 File No.: EXP202209339

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 PAYMENTS & CONSUMER EFC, EP, S.A.U. with NIF A08980153. The

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 the CaixaBank Group, dated December 24, 2020, addressed to give

response to the claim filed by the claimant, informing that

verified the nullity of the contract, for which reason they have issued orders for the cessation of the

non-payment claims that it 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

hereinafter LOPDGDD), said claim was forwarded to CaixaBank, S.A., 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 N.1 ***LOCATION.1.

In the Judgment of the First Instance Court No.1 ***LOCATION.1 Procedure

Ordinary 0000262/2018 plaintiff the complainant and defendant CaixaBank

Payments & Consumer EFC, EP, S.A.U. dated May 13, 2019. In its

Basis of Law Fifth provides for the radical nullity of the contract card "Visa

Classic Club Now" and the consequence is that the actor will only be obliged to

return to the defendant the capital actually disposed of, discounting all

amount that exceeds 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 sanction proceedings against CaixaBank, S.A., for

the alleged violation 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 document from the representation of CaixaBank, S.A. was entered in this Agency,

in which he 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 annulment of the “Visa Classic” card contract is declared

Club Ahora” is the entity CaixaBank Payments, E.F.C. E.P., S.A., with NIF

A08980153. Since CaixaBank Payments, E.F.C. E.P., S.A., a commercial entity with

own legal personality 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 "Visa Classic Club Ahora" is the entity CaixaBank Payments,

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

SIXTH: It is confirmed in the Judgment of the First Instance Court No.1 ***LOCATION.1

Ordinary Procedure 0000262/2018 that the entity sued in the procedure

because the radical nullity of the "Visa Classic Club Now" card contract is declared

is the entity CaixaBank Payments, E.F.C. E.P., S.A., with NIF A08980153.

SEVENTH: On September 26, 2022, the Director of the Spanish Agency

of Data Protection agreed to initiate sanction proceedings against CaixaBank

Payments, E.F.C. E.P., S.A., with NIF A08980153, in accordance with the provisions of the

Articles 63 and 64 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), for the alleged

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

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), CaixaBank Payments, E.F.C. E.P., S.A., presented a brief of allegations in which, in summary, it stated: "defenselessness

produced to CaixaBank Payments & Consumer as a result of setting the penalty amount in the initiation agreement. In this procedure, the Organ itself Sanctioner makes an assessment in the Commencement Agreement (advance and without any motivation), of the responsibility of the Entity, even indicating, even if solely by its mere mention, the concurrent aggravating factors in the case, even when it formally intends to leave what is finally appropriate based on The instruction. Well then, from the foregoing we can only draw the conclusion that, said be with the greatest of respect, the legality of the administrative action, every time that the degree of guilt of the Entity in the alleged commission of the infringing conduct, without for that reason, it was possible, at any time, to carry out any allegation that allows the Sanctioning Body to assess, even minimally, the circumstances concurrent in the case in light of said allegations. The fact that the Organ Sanctioner establishes in the Commencement Agreement the amount of the sanction that, at his judgment, should be imposed on the Entity, substantially affects the impartiality of the action of the Instructing Body, which is knowledgeable, before starting the processing of the

procedure, of what is the criterion of the Body to which it will finally raise the
file for the imposition of the sanction that "could correspond", in what
Regarding the amount of the same and the modifying circumstances of the
liability to be taken into account in their determination. It looks like this
substantially affected the scope of action of the competent body for the
instruction.

This party understands that there is a radical defect in the processing of this procedure
disciplinary action that affects its nullity, while the investigation phase has been
contaminated by the action of the Sanctioning Body that, when assessing the amount of the
sanction that should be imposed, has compromised the impartiality of the Body
Instructor, of which he is a hierarchical superior, having evaluated the causes of aggravation
of the responsibility in their opinion concurrent in the case and has quantified which must be
be, in his opinion, the penalizing reproach that should be imposed on this party. is deprived
thus to the Examining Body of an objective knowledge of the facts and of the possibility
to make an assessment of those circumstances derived from the instruction, from the
evidence that the parties could provide and the assessments and allegations that the parties
they could do. It is true that hierarchical independence will not be required
of the sanctioning body and the Investigating Body, but it is also true that the actions of the
Instructing Body may not, in any case, be directed by the Sanctioning Body.

The consequence of all the above is that there is a radical vice in the processing of
this disciplinary procedure, derived from an interpretation contrary to the
Articles 64 and 85 of the LPACAP, which affects the nullity of the same, having
violated the fundamental rights of CaixaBank Payments & Consumer.

CaixaBank Payments & Consumer has not entrusted Lexer with the debt claim
any for which my client has not carried out the data processing that was
imputed in this Commencement Agreement. Consequently, it is not possible to impute

this part the commission of an offense for violation of article 6 of the GDPR

"Legality of treatment".

CaixaBank Payments & Consumer is not responsible in the procedure

disciplinary system at hand, the conduct susceptible to infringement is not attributable to

CaixaBank Payments & Consumer, without anyone being convicted or penalized

but for facts that can be imputed to him.

Since there is no conduct attributable to CaixaBank Payments & Consumer, there is no

It is possible to assess any aggravating or mitigating circumstance. under everything

which, requests that a resolution be issued declaring the nullity of full right or

secondarily, agreeing to file the procedure".

NINTH: On October 20, 2022, the instructor of the procedure agreed

perform the following tests:

"1. The claim filed by D.

B.B.B. and its documentation, the documents obtained and generated during the phase of

admission to process the claim. 2. Likewise, it is considered reproduced for the purposes

evidence, the allegations to the agreement to start the disciplinary procedure

referenced, presented by CAIXABANK PAYMENTS & CONSUMER EFC, EP,

S.A.U., and the documentation that accompanies them".

TENTH: On November 18 and December 7, 2022, the

Proposed Resolution formulated on November 17 and December 5, 2022,

granting a period of ten business days for the submission of a written

allegations. Said term was subject to extension in the terms legally

planned.

Notified the Proposed Resolution, dated December 12, 2022, the party

The defendant submits a brief of allegations in which, in summary, it states:

A.-) Neither the debt "was annulled" (as the claimant erroneously says), nor "has

continued claiming a debt already paid" (as also wrongly indicates

that Agency).

The Judgment of the Court of First Instance No. 1 of ***LOCALIDAD.1, dated 13

of May 2019, provided by the claimant, declares the nullity, as usurious, of the

credit card contract dated March 6, 2015. The consequence of

Said annulment is provided for in Article 3 of the Law of July 23, 1908, on Usury that

establishes: "Declared in accordance with this law the nullity of a contract, the borrower

will be obliged to deliver only the sum received; and if I had satisfied part of

and the interest due, the lender will return to the borrower what,

taking into account the total amount received, exceeds the loaned capital."

Thus, based on said Judgment, the claimant was obliged to deliver to

CaixaBank Payments & Consumer the total borrowed capital that would have been available

(the only thing that will not pay are interest, penalties, commissions, etc.), then, as

As the Supreme Court has established, the consequence of the usurious nature of

a loan, due to the interest rate, is that the borrower will be obliged to deliver as

only the sum received, but not the interest and expenses.

Therefore, the claimant had to pay, after the issuance of the aforementioned Judgment (and

in compliance with the same), logically, to CaixaBank Payments & Consumer, all

the borrowed capital arranged. Specifically, almost a year after the issuance of the

aforementioned Judgment, dated September 30, 2020, the claimant entered in favor of

of CaixaBank 5 Payments & Consumer, in the deposit and consignment account

Court of First Instance No. 1 of *** LOCATION.1, the total amount

of XXX.XX € (XXX.XX € as payment of the borrowed capital drawn down and

€XX.XX for legal interest from the date of the Judgment). In accreditation of

exposed, is attached, as document No. 1, the brief presented (together with the

proof of the transfer made), in the aforementioned judicial body, by the

procedural representation of the claimant, in which the following is stated: Subsequently,

the aforementioned Court, on November 6, 2020, handed over to the representation

proceedings of CaixaBank Payments & Consumer the corresponding writ of

payment for said amount (XXX.XX €). It is also attached as document No. 2,

the judicial notification together with the aforementioned order.

B.-) The personal data referring to the card contract subscribed, on the date

March 6, 2015, by the interested party, they were canceled/deleted and

kept blocked at the disposal only of that Agency or other Bodies

administrative or judicial, in compliance with the provisions of the applicable regulations

regarding the protection of personal data.

C.-) In a procedure similar to the present one, specifically in No. EXP202208940

(Along with the claim, a court ruling is provided declaring the nullity of the

card contract with the claimed party, per user, and reports of inclusion in the

Asnef and Experian systems), instructed by that 6 Agency also to CaixaBank

Payments & Consumer, was issued by its Director, dated October 28

of 2022, RESOLUTION OF ARCHIVE OF ACTIONS.

The doctrine of own acts or "venire contra factum proprium non valet" results from full application in the scope of action of the Administration. The doctrine jurisprudential of the Constitutional Court and of our Supreme Court is clear to the regard. The Administration cannot rise up against its previous criteria or decisions, expressed in previous acts, as it is bound by such acts.

This principle, it is obvious to point out, is related to those of legitimate trust and good faith. Thus, the principle of protection of legitimate expectations (well known in the law European administrative procedure) has been accepted by the jurisprudence of Chamber Third, of contentious-administrative matters, of the Supreme Court (among others, in the Judgments of February 1, 1990, February 13, 1992, February 17, June 5, July 28, 1997, January 22, 2007, January 22 and November 4, 2013).

Like any subject of law, the Administration is obliged to observe towards the future the conduct that has been followed in previous, unequivocal and definitive acts. He principle of good faith, together with the protection of legitimate expectations, constitute patterns of behavior to which, at the service of legal certainty, the Public administrations, all without exception, must adjust their actions. would go against the principle of good faith, the protection of legitimate trust and security that CaixaBank Payments & Consumer should now be penalized (with the fine proposal of €70,000 -nothing more and nothing less-), when in a procedure analogous to the present, for substantially identical facts, specifically in the aforementioned No. EXP202208940, instructed by that Agency also to CaixaBank Payments & Consumer, was issued by its Director, dated 28 October 2022 (just one month ago), FILE RESOLUTION OF PERFORMANCES.

Since some actions have been archived for not noticing a breach of the data protection regulations, must be issued in this procedure

Resolution declaring the non-existence of liability. Indeed, giving one

total identity between the two actions mentioned there cannot be two

contradictory resolutions, therefore, having been filed previously for not

having breached the data protection regulations, cannot subsequently, a

a month later, a violation of said regulations was found in a second resolution,

unless the previous resolution has been annulled by one of the

review mechanisms established in the regulations, which has not occurred in the

present case.

CaixaBank Payments & Consumer, given the circumstances of this case, has

acted correctly and diligently without breaching the duties imposed by the Law, since

has not violated article 6.1 of the GDPR ("Lawfulness of the treatment") and, therefore, does not

has committed the infringement defined in articles 83.5.a) of the aforementioned Regulation and

72.1 b) of the LOPDGDD.

Therefore, the procedure must be resolved in this sense, proceeding to file

of these proceedings; since CaixaBank Payments & Consumer has not infringed

Article 6 of the GDPR.

Secondarily, imposing a warning sanction, established in the

Article 58.2 b) of the GDPR or, failing that, agreeing to significantly reduce the

amount of the administrative fine expressed in the Resolution Proposal.

PROVEN FACTS

1. The claimant states that Caixabank Payments & Consumer EFC, EP,

S.A.U., through collection companies, is demanding the payment of a debt

which was annulled by Judgment 66/2019 of First Instance Court No. 1 of

*** LOCATION.1, ordinary trial 262/20218, dated May 13, 2019.

2. It is stated in the letter from the CaixaBank Group, dated December 24, 2020, that

verified the nullity of the contract, for which reason they have issued orders for the cessation of the

non-payment claims that it received.

3. The complaining party provides a screenshot of the SMS received from the

collection company on behalf of the defendant, dated July 23, 2021,

demanding payment of the debt.

4. It is on record that the entity sued in the proceedings for which the nullity is declared

radical of the "Visa Classic Club Ahora" card contract is the entity CaixaBank

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

5. It appears in the Fifth Legal Foundation (merits of the matter) of the Judgment

66/2019 of First Instance Court No. 1 of ***LOCATION.1, ordinary trial

262/20218, dated May 13, 2019 that <<therefore, what is appropriate is

declare the nullity of the card contract signed on March 6, 2015 between

the parties (Visa Classic Club Now contract with no. ***CONTRACT.1) due to the

usurious nature of remunerative interest, with the effect that the plaintiff comes

obligated only to repay the lender the amount received for capital that

remains to be amortized. The consequence of said declaration of nullity is that the plaintiff

will only be obliged to return to the defendant the capital effectively

disposed, discounting any amount that exceeds said capital>>.

6. It is verified that the claimant paid in compliance with the aforementioned Judgment,
on September 30, 2020, the total amount of XXX.XX€, and that the aforementioned Court,
on November 6, 2020, delivered to the procedural representation of
CaixaBank Payments & Consumer the corresponding payment order for said
amount (XXX.XX €).

7. The personal data referring to the card contract signed, dated 6
March 2015, by the interested party, were canceled/deleted by
of the claimed party.

FUNDAMENTALS OF LAW

Yo

Competence

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

breached obligation

CaixaBank Payments, E.F.C. E.P., S.A. the commission of an offense

violation of article 6 of the GDPR, "Lawfulness of the treatment", which indicates in its

section 1 the cases in which the processing of third-party data 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;

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”.

II

Classification and classification of the offense

The infraction to which the claimed party is held responsible is typified in the

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

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 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 LOPDGDD, for the purposes of the prescription of the infringement, qualifies in its article 72.1

very serious infringement, in this case the limitation period is three years,

<<b) The processing of personal data without the fulfillment of any of the conditions

of legality of the treatment established in article 6 of the Regulation (EU)

2016/679>>

In response to the allegations presented by the respondent entity, it should be noted

the next:

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 claimed party 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, it is expressed

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 opinion of the defendant according to which article 85 LPACAP

could only be applied to cases in which the sanctioning rule

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, it must be indicated that the

AEPD has been applying article 85 LPACAP in the same way since its entry into force

of the aforementioned law without the Administrative Litigation Chamber of the Hearing

National, before which there is a contentious-administrative appeal against its resolutions, has never ruled in line with the criteria that that entity defend.

Nor can it be accepted that having indicated in the initiation agreement the sanction that could correspond to the one claimed for the imputed infraction is determinative of defenselessness or supposes a breach of the principle of separation of the phases of instruction and resolution, since this Agency is limited to complying with it with a of the requirements set forth in the standards reviewed. In greater abundance, also Articles 68 of the LOPDGDD and 64.2 of the LPACAP require as content of the opening agreement that sets the sanction that may 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 rank.

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.

The defendant party cites in its defense the resolution issued by the AEPD,
stating that the present case is analogous to that included in the
procedure EXP2022208490 also for nullity of the card contract, which was
file object by the AEPD.

Well, in EXP2022208490, there is no record that collection companies were
claiming the outstanding debt after its payment.

In this proceeding, despite the fact that Caixabank Payments & Consumer
made the corresponding adjustments to reflect the amount of outstanding debt and
Said amount must be paid by the claimant, continued through collection companies
claiming the amount of the debt.

Well then, in the Fifth Law Foundation of the judgment handed down by the
First Instance Court N.1 ***LOCATION.1 Ordinary Procedure 0000262/2018
provides for the radical nullity of the "Visa Classic Club Now" card contract and the
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. For these purposes, the reproduced SMS announces the filing of
actions to recover "the outstanding debt plus agreed interest and costs", which

certifies that payment was required beyond the interest recognized by the sentence.

Despite the favorable resolution of the aforementioned Court of May 13, 2019, and the

response from the CaixaBank Group dated December 24, 2020 in response to

the claim of the claiming party dated December 10, 2020, in which

states that <<we have verified the nullity of the ruled contract, for which reason

They have given orders to cease the non-payment claims that it receives>>.

However, the claimant received an SMS from Lexer, a collection company, in which

which stated: <<Lexer informs you reliably through this SMS,

that we will recommend to our client CaixaBank the implementation of the

judicial actions necessary for the recovery of the outstanding debt plus

agreed interest and costs>>, dated July 23, 2021.

It has been verified in the documentation provided by the claimed party that with

dated September 30, 2020, on the one hand, the claimant entered in his favor in the

account of deposits and judicial consignments of the Court of First Instance No. 1

of ***LOCATION.1, the total amount of XXX.XX € (XXX.XX € as payment

of the borrowed capital drawn down and XX.XX € for legal interest from the date of the

Judgment), and on the other hand, the aforementioned Court, dated November 6, 2020,

delivered to the procedural representation of CaixaBank Payments & Consumer the

corresponding payment order for said amount (XXX.XX €).

On the other hand, the claimed party states that the personal data

referring to the card contract signed, on March 6, 2015, by the

interested party, were subject to cancellation/deletion and are kept blocked to

available only to that Agency or other administrative or judicial bodies,

in compliance with the provisions of the applicable regulations on the protection of

Personal data.

It must be taken into account that the claimed party violated article 6.1 of the GDPR,

since it processed the personal data of the claimant without legitimacy. Since the

aforementioned Court delivered the procedural representation of CaixaBank Payments &

Consuming the corresponding payment order for said amount (XXX.XX €), the

November 6, 2020. However, the claimed party continued to claim such

debt through a collection company on July 23, 2021.

The lack of diligence displayed by the entity in the fulfillment of the obligations

imposed by the personal data protection regulations is, therefore,

evident. Diligent compliance with the principle of legality in data processing

of third parties requires that the controller be in a position to

prove it (principle of proactive responsibility).

Based on the available evidence, it is estimated that the conduct

of the claimed party could violate article 6.1 of the GDPR and may be

constituting the offense classified in article 83.5.a) of the aforementioned Regulation

2016/679.

In this sense, Recital 40 of the GDPR states:

"(40) For processing to be lawful, personal data must be processed with the

consent of the interested party or on some other legitimate basis established in accordance

a Law, either in this Regulation or under other Union law

or of the Member States referred to in this Regulation, including the

the need to comply with the legal obligation applicable to the data controller or the

need to execute a contract to which the interested party is a party or for the purpose of

take measures at the request of the interested party prior to the conclusion of a

contract."

IV.

Sanction

The determination of the sanction that should be imposed in the present case requires

observe the provisions of articles 83.1 and 2 of the GDPR, precepts that,

respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines

administrative proceedings under this article for violations of this

Regulations 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 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:

1. 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 person in charge or in charge of the treatment to

settle 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, habi-

gives an account of the technical or organizational measures that have been applied by virtue of the

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;

1. the categories of personal data affected by the infringement;

1. 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 certification mechanisms.

fications 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."

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio-

and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of said 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 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.

3. It will be possible, complementary or alternatively, the adoption, when appropriate,

of the remaining corrective measures referred to in article 83.2 of the

Regulation (EU) 2016/679."

In accordance with the transcribed precepts, and without prejudice to what results from the

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

impose on the entity claimed as responsible for an infringement classified in the

article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating factors:

1. That the facts that are the subject of the claim derive from a serious lack of

CaixaBank Payments, E.F.C. E.P., S.A. (article 83.2.b, GDPR),

When he learned of the Judgment, he did not act and continued to treat the

claimant data. The Judgment was delivered on May 13, 2019, the

response from the CaixaBank Group dated December 24, 2020, indicated the

nullity of the contract and that they had given orders for the cessation of the

non-payment claims. However, on July 23, 2021, he received an SMS

claiming the non-existent debt.

The Judgment of the National Court of 10/17/2007 (rec. 63/2006), in the

that, with respect to entities whose activity involves a continuous

treatment of customer data, indicates that "...the Supreme Court comes

understanding that imprudence exists whenever a duty is neglected

legal care, that is, when the offender does not behave with due diligence

callable. And in assessing the degree of diligence, consideration must be

especially the professionalism or not of the subject, and there is no doubt that, in

the case now examined, when the activity of the appellant is

constant and abundant handling of personal data must be insisted

in the rigor and the exquisite care to adjust to the legal preventions to the

regard."

-

The obvious link between the business activity of CaixaBank

Payments, E.F.C. E.P., S.A. and the processing of customer personal data

or third parties (article 83.2.k, of the GDPR in relation to article 76.2.b, of

the LOPDGDD)

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of €70,000

for violation of article 83.5 a) GDPR.

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 PAYMENTS & CONSUMER EFC, EP, S.A.U.,

with NIF A08980153, for a violation of Article 6.1 of the GDPR, typified in the

Article 83.5 of the GDPR, a fine of 70,000 euros (seventy thousand euros).

SECOND: NOTIFY this resolution to CAIXABANK PAYMENTS &

CONSUMER EFC, EP, S.A.U.

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 IBAN 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

Director of the Spanish Data Protection Agency

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