

Procedure No.: PS/00193/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) files a claim against
CAIXABANK, S.A., with NIF A08663619 (hereinafter, the claimed or CAIXABANK)
that has entry in the Spanish Agency for Data Protection (AEPD) with date
09/10/2018.

The basis for the claim is the communication of your personal data to
instance of the claimed, to the ASNEF asset solvency file, with the date of registration
09/03/2018, without the reporting entity requiring payment of the debt with
character prior to inclusion. The claimant acknowledges being a guarantor of a loan
entered into with CAIXABANK by the company Carnes y Pescados Extremadura, S.L., and
admits that the debt reported to the file is true, due and payable from the
06/28/2018.

Attach to the claim a copy of your DNI and a document with the
EQUIFAX anagram dated 09/04/2018 that proves that your NIF, name and two
surnames were on that date included in the solvency file for a debt
unpaid amount of 1,688.27 euros, as guarantor, having been included by the
claimed on 09/03/2018.

SECOND: A. In view of the facts set forth in the claim, the AEPD, in the
framework of file E/07176/2018, by means of a document signed on 10/09/2018
transfer of it to the claimed one so that within a month it can provide this Agency

an explanation of the facts set forth in the claim, detail the measures taken to prevent similar situations from occurring in the future and Proceed to communicate your decision to the claimant. This letter was notified to the claimed electronically, as evidenced by the Citizen Folder document that works in the file that confirms that the notification was accepted on 10/10/2018.

After the term granted to the claimed party without receiving response, the AEPD reiterates the information request, granting a new period of five days. This document, signed on 11/22/2018, is notified electronically to the Respondent accepting notice on 11/23/2018.

Likewise, in a document signed on 10/09/2018, the claimant is notified of the transfer of the claim. The certificate issued by the FNMT that is in the file certifies that the AEPD made it available in the electronic office on 10/12/2018 and that on 10/20/2018 the notification was automatically rejected.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/14

As of 12/12/2018, no response had been received from the respondent to the informative request. On that same date, pursuant to the provisions of article 65.5 of Organic Law 3/2018, on Data Protection and Guarantees of Digital Rights (LOPDGDD) agrees to Admit to Process the claim made against CAIXABANK.

B. By virtue of the investigative powers granted to the control authorities in Article 57.1 of Regulation (EU) 2016/679 (General Regulation for the Protection of Data, hereinafter RGPD) and in accordance with the provisions of Title VII,

Chapter I, Second Section, of Organic Law 3/2018, of December 5, of

Data Protection and Guarantee of Digital Rights (LOPDGDD) the Subdirectorate

General Data Inspectorate proceeded to carry out investigative actions

prior to the clarification of the claimed facts. The performances are

They start under the reference E/00243/2019.

In the course of the preliminary investigation, the Data Inspection required

CAIXABANK certain information. The letter of request, signed on

02/01/2019, it was made available in the electronic office on 02/01/2019 at 12:53

hours and the notification was accepted by the claimed party on the same day 02/01/2019 at

1:14 p.m. This is confirmed by the certificate issued by the FNMT that operates in the

proceedings.

The Preliminary Investigation Report was signed by the acting inspector on

04/05/2019.

The "result of the investigation actions" is transcribed below

that appears in the report issued by the data inspector:

<<On October 9, 2018, the complaint was transferred to the entity

denounced in the Proceedings with reference E/07176/2018.

On November 22, 2018, the entity requested an extension of the term to give

response to the claim.

On December 12, 2018, without receiving a response to the transfer, the

present inspection actions.

On February 1, 2019, a request for information was sent to the entity

reported. The brief is notified that same day, as recorded in the system of

management of @notifica.

To date, the reported entity has not answered any of the

writings that have been sent to him in relation to the facts denounced. >>

THIRD: On 05/23/2019 the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infringement of articles 13 and 31 of the RGPD, sanctioned, respectively, in the Articles 83.5.b) and 83.4.a) of Regulation (EU) 2016/679.

FOURTH: On 05/31/2019, the electronic offices of the AEPD have access to the allegations of the respondent to the agreement to initiate the file in which she requests that file is proceeded.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/14

In defense of his claim he invokes these arguments:

1. Regarding the alleged infringement of article 13 of the RGPD:

-

-

- That on 10/10/2018 received the information request from this Agency with reference E/07176/2018. Who prepared the answer answering all the points of the requirement, but, "due to an error in our systems we did not said document was even sent to the AEPD, and the lack of information was not detected. Shipping".

- That on 02/04/2019 he receives a request from the AEPD in which he reiterates the earlier information request. On this point he says that "For a unfortunate error in the procedure number it was reported as finished in our systems."

The allegations made to the initial agreement are, in essence, a reference

to the response document that, according to statements by the respondent, had prepared to send them to the AEPD within the framework of E/07176/2018.

The respondent states that on 11/10/2018 she sent a letter to the claimant in which he informed him that, in order to attend to a claim sent by the AEPD with reference number E/07176/2018, informed him that the debt was notified and required on 08/09/2018, with character prior to inclusion in ASNEF; that the notification was made by the postal services and that he was not aware of any incidence or return regarding her. In relation to this point, provide a copy of a document regarding the sending of a certified letter through Correos on the date 11/23/2018, with shipping code, CD0D7M00000780620006350S, whose sender is CAIXABANK S.A., and as recipient the claimant in the address ***ADDRESS.1.

The respondent also provides a copy of the letter requesting payment that stated that he had sent the claimant on 08/09/2018, previously to the communication of their data to the solvency file. at the bottom of the letter This information appears: "No. Contract 9620.315.501862.48"; "Date unpaid situation 06.28.2018"; "Relationship person-guarantor contract"; "Amount 2,865.64". In the body of the brief, the claimant is reminded that there is no that as of 08/09/2018 the amount due has been paid. And since there hasn't been been satisfied within the period established for it, you are informed that "in remain in the situation of non-payment, the data relating to this may be communicated to files related to compliance or non-compliance with monetary obligations".

-

In order to prove the sending of the letter requesting the date

08/09/2018, the respondent declares that it contains the reference

118223100008000249 in order to be able to trace the

communication; that the communication was sent to the address that works in your

systems associated with the claimant and that does not appear to have been returned. Provides a

certificate issued by the service company Servinform in which it asserts

that the letter of demand was enclosed in an envelope and delivered to the “postal distributor”

for delivery to the address that appears on it. Also provide a copy of the

delivery note at the Correos service. However, this document

lacks mechanical validation, seal and signature authorized by Correos and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/14

Telegraphs expressly indicating the document that without these elements

is invalid.

- Concludes based on the foregoing that article 13 of the RGPD was not violated

because the claim was required for payment prior to the communication of

the debt to ASNEF.

1. Regarding the violation of article 31 of the RGPD:

-

Regrets the incident and apologizes for any damage that may have occurred

caused.

- It adds that “the appropriate measures have been implemented so that

Incidents of this type do not happen again in the future...”

- Explains that there has been no type of intentionality in his conduct or lack of

of cooperation with the AEPD because "everything has been a consequence of unfortunate incidents that has led to not being able to notice that the requirements in question of the AEPD were not answered...".

- Provides a letter dated 11/22/2018 with the answer to the questions that they were formulated in the preliminary hearing procedure.

1. Provide a copy of the policy notarized on 02/28/2016 relating to a loan agreement entered into with CAIXABANK, S.A.; as a borrower appears Carnes y Pescados Extremadura, S.L., with NIF B06654099, represented by Ms. A.A.A. as sole administrator of the company; as a joint guarantor, acting in her own name and right, Ms. A.A.A. residing in

***ADDRESS 1.

Stipulation 17 of the loan agreement, "Data Processing personal", it says in its second paragraph:

<< The people who are party to this contract are informed that, in the event of non-payment of any of the obligations derived from it, the data relating to the debit may be communicated to compliance files or Non-compliance with monetary obligations>> (The underlining is from the AEPD)

FIFTH: The LPACAP establishes in its article 89, "Proposal for a resolution in the sanctioning procedures":

"1. The investigating body will resolve the completion of the procedure, with file of the actions, without it being necessary to formulate the proposal for resolution, when in the instruction of the procedure it is made clear that any of the following circumstances occur:

- a) The non-existence of the facts that could constitute the infraction
- b) When the facts are not proven
- c) When the proven facts do not manifestly constitute an infringement

administrative.

d) When it does not exist or it has not been possible to identify the person or persons liable or appear exempt from liability.

e) When it is concluded, at any time, that the infraction has prescribed”

(The underlining is from the AEPD)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/14

Of the actions carried out in this proceeding and of the documentation in the file are accredited the following

FACTS

1.- Ms. A.A.A., with DNI ***NIF.1, states that CAIXABANK has violated her right to data protection by having included your personal data in the file ASNEF as guarantor "without having required in any way the payment of the debt prior to registration in the Asnef Equifax database".

2.-The claimant acknowledges that the debt included in ASNEF associated with their data personal is true, expired and payable since 06/28/2018.

3.- Work in the file -provided by the claimant- a document with the anagram of EQUIFAX and the information that, associated with its NIF, appeared on 09/04/2018 in ASNEF:

Registration informed by CAIXABANK on 09/03/2018, as guarantor, of a unpaid amount of 1,688.27 euros, for the concept "personal loans".

The address linked to the claimant that appears in ASNEF is

***ADDRESS 1.

4.- Work in the file -provided by CAIXABANK- the "contract policy of

loan with collateral, number 315.501.862-48", notarized on

12/28/2016. The Notary makes it clear in the Diligence that they are involved in the contract of

loan the following parts:

As lender, CAIXABANK.

As the borrower, the company Carnes y Pescados Extremadura, S.L., specifying

that the commercial borrower is involved in the act represented by its Administrator

sole, Ms. A.A.A., position for which she was appointed indefinitely in the

constitution deed.

And as "solidarity guarantor", "in her own name and right", "DOÑA A.A.A. with

DNI/NIF ***NIF.1 with profession as a housewife" (The underlining is from the notarial document)

The address associated with the claimant and guarantor that appears in the loan policy is

***ADDRESS 1.

5.- Clause 17 of the General Conditions of the Loan contract, "Treatment

of personal data", (folio TN5784882) establishes in its last paragraph:

<< The people who are party to this contract are informed that, in the event of

non-payment of any of the obligations derived from it, the data related to the

debit may be communicated to files of compliance or non-compliance with

monetary obligations>> (The underlining is from the AEPD)

6.- Work in the file, provided by the claimed, a copy of the letter dated

08/09/2018 addressed to the claimant and to her address at ***ADDRESS.1, in which

communicates that the amount has not been paid within the period established for it and that, in

the assumption of maintaining the indicated situation of non-payment, the data referring to the

The same may be communicated to files related to compliance or non-compliance

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/14

of monetary obligations.

7.- The following documents are included in the file provided by the respondent:

In their opinion, they prove the traceability of the payment request letter that affirms have sent to the claimant and of which he says he is not aware of its return or incident any: (i) A Servinform Certificate indicating that the letter with reference/identifier code 118223100008000249, generated on 08/11/2018 delivered to the Postal Distributor on 08/13/2018.

(ii) Copy of the delivery note in Correos of the product "Ordinary Letters", 3,951 shipments, from the client CAIXABANK, S.A., Grandes Volúmenes-Jurídica, which has the reference 11433 and in which the registration date is 08/13/2019.

This document that CAIXABANK provides lacks mechanical validation, seal and authorized signature. At the bottom of the document appears this legend: "This document is invalid without mechanical validation or seal and authorized signature of Post and Telegraph".

8.- Work in the file provided by the claimed a letter with the anagram of CAIXABANK addressed to the claimant, which is dated 11/10/2018, in which it accuses receipt of the claim filed with the AEPD with reference E/07176/2018 and informs that it required the debt that it had with that entity previously to its inclusion in ASNEF on 02/09/2018; which was deposited in the postal services for delivery without recording any incidence or return. Provide a copy of the certified shipping document through the Post Office on 11/22/2018, being the shipping code CD0D7M0000780620006350S.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

In the agreement to initiate sanctioning proceedings PS/193/2019, it was attributed to the claimed an infringement of articles 13.3 and 31 of the RGPD.

Regarding the alleged violation of article 13.3 of the RGPD, sanctioned in article 83.5.b) of the RGPD, it is appropriate to indicate the following:

A.- The RGPD deals in article 5 with the principles that must govern the treatment of personal data and mentions among them those of "lawfulness, loyalty and transparency". The provision provides:

"1. The personal data will be:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/14

a) Treated in a lawful, loyal and transparent manner in relation to the interested party;"

Pursuant to article 6 of the RGPD –"Legality of the treatment"- so that the third-party data processing is lawful, at least one of the following conditions:

"a) the interested party gave their consent for the processing of their personal data. final for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at its request of pre-contractual measures

contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the controller

of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests per-

guided by the data controller or by a third party, provided that on

such interests do not override the interests or fundamental rights and freedoms

data of the interested party that require the protection of personal data, in

particularly when the interested party is a child

(...).” (The underlining is from the AEPD)

In turn, article 12 of the RGPD, under the heading "Transparency of the

information, communication and modalities of the exercise of the rights of the interested party”

precise:

"1. The person responsible for the treatment will take the appropriate measures to facilitate the

interested all information indicated in articles 13 and 14, (...) The information will be

provided in writing or by other means, including, if applicable, by electronic means.

(...).”

Article 13 of the RGPD deals with the “Information that must be provided

when the personal data is obtained from the interested party”. Point 3 of the precept says:

“When the data controller plans the further processing of data

personal data for a purpose other than that for which they were collected, will provide the

interested party, prior to such further processing, information on that other purpose and any additional relevant information pursuant to section 2". (The underline is of the AEPD)

At the same time, the LOPDGDD in its article 20 refers to the systems of credit information and states:

"1. Unless proven otherwise, the data processing will be presumed lawful.

related to the breach of monetary, financial or

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

8/14

credit through common credit information systems when the requirements are met.

following requirements:

a) That the data have been provided by the creditor or by someone acting on their behalf or interest.

b) That the data refer to certain, overdue and payable debts, whose existence or amount had not been subject to an administrative or judicial claim by the debtor or through a binding alternative dispute resolution procedure between the parts.

c) That the creditor has informed the affected party in the contract or at the time of require payment about the possibility of inclusion in said systems, with indication of those in which it participates.

The entity that maintains the credit information system with data related to the

Non-compliance with monetary, financial or credit obligations must notify the

affected the inclusion of such data and will inform you about the possibility of exercising the

rights established in articles 15 to 22 of Regulation (EU) 2016/679 within

thirty days following notification of the debt to the system, remaining

The data is blocked during this period.

d) That the data is only kept in the system while the problem persists.

default, with a maximum limit of five years from the expiration date of

monetary, financial or credit obligation.

e) That the data referring to a specific debtor can only be

consulted when the person consulting the system maintained a contractual relationship

with the affected party that implies the payment of a pecuniary amount or this would have

requested the conclusion of a contract that involves financing, deferred payment or

periodic billing, as happens, among other cases, in those provided for in the

legislation of consumer credit contracts and real estate credit contracts.

When the right to limit processing has been exercised before the system

of the data contesting its accuracy in accordance with the provisions of article 18.1.a) of the

Regulation (EU) 2016/679, the system will inform those who could consult it with

according to the previous paragraph about the mere existence of said circumstance, without

provide the specific data with respect to which the right has been exercised, in

Therefore, it is resolved on the request of the affected party.

f) That, in the event that the request to enter into the contract is denied, or the contract

were not held, as a result of the consultation carried out, whoever has

consulted, the system informs the affected party of the result of said consultation.”

(The underlining is from the AEPD)

The violation of article 13.3 of the RGPD is sanctioned in article 83.5.b) of the

Regulation (EU) 2016/679 in the following terms:

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

with 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 global total annual turnover of the previous financial year, opting for the largest amount:

(...)

b) The rights of the interested parties pursuant to articles 12 to 22;”

On the other hand, the LOPDGDD, in its article 72.1.a), for prescription purposes,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/14

considers the violation of this right to be a very serious infraction.

B.- CAIXABANK has stated in its allegations to the initial agreement that it required

to the claimant the payment of the pending debt before proceeding to communicate their

data to ASNEF. To this end, he attached to his pleadings brief a copy of a letter

addressed to the claimant, which is dated 08/09/2018 - therefore prior to registration in

ASNEF, dating from 09/03/2018-, in which it requires the payment of a debt

pending and informs you that your data may be communicated to files of

insolvency if the non-payment situation persists.

However, the documents provided by the respondent -despite the fact that she affirms that

Such documents certify the sending and reception of the letter and allow to know the

traceability of the document - in no case do they prove that the

said letter had been sent to the claimant. It suffices to examine the

document called "Delivery note", which bears the anagram of Correos, in the

that neither signature, nor seal, nor mechanical validation appears, in such a way that according to

the information that said document offers, absolutely lacks virtuality to

accredit the sending of the letter of requirement and even less its reception.

C.- The regulation that the RGPD makes of the duty to inform the owner of the data

when the purpose of the treatment is communication to a solvency file

patrimonial differs substantially from that provided for in the previous regulations: The Law

Organic 15/1999, Protection of Personal Data (LOPD) and its

Development regulation, approved by Royal Decree 1720/2007 (RLOPD)

In accordance with article 13 of the RGPD, effective application from 05/25/2018 (ex

article 99.2 RGPD), the processing of data for a purpose other than that

for which they were collected obliges the owner to be informed about the purpose of that

further treatment before it is carried out.

On the date on which CAIXABANK communicated to ASNEF the data of the

claimant -on 09/03/2018- neither the LOPD nor the RLOPD were in force, so

neither article 29 of the LOPD nor articles 38 and 39 of the RLOPD were applicable;

precepts that required so that the inclusion of data of third parties in a file of

unpaid was adjusted to law not only that it be reported in the contract of the

possibility of such communication but, in addition, that the debtor be required to pay

the debt prior to the inclusion of their data in the solvency file.

The debt that CAIXABANK reported to the ASNEF in September 2018 associated with

the data of the claimant came from a loan contract signed between that

entity and the company Carnes y Pescados Extremadura, S.L. contract in which

The claimant was also a party, intervening on her own behalf, as

“solidarity guarantor”, hence the one claimed, once the debt was liquidated, expired

and payable, could claim the full unpaid amount, indistinctly, from the merchant

borrower and the joint guarantor.

It has been proven in the file that the notarial policy of the contract of

loan, dating from 12/28/2016 - contract in which the claimant had the condition

as a joint and several guarantor of the borrowing company- informed the parties of

that in case of non-payment the lender could communicate to default files

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/14

of monetary obligations the data related to the debit. Contract stipulation 17

of loan, "Processing of personal data", says in its second paragraph:

<< The people who are party to this contract are informed that, in the event of

non-payment of any of the obligations derived from it, the data related to the

debit may be communicated to files of compliance or non-compliance with

monetary obligations>> (The underlining is from the AEPD)

Thus, the respondent and lender have documented that, in the

loan contract, dated 12/28/2016, in which the claimant intervened as

guarantor, informed the parties that in case of non-payment it could communicate to files

of breach of monetary obligations the data related to the debit.

The communication to ASNEF, at the request of CAIXABANK, of the personal data

of the claimant associated with the unpaid debt occurred on 09/03/2018. And in the

date of registration of the incident in the solvency file - from several months ago,

exactly from 05/25/2018- the RGPD was of effective application and they were neither

the LOPD or its Development Regulation, RLOPD

Finally, it should be noted that Organic Law 3/2018, of December 5, of

Data Protection and Guarantee of Digital Rights (LOPGDD) was not

in force on the date on which CAIXABANK informed ASNEF of the personal data of

the claimant, on 09/03/2018, so that, in the present matter, no relevance

can be attributed to the last paragraph of article 20.1.c, of the aforementioned Organic Law 3/2018.

Paragraph that requires, for the treatment to be presumed lawful, not only that the creditor has informed the affected party in the contract, or at the time of requesting payment, of the possibility of including your data in credit information systems but also -condition that is not contemplated in article 13 of the RGPD- that you have informed of those files with which it works (which includes the "indication of those in which participates").

In light of the Statement of Reasons of the LOPDGDD, section V, this condition of article 20.1.c, in fine, of the Organic Law operates as a "juris iuris presumption tantum" of prevalence of the legitimate interest of the person in charge. so that nothing It prevents the treatment from being lawful even when that requirement is not strictly complied with. condition, although in such a case the controller will not be covered by a presumption iuris tantum of legality of the treatment and must carry out the weighting of the legally enforceable interests at stake.

Thus, in the event that it is submitted to the assessment of this Agency, taking into account that it has been proven that CAIXABANK had reported in the loan contract "to the people who were party to it" - a condition that meets the claimant because it intervened in the loan as joint guarantor - that in case of non-payment of any of the obligations derived from that, the data related to the debit could be communicated to compliance files or breach of monetary obligations, is not appreciated in the performance of CAIXABANK -specified in the communication of the data of the claimant to the file of financial solvency ASNEF- a violation of article 13.3. of the GDPR, Therefore, it is necessary to agree on the filing of the proceedings.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/14

III

In the agreement to initiate sanctioning proceedings PS/193/2019, it was attributed

also to the claimed infringement of article 31 of the RGPD. As regards the

The alleged violation of this provision indicates the following:

A.-Articles 24 to 31 of the RGPD deal with the obligations that the RGPD

generally imposed on those responsible and in charge of treatment. Among

them, article 31 refers to the "Cooperation with the Control Authority", precept

That points:

“The person in charge and the person in charge of treatment and, where appropriate, their representatives,

They will cooperate with the control authority that requests it in the performance of their duties.

functions”.

The functions of the control authority are detailed in article 57 of the RGPD.

Failure to comply with the obligation provided for in article 31 of the RGPD is

sanctions in its article 83.4 in the following terms:

“Infractions of the following provisions will be sanctioned, in accordance

with section 2, with administrative fines of a maximum of EUR 100,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

The obligations of the person in charge and the person in charge under articles 8, 11,

(...)” (The underlining is from the AEPD)

25 to 39, 42 and 43,

serious the following:

At the same time, the LOPDGDD classifies in article 72.1 as very infractions

“(…)

ñ) Failure to facilitate access by data protection authority personnel

competent to personal data, information, premises, equipment and means of

treatment that are required by the data protection authority for the

exercise of its investigative powers.

The LOPDGDD dedicates to the "Powers of investigation and audit plans

preventive" articles 51 to 54. The aforementioned Organic Law 3/2018 specifies in its

article 51.1 that “The Spanish Agency for Data Protection will develop its

research activity through the actions provided for in Title VIII and

preventive audit plans” (emphasis is from the AEPD). In turn, the title

VIII of the Organic Law regulates in its article 67 the "Previous actions of

research".

B.- The documentation in the file shows that, within the framework of the

Previous investigation actions E/0243/2019, the Data Inspection of the AEPD

made an informative request to the respondent, to which the latter did not respond.

The requirement was signed electronically on 02/01/2019, on that same date

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/14

was made available to the claimed person through the notification system and was also

accepted by the recipient. The Service Certificate proves such extremes.

of Electronic Notifications and Authorized Electronic Address of the FNMT that works

on the record.

As stated in the Report of Previous Actions, on 04/05/2019

(more than two months after the respondent had known the requirement informative made by this Agency) no response had been received.

The non-response of the respondent to the information request made in the course of the previous investigation was preceded by similar conduct in the phase of admission to processing of the claim. Before the letter of the Agency in which the DPD of the company was notified so that he could explain the facts occurred and provide the documents proving that he acted in compliance with the obligations imposed by article 13 of the RGPD, did not respond to the questions raised.

Based on the foregoing, what is invoked by the claimed party in its allegations to the agreement to initiate the file.

The entity has stated that it effectively received on 10/10/2018, in the admission for processing, an informative request from the AEPD and adds that it prepared the response document answering all the points of the request but that, “due to an error in their systems”, the document was not sent without the missing of sending could have been detected. He also acknowledges that on 02/04/2018 he received a reiteration of the request for information and explains its lack of response in that “for a unfortunate error in the procedure number it was reported as finished in our systems.”

On the other hand, the respondent has contributed to the AEPD with the brief of allegations to the agreement to initiate the sanctioning file, a copy of all the documents that were required during the previous performances.

In addition to the foregoing, CAIXABANK has apologized for the damage that could have caused in the investigation its lack of response within the granted for the purpose. And, in addition, it states that in no case has it acted with intent or

intentionality, but that his will was always to collaborate with the Agency.

In proof of his statements and corroborating his version that he had prepared the response to the information request made by the Agency during the of Admission to Procedure, on 10/10/2018, but that the document was not sent "due to an error in their systems" without the lack of shipment having been detected, provides a copy of the letter sent to the claimant in compliance with the instructions received from the AEPD in the letter of 10/10/2018.

In that letter addressed to the claimant, dated 11/10/2018, he acknowledges receipt of the claim that it filed with the AEPD, with reference E/07176/2018, and informs that the payment of the debt was required on 08/09/2018, prior to upon registration with ASNEF. This letter is accompanied by the receipt of the shipment made by mail certificate dated 11/23/2018, addressed to the claimant and to the address that appears

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/14

linked to your data in the records of the entity with CD shipping code CD0D7M0000780620006350S.

In the specific matter at hand, in light of the particular circumstances that concur -such as that the entity has contributed in a subsequent procedure, with his allegations to the initiation agreement, the documentation that was required previously; indisputable evidence of the will to cooperate with this Agency in the performance of its functions, of which the letter that sent to the claimant on 11/10/2018, which was sent by certified mail on 11/23/2018, through which it complies with one of the indications received from

the AEPD in the letter that was sent to the DPD of the company during the phase of Admission for processing to inform the claimant of the origin of the facts object of the claim; and the not excessively long period - a little more than two months - that elapsed between the information request made by the Data Inspection and an agreement was issued to start the sanctioning file, they call into question the existence of an infringement of article 31 of the RGPD whose violation was attributed to the claimed in the agreement to initiate the disciplinary proceedings.

The obligation imposed by article 31 of the RGPD - whose infringement is held the defendant responsible in the initiation agreement - is defined with an action concrete: "cooperate" with the supervisory authority in the performance of its functions.

According to the dictionary of the Royal Academy of the Spanish Language, to cooperate is to act together with another or others to achieve an end; In this case the end is performance of the functions that the RGPD attributes to the control authorities and that Article 57 of the RGPD is detailed.

Thus, in this particular case, taking into account the circumstances that concur -given that the respondent finally provided this Agency with the precise documentation for the clarification of the facts object of the claim and taking into account that the sending on 11/22/2018 of a letter addressed to the claimant to through which the respondent acknowledges receipt of the claim with reference E/07176/2018 formulated before this Agency and complies with one of the requirements that the AEPD imposed on him in the letter addressed to him during the Admission to Procedure, which, on the other hand, is an indication in favor of admitting the explanation provided by the one claimed according to which he had prepared the answer to send it to the AEPD on time, but due to an undetected error in their systems, their response did not arrive be sent to the AEPD-, it is deemed appropriate to agree on the filing of the proceedings practiced regarding the alleged infringement of article 31 of the RGPD.

Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE TO FILE the proceedings followed against

CAIXABANK, S.A., with NIF A08663619, for the alleged infringement of article 13 of the

RGPD sanctioned in article 83.5.b) of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/14

SECOND: AGREE TO FILE the proceedings followed against

CAIXABANK, S.A., with NIF A08663619, for the alleged infringement of article 31 of the

RGPD sanctioned in article 83.4.a) of the RGPD.

THIRD: NOTIFY this resolution to CAIXABANK, S.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es