTH: Notification of the start agreement on June 23, 2022 to the claimed party.

On July 5, 2022, he requested an extension of the term and on the 13th of the same month and

year, a letter from the representation of CAIXABANK was entered in this Agency,

S.A., in which it alleged that CaixaBank is totally unrelated to the card contract whose

nullity is the object of the sentence and therefore in no case can a

responsible for the infringement that is imputed, since the entity sued in the

procedure by which the radical nullity of the card contract is declared (...) is the

entity CAIXABANK PAYMENTS, E.F.C. E.P., S.A., with NIF A08980153. Being

CAIXABANK PAYMENTS, E.F.C. E.P., S.A., a commercial entity with personality

own legal entity and absolutely different from the entity CAIXABANK, S.A. with NIF

A08663619

On the other hand, they provide as document number two, the sentence, in which the

entity sued in the procedure for which the radical nullity of the

card contract (...) is the entity CAIXABANK PAYMENTS, E.F.C. E.P., S.A., with

NIF A08980153.

SIXTH: On July 19, 2022, CaixaBank was notified of the proposed resolution

formulated in the following terms:

<<That by the Director of the Spanish Data Protection Agency ARCHIVE

the disciplinary procedure with file number EXP202204998 opened the

entity CAIXABANK, S.A. with NIF A08663619 for a violation of Article 6.1 of the

GDPR, typified in Article 83.5 of the GDPR>>.

PROVEN FACTS

FIRST: The claimant states that CaixaBank, S.A. with NIF A08663619, to

through collection companies, you are demanding the payment of a debt that remained

annulled by court ruling, and on which CaixaBank indicated that it was proceeding to terminate of its claims.

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SECOND: It is confirmed in the Judgment of the First Instance Court (...) Procedure

Ordinary 000026X/XXXX that the entity sued in the proceeding for which

declares the radical nullity of the card contract (...) is the entity CAIXABANK

PAYMENTS, E.F.C. E.P., S.A., with NIF A08980153

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, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

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

in Regulation (EU) 2016/679, in this organic law, by the 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 defendant is accused of committing an infraction for violation of article 6

of the RGPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which that the processing of data by third parties is considered lawful:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

a) the interested party gave his consent for the processing of his 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 processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of 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 conferred on the data controller;

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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 outweigh 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.

application to processing carried out by public authorities in the exercise of their

functions”.

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"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 a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent in accordance with articles 5,6,7 and 9.”

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infractions considered very serious" provides:

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

(...)

a) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

II

Article 28 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public, on responsibility, in its first section:

"Only those that may be penalized for acts constituting an administrative infraction physical and legal persons, as well as, when a Law recognizes their capacity to act, the affected groups, the unions and entities without legal personality and the independent or autonomous patrimonies, which are responsible for them

title of fraud or fault".

For its part, article 89 of Law 39/2015, of October 1, on the

Common Administrative Procedure of Public Administrations, in its section

first:

"The investigating body will resolve the completion of the procedure, with a file of

the actions, without it being necessary to formulate the proposed resolution,

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when in the procedure instruction it is revealed that any

of the following circumstances:

a) The non-existence of the facts that could constitute the infringement.

b) When the facts are not proven.

c) When the proven facts do not manifestly constitute an in-administrative fraction.

d) When there is no or it has not been possible to identify the person or persons responsible parties or appear exempt from liability.

e) When it is concluded, at any time, that the in-fraction".

With respect to what was alleged by the party claimed in the present case, which is stated in the

sentence that the entity sued in the procedure for which the nullity is declared

radical of the card contract "(...)" is the entity CAIXABANK PAYMENTS, E.F.C.

E.P., S.A., with NIF A08980153 and not the claimed party.

Well, from the documentation provided, it can be deduced that indeed the entity

defendant that appears in the judgment of Court 1.A. Instance (...). Procedure

Ordinary 000026X/XXXX, Judgment 0006X/XXXX promoted by the representative of the

claimant is not the claimed party but CAIXABANK PAYMENTS, E.F.C. E.P., S.A.,

of date ***FECHA.1, therefore the entity CAIXABANK cannot be considered,

S.A., as responsible.

Therefore, it is obligatory to file the proceedings of this

file, without prejudice to the fact that the entity actually

responsible for the facts.

For this reason, and given the above, by the Director of the Spanish Agency for the Protection of

Data.

RESOLVES:

FIRST: FILE the disciplinary procedure with file number

EXP202204998 open to the entity CAIXABANK, S.A. with NIF A08663619 for a

infringement of Article 6.1 of the GDPR, typified in Article 83.5 of the GDPR.

SECOND: NOTIFY this resolution to the denounced entity CAIXABANK,

S.A. with NIF A08663619.

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

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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

Director of the Spanish Data Protection Agency

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