 Procedure No.: PS/00477/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 01/24/2018, he had entry into this Agency in writing from D.A.A.A. (in successively the claimant), in which he denounces the entity CAIXABANK, S.A. (hereafter CAIXABANK) for imposing, on the same date of the complaint, the obligation to accept the new conditions regarding the protection of personal data, specifically that relating to the transfer of your personal data to all the companies of the group, as stated in the section II of the "new LOPD conditions" established by the entity. Add that to cancel said assignment must address a letter to each of the companies, which qualifies as disproportionate considering that the assignment is accepted in a single act.

Provide a copy of the condition that motivates the claim, regarding "Authorizations for data processing" and "Exercise of the right of access, cancellation and opposition. Claims before the Data Protection Authority". Through this document, appears with the label "Authorizations for data processing", the interested party "consents expressly" the incorporation of all your personal data in a repository common information, where the data of the companies of the "la Caixa" Group are stored, so that are processed by CAIXABANK and the companies of the "la Caixa" Group for the purposes detail (two groups of purposes: "Purposes of study and monitoring" and "Purposes of communication of offer of products, services and promotions").

Likewise, the client is warned that the indicated treatments may be carried out in an automated manner and entail the elaboration of profiles, with the purposes already marked. To this effect, CAIXABANK informs you of your right to obtain the intervention

in the treatments, to express their point of view, to obtain an explanation about

of the decision made based on automated processing, and to challenge said decision.

Information is offered on the "data" of the Signatory that will be incorporated into this

Common Repository and it is added that these data will be complemented and enriched by

data obtained from companies providing commercial information, for data obtained from

public sources, as well as statistical, socioeconomic data ("Additional Information").

Finally, the term of conservation of the personal data is indicated and it is offered

information on data protection rights and the possibility of

file a claim with the Spanish Data Protection Agency.

SECOND: In use of the powers conferred by article 40 of the Organic Law

15/1999, of December 13, on the Protection of Personal Data (LOPD), after the

receipt of the complaint, the General Subdirectorate for Data Inspection proceeded to

carrying out previous investigation actions, indicated with the number E/01475/2018,

to clarify the facts denounced and determine if there are circumstances

that justify the initiation of a sanctioning procedure.

In their responses to the two requests made by the Services

of Inspection during the development of the aforementioned preliminary actions, the entity

CAIXABANK informed this Agency that the informative clauses referred to in the

complaint were implemented on the occasion of the contractual changes arranged by the

entity for adaptation to Regulation (EU) 2016/679, of the European Parliament and of the

Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the

Treatment of Personal Data and the Free Circulation of these Data and by which repeals Directive 95/46/EC (hereinafter General Data Protection Regulation or GDPR), applicable from May 25, 2018.

1. By means of a document dated 05/16/2018, entered on 05/22/2018, the entity CAIXABANK informed this Agency as follows:

(…)

Taking advantage of the contractual changes that were going to be implemented to adapt to the RGPD, in 2016 it was decided to follow two principles in the relations to be established with the clients: the basis for the commercial activity (treatment) would be the unequivocal consent the client's; and consents would be collected at the “group” level, to simplify cross-relationships, requesting authorization from clients for treatment with the purpose jointly for all the companies of the “group”.

(…)

Clients are requested authorization to carry out data analysis treatments and advertising treatments for a set of ten entities, allowing to evaluate in common the information on all the customer's products associated with the “CaixaBank Group”. I know centralize the consents in a repository, so that any entry of information in it, whether they are notes of consents granted or denied, replaces the previous annotation, allowing a client to revoke consent from any company of the “group”, and vice versa. Any company in the group is a point of entrance where the client can grant consents, or withdraw them, with effects to the whole. (…)

The revocation of consent for commercial purposes is automatically effective for all of them, so that the right can be exercised indistinctly before anyone and by any channel. On the other hand, with respect to cancellation and rectification, each of the companies is responsible for the business relationships it maintains with its customers and for

both of the data that it deals with in the scope of the contractual relationship. Notwithstanding that the data

canceled or rectified, if it was likely to be used by other companies, it will cease to be

be in case of cancellation or will be updated, in case of rectification. Additionally,

CAIXABANK informs that a rights attention system has been implemented

centralized, at group level, in a service supervised by the DPD, this entity being

entry channel, without prejudice to the fact that all companies have their own channel for

the receipt of exercises of rights, including revocation.

When asked about the collection of data from social networks, CAIXABANK clarifies that it has a

service so that customers who consent to it through internet banking can

link your identification data in networks (Facebook, Twitter and Linkedin) with this service,

to be able to identify them when they use these channels to contact the entity. (…) In

all cases, the client must accept its use and the terms and conditions.

Information is also provided on the data aggregation services, which allow, upon request

of the interested party, add the information of the products that you have contracted with other

entities (positions and movements of accounts and cards) and thus have a global vision

of all positions, alerts on receipts, expirations, etc., but not operating on the

products of the added entities (the client adds or deletes entities at will,

but only among those incorporated into the service).

CAIXABANK includes a detail (screenshot) of the service request process

of aggregation that the client must follow through the entity's website. After

select the entity that intends to add to the service and enter the data that the client

used to access the selected entity online (access codes), the process requires

the acceptance of the terms and conditions of the service, according to the detail that is outlined

in Proven Fact 8.

On the other hand, regarding the possibility, contemplated in the information that it provides to

stakeholders, to complement or enrich customer data with data obtained from

companies providing commercial information, public sources, and with statistical data and

socioeconomic, (...).

2. By letter dated 07/17/2018, registered on 07/19/2018, CAIXABANK

provided its response to the second request for information that was sent to it so that

provide details on the mechanism implemented to obtain consent

unequivocal of the client for the treatments carried out with commercial purpose (or other

treatments that exceed the basic activity covered by the legitimate interest of the

entity, e.g. analysis and business impact treatments); mechanism detail

implemented to allow the client to revoke the consent granted for any of

the processing of personal data carried out by the companies of the CaixaBank Group with

legal basis in the consent of the client; and information provided to the client in the

moment of obtaining consent in relation to data processing

made by CaixaBank Group companies, their purpose and the mechanism

to exercise your rights of access, rectification, deletion, limitation of your treatment,

opposition to it and data portability.

A) on the mechanism to obtain the consent of the client:

It has two channels to collect commercial consent from its customers, which

coincide with the channels that make it possible to become a client of the entity, that is,

in person at branches and through digital channels (CAIXABANK web portal,

ImaginBank website and mobile application):

a) The registration process in offices

The entity informs that this process is carried out through an interview between the client and the manager, and entails the collection of identification, fiscal and contact data, data socioeconomic and work activity, data on experience, financial situation and

investment objectives, as well as the collection of authorizations for the use of data for commercial purposes. These authorizations are provided by answering three questions made by the manager to the client, one of them broken down into four options.

The information provided by the client during the interview is incorporated into the system and, Once this is finished, it is reflected in the printing on paper of a "Framework Agreement" that the client signs (provides a copy of a "Framework Agreement" dated 05/24/2018, whose clauses coincides with the one included in Annex I). This document provides a summary of the information provided (including your answers about the treatments) and a clause with the detail about the data processing that is envisaged.

Attached sequence of the screens that the manager has to complete in the registration process of a person. Among others, those that allow identifying data to be collected, digitize the identification document and the signature, data of birth, residence and fiscal domicile, data of contact, taxation and economic data. After completing several screens (about to fifteen), the manager must complete the label "Modification of data protection of...", in which the "registration of consents" is collected (the structure of this screen consists of outlined in Proven Fact 4).

On a later screen, labeled “Scan signed document from original. Signature digital", you can access the client's "Framework Agreement" in pdf format. At the end of this

screen, a “Signed document” section is included, which offers the options “Document scan” and “Scan and send document”.

It adds that the same operation is followed for existing customers, when necessary remediate the information contained in the systems. Since 2016, the Law on the Prevention of Money Laundering and Terrorist Financing and the RGPD motivated this remedy of customer information (100% of individual customers were marked as remediable - when the manager accessed the client file, a notice was displayed indicating that the client has the "Framework Agreement" pending for the manager to start the interview).

It is also possible that consents may be collected or modified for commercial at later times, with the same management described, but subscribing to a document that only addresses this end. CAIXABANK provides a copy of this document, which is presented as "Authorization for the processing of personal data with commercial purposes by CaixaBank, S.A. and companies of the CaixaBank Group” and that this entity calls "Consent Contract", the details of which appear in Annex II (in hereinafter “Consent contract” or “Authorization for treatment”).

In view of said document, it is verified that it has a structure and content similar to the signed by the claimant on 01/24/2018 (reviewed in Fact One), although it has been provision of consent separately for the same purposes as are cited in the "Framework Contract" (purpose of study and monitoring; communication of offers of products, services and promotions; transfer of data to third parties)

Additionally, CAIXABANK continues, has provided the entire branch network with tablets digitizers, making it possible for the "Framework Agreement" and the "Consent Agreement" to be sign, not on paper, but on the tablet itself. In addition, it plans to update the software of tablets to allow the manager and the client to work in "shared screen" and to this interact with the device by selecting the options on the treatment of your data.

b) Registration process through digital channels (CAIXABANK web portal, web portal and ImaginBank mobile app):

CAIXABANK points out that its web portal has a service to process customer registration over the internet, the process of which includes a step that displays a screen through which collect consent for the processing of data for commercial purposes (the details of the options shown on this screen are outlined in Proven Fact 4).

Add CAIXABANK to the information symbol (i) that appears on the previous screen leads to another screen “in which it is explained why it is necessary for the client to respond to the questions that arise”. This new screen indicates “(i) We need your consent. Since May 2018, a new Data Protection Regulation applies.

We have always been concerned about the protection of your data, that is why it is important that you answer the following questions (Got it)”. From there you can access the clause 8 “Processing and transfer of data for commercial purposes by CaixaBank and companies of the CaixaBank Group based on the consent” of the “Framework Agreement”.

Finally, the summary of the consents granted and the clauses will be shown in the "Framework Agreement" signed by the client at the end of the process. CAIXABANK warns that in the The screen where the signature is requested shows a summary of the most important aspects that regulates the contract, among which the authorizations for data processing are indicated.

This screen includes a box to check “I have read and accept the agreement”.

The same process follows the registration and collection of consents through the mobile application from Imagina Bank. The screen related to consents shows the same structure of the CAIXABANK web portal, replacing mentions of this entity with ImaginBank.

B) About the mechanism to allow the client to revoke the consent:

The exercise of rights and the revocation of “commercial consents”, by

clients and non-clients, can be formulated in multiple ways:

. In person at the entity's offices.

. Through the personal electronic banking space (Caixabank Now and ImaginBank, both in

its web version as in the mobile application).

. Using application forms on the corporate web portal of CAIXABANK or of each

one of the Group companies.

. Through CAIXABANK telephone attention services.

. Request by post or hand delivery.

a) In the face-to-face process, in offices, the employee will register the request in the system

indicating "with respect to which company the revocation is formally exercised", as can be

be seen on the screens it shows, one related to rights management and another specific

for the revocation of consent (both have a drop-down menu that allows

indicate the specific company before which the statement in question is made).

The structure that shows the screen enabled for the manager to register the revocation or

modification of consents that the client intends, under the heading "Modification of

data protection”, is the same as the one indicated above for the “Registration of consents”

manifested in person at the office.

According to CAIXABANK, these requests are registered and sent to a service

centralized service of rights, which is in charge of giving them the corresponding procedure.

b) The process to follow in the client's private area on the Caixabank Now website will

allows you to select your preferences and obtain information on the proposed treatments

(by clicking the option "see detail Clause 8" you have direct access to the texts of the "Contract

Framework" related to each purpose). The detail of the options shown on this screen

It is stated in Proven Fact 5.

Next, the client is shown a summary with the consents granted, to

that you can check them, and the contract that includes a summary of

those consents. Here is an example of this summary:

<<Operation not yet completed, check the data and confirm the operation.

Check the data

Purpose of study and monitoring: You have expressed your acceptance and consent to the treatment of

data.

Purpose of communication of offers of products, services and promotions: you have stated your NO

acceptance and consent to contact for commercial purposes.

By any channel or means, including electronic means.

. Through my manager (office)

Transfer of data to third parties: you have stated your NO acceptance and consent to contact with

commercial purposes.

Read the contract carefully

Confirm the operation…>>.

In the CaixaBank Now mobile application environment, the customer can access

"Configuration - Exercise of rights" and is redirected to the Web portal. However, it clarifies that

this process is being reviewed in order to show the options available in the

own app. Provides a detail of the screen under development "Configuration – Exercise of

rights – Right of revocation":

"The personal data protection regulations establish the right to revoke the

data treatment. Below are the data treatments that you have authorized:

Authorization to treat my data to carry out monitoring and study of operations, generation of

alert of my contracted products, studies and services adjusted to my profile

(I do not accept)

Authorization for CaixaBank to contact me to find out about those product offers and

services, as well as promotions and offers that may be of interest to me

(I do not accept)

I accept the transfer of data to third parties

(I do not accept)".

Subsequently, the summary of the statements made is shown, the

entering the passwords and, on a new screen, it is indicated “Your right of access has been exercised.

revocation. You can consult the contract in MailBox”.

The same indication is made regarding the ImaginBank application.

c) Use of the application forms available on the CAIXABANK corporate website

or of each of the companies of the Group.

As indicated, in the first case customers can revoke their consent to

any Group company through the CAIXABANK website (a drop-down menu is provided

for the customer to select the company for which he wishes to revoke consent).

Chosen the company, you must select the right that the client wants to exercise, also

through a dropdown. One of the options refers to the revocation of

consents, with the possibility of marking three boxes, according to the detail that consists

outlined in Proven Fact 5.

In the second case, when it is intended to revoke the consent from the web portal of

a group company, according to CAIXABANK, a similar form is shown and

Same operation as above. When accessing the page corresponding to the entity from which

try, the client is directed to a screen common to all.

d) Finally, reference is made to the request through the telephone service and

by postage.

According to the entity, the Call Centers have at their disposal a tool that allows them to

address the exercise of rights, including the revocation of consent. It registers the

request (the protocol contemplates the recording of the call) and the interested party is informed that

You will receive a written response within one month. The structure shown by the aforementioned

tool for the revocation of consent is similar to the one indicated above

for the "Registration of consents" manifested in person at the office. In each

option, a dropdown is displayed for the employee to mark the option desired by the employee.

client.

3. CAIXABANK consulted for the information provided to the client at the time of the

obtaining consent from the Group companies, it is indicated that this

information is contained in the "Framework Agreement" and in the "Consent Agreement".

THIRD: By resolution dated 02/01/2019, of the Director of the Spanish Agency

of Data Protection, the expiration of the previous actions outlined in the

Second Background, followed by number E/01475/2018, due to the expiration of the term of

twelve months counted from the date the complaint was filed (01/24/2018), in accordance with

established in article 122 of RD 1720/2007, of December 21, which approves the

Development regulation of the LOPD.

Said resolution warns about the provisions of article 95.3 of the On the other hand

part, article 95.3 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), which establishes

that the expiration will not produce by itself the prescription of the actions of the Administration,

and the opening of a new procedure is admitted when the

prescription, with incorporation to the same of the acts the acts and procedures whose content is

would have remained the same had the expiration not occurred.

FOURTH: On 03/29/2019, a document from the entity entered this Agency

Association of Consumers and Users in Action - FACUA, in which it makes a claim

against CAIXABANK in relation to the "Framework Agreement" signed by the clients of this

entity, through which their personal data is collected, offers them the

information on this matter and consents are collected for the data processing that

are specified. Specifically, FACUA denounces that it is an adhesion contract, whose

content cannot be negotiated by the consumer, who consents to the

treatment of your personal data and the transfer of the same to third companies with the

that the former may not be related (authorizations provided for in clause 8 and assignments

mentioned in clause 10 of said contract).

The claimant provides a copy of a "Framework Agreement" dated 10/24/2017, whose

clause coincides with that corresponding to the version dated "03/14/2017", which will refer to

below (“Version 3”, according to the numbering provided by CAIXABANK).

This claim was transferred to the entity CAIXABANK. In response to what

manifested in the claim, CAIXABANK informed this Agency that it sent FACUA a

document detailing the process of collecting consent from customers for purposes

commercial, as well as the operation used for the signing of the contract, which summarizes as follow:

. Customers are requested, on all occasions, the express consent for the data analysis, commercial impact and the transfer of your data.

. The contract is not one of adhesion, since the client can decide whether or not to grant the consents.

. Additionally, the customer has various channels to modify his initial decision (offices, internet banking, call centers, etc.).

CAIXABANK provides a copy of the communication sent to FACUA, which summarizes part of what was stated to the Agency in its response of 05/16/2018, and includes a list of the "Group companies" and an annex with the details of the consent collection process (corresponds to an extract of the training given to employees, which includes the screens to fill in). From what was reported to FACUA in this communication, date 05/03/2019, the following should be noted:

. Regarding the collection of consents, it describes the procedure for registering a new client, which includes your identification and your consent (signature). Prior to the signing of the "Contract Marco", the branch manager must ask the client if he authorizes or not the treatment of his data for commercial purposes (profiling, commercial communications and transfer to third parties), so that the client verbally expresses his choice in each of the three questions and the manager fills in the boxes corresponding to this choice (consent for the treatments explained in clauses 8 and 10 of the "Framework Agreement" -currently 8 and 9). Once these boxes are filled in, the "Framework Agreement" is generated to be signed by the client, collecting them in its header (page 1, section "Authorizations for data processing"). In case it is not granted none of the authorizations, in the aforementioned section the following will be indicated: "Authorizations for data processing

In the terms established in clause 8 and 9 of this Agreement, your authorizations for the

data processing are as follows:

Commercial purposes:

. Purpose of studies and profiling: You have expressed your non-acceptance and consent to

treatment of your data.

. Purpose of communication of offers of products, services and promotions: You have

expressed their non-acceptance and consent to contact for commercial purposes by

any channel or medium, including electronic media.

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. Transfer of data to third parties: You have stated your non-acceptance to the transfer to third parties of your

data".

It also informs that a new shared screen operation is in the pipeline

that will allow the client to directly read the information on data processing

and signal, without intermediaries, those that it authorizes or not.

. Regarding the revocation of consent and the exercise of rights, it warns that it has

effects for all the companies of the Group and that can be exercised before any of the

them, through any of the channels of each of them. He adds that he has been named

a Group DPO, who oversees the centralized rights management service, and who

CAIXABANK is the entry channel for exercising rights for all companies.

(…)

FIFTH: The claim outlined in Precedent Four was admitted for processing by

agreement of the Spanish Data Protection Agency of 05/28/2019.

In accordance with the provisions of article 67 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights (in what successive LOPDGDD), it was agreed to start preliminary investigation actions and the incorporation to them of all the documentation outlined in the previous facts, made up of the complaint made by the claimant, the documentation corresponding to the previous actions indicated with the number E/01475/2018, processed on the occasion of that claim, the claim made by the FACUA entity and the documentation that integrates the phase of admission to processing of the same.

The object of these preliminary investigation actions was determined to be the analysis of the information offered in general by CAIXABANK regarding the protection of personal data, through all the channels used by the entity (compliance by CAIXABANK part of the principle of transparency established in articles 5, 12 and following of the RGPD, and related precepts); the different data processing carried out by the entity according to the information offered, in relation to customers or person who maintain any other relationship with it, and within the framework of the new regulations applicable from 05/25/2018, including the analysis of the mechanisms employees to obtain the provision of the consent of the interested parties; just like him compliance by the aforementioned entity with the rest of the principles related to the treatment established in article 5 of the RGPD.

In development of these preliminary investigation actions, a request was made information to CAIXABANK and an inspection visit was carried out on 11/28/2019:

1. On 11/20/2019, a response was received from CAIXABANK to the request that was completed by the Inspection Services to provide information on the "Contract Framework", in its current version and previous versions in force as of 05/25/2018, and possible addenda; channels and methodology for its acceptance and granularity for obtaining of the consents; as well as on the procedures that were enabled to give

know the information on the protection of personal data updated to the RGPD to

customers prior to 05/25/2018 and mechanisms to obtain their acceptance.

a) CAIXABANK points out that, taking into account the preliminary texts of the RGPD,

implemented the "Framework Agreement" in June 2016, with six versions dated on

06/20/2016, 11/22/2016, 03/14/2017, 11/12/2018, 12/20/2018 and 09/17/2019 (provide a copy of

these versions). It emphasizes that there have been no significant changes in this document, which

regulates all customer relations with CAIXABANK and the companies of the Group whose

products commercializes that one, informs about all the treatments derived from the relationship

contract and requests the necessary consents for the treatment of the data of

personal character at Group level.

On the other hand, CAIXABANK warns that product and service contracts also

include the information required by article 13 of the RGPD, in anticipation that it could

mediate time between the signing of the "Framework Agreement" and the contracting of products

(it includes a copy of a contract for products and services corresponding to the "Booklet

Star"); and that there are other services that, due to their specialty, contain their own

data protection clauses (accompanies the detail of the data protection information

personal data provided to subscribers of the "Shareholder Service" and in the

"Events" subscription form).

b) In relation to the granularity for obtaining consent, it is indicated that

CAIXABANK and a selection of affiliated companies, to which has been added

recently Caixabank Payments & Consumer, EFC, EP, SAU, has been collecting

consents to carry out commercial treatments since 2016 in the terms

exposed in file E/01475/2018 (Precedent Second Previous).

It details the procedure followed by CAIXABANK and by Payments. In the first case, it

indicates that the information system guides the manager throughout the process, warning him that he must

consult the client about their preferences and physically provide them with the tablet so that the client can

Proceed to check your options. Once the preferences have been marked, the terminal itself

indicates that these preferences have been registered and invites you to return the device to the

manager. Subsequently, "the manager finalizes and consolidates the document and provides it for signature

to the client".

On the next screen, the indication “Tablet Mode” disappears and the following is expressed:

“Your consents have been indicated. Thank you for your cooperation. please return the

Tablet to your manager”.

Reports that CAIXABANK and its Group request three consents for the three purposes

reviewed, breaking down one of them into four options, and clarifies that the first two are

requested at the level of the Group of CaixaBank companies.

Below, it reproduces part of Clause 8 of the aforementioned contract, in which, according to

CAIXABANK, the meaning and specification of the previous literals is explained and the

details of what data will be processed for purposes i) and ii). The content of this clause

reproduced in CAIXABANK's letter coincides with that outlined in Annex I.

On this issue, it provides a copy of the screens that allow visualizing the registration process

of a client in person at offices. After advancing about fifteen screens

they show two screens corresponding to the collection of consents for the treatment

of personal data, with the label "Authorization / Revocation of consent" and the

indication “Tablet mode. Client". A screen with a message is shown beforehand to

the manager with the indication “According to the General Data Protection Regulation, the client

You must authorize the use of your data. You must then hand over the tablet to the customer so that they can

complete the consents. After pressing the “Accept” button, you access the “Mode Tablet”, to the “Authorization/Revocation of consent” screens, the detail of which consists outlined in Proven Fact 4.

Once the options have been marked, the buttons are included in the final part of the screen. “Accept” and “Cancel”. Pressing the first one offers a message with the text “Your consents have been indicated. Thank you for your cooperation. Please return the Tablet to your manager”. (…)

It is verified that the screens “Tablet mode. Customer” do not contain any link to the information on the protection of personal data contained in the "Framework Agreement".

In relation to this process, no screen is provided regarding the consolidation of the document and its signature by the client.

Next, the screens corresponding to the process of "Modification of consents”. (…) This screen includes a link with the text: “Authorization/Revocation processing for commercial purposes. Clicking on this link displays a message to the manager with the indication “According to the General Data Protection Regulation, the client You must authorize the use of your data. You must then hand over the tablet to the customer so that they can complete the consents. After pressing the “Accept” button, you access the “Mode Tablet”, to the “Authorization/Revocation of consent” screens, whose detail is identical to that of the “Authorization/Revocation of consent” screens. Tablet mode. Client” of customer registration process, which has been referred to in the preceding paragraphs, except in regarding the use of biometric data, which is not included in this case.

With its response brief, CAIXABANK provided a copy of the contract corresponding to

a client, which appears dated 06/11/2019 (hereinafter we will call this

document such as "Version 7 of the Master Agreement" or "Customer Master Agreement dated

11/06/2019"). It is verified that its content does not match any of the six versions

of the "Framework Agreement" provided by the entity itself (in Annex I the

modifications or new informative clauses introduced in this version of the "Contract

Framework", which affect data processing in the electronic signature of documents and the

biometric data processing). At the top of the document, under the heading of

"Authorizations for data processing" indicates:

"Other purposes: Use of biometric data for the purpose of verifying identity and signature. You

has expressed its acceptance and consent.

c) About the procedures enabled to publicize the "Privacy Policy"

updated to the RGPD to clients prior to the application of this standard and the mechanisms

to obtain its acceptance, CAIXABANK informs this Agency that said "Privacy Policy"

Privacy", which is published on the "caixabank.es" website, is intended to

supplement the information provided to customers in the "Framework Agreement" between June

2016 and May 2018; and give complete information to customers who in May 2018 did not

signed the "Framework Agreement". Thus, since May 2018 it distinguishes two situations:

. All pre-existing clients have signed a framework contract or have received the "Privacy Policy".

Privacy" (in addition to having it available on the entity's website).

. All new clients, in their first relationship with the entity, sign a "Contract

Framework", which includes all the information of article 13 of the RGPD.

Clarifies that the "Framework Agreement" is, since May 2018, the information on the treatment of the data that is delivered to the client in compliance with the provisions of article 13 of the RGPD and that the "Privacy Policy" is a document consistent with what is contained in said contract.

To transfer the "Privacy Policy" to customers, CAIXABANK states that sent 15,917,507 communications, of which 5,663,683 were made by post and 10,253,824 through remote banking with a warning pop up ("If you want to know more about our commitment to your data and your privacy, you have a statement available at your MailBox -Access MailBox").

Accompanies a copy of CAIXABANK's "Privacy Policy" available on the CAIXABANK website. entity, which is reproduced in Annex V.

2. On the other hand, an inspection visit was made to CAIXABANK on 11/28/2019, informing the representatives of the entity that said action was aimed at verify the information you provide on the protection of personal data and obtaining consents for data processing carried out.

According to the inspection report, in response to the questions raised, the representatives of CAIXABANK made the following statements and carried out the checks that are also detailed:

a) The procedure for the beginning of commercial relations can be carried out in person, or also through the web and through the application for devices "CaixaBank" mobile phones previously downloaded

In person.

The agent requests the identification data, digitizes the identity document, collects data on residence and fiscal domicile, taxation and economic data (source of funds, public personality, etc.); and hands a tablet to the customer to select the

consents you wish to grant to the inspected company and the group companies. Indicated

that there are four groups with Yes/No answers and the text that appears on the tablet is detailed

enunciating the different groups, which coincides with the text detailed in section b) above

(screen “Authorization/Revocation of consents”, in which the indication “Mode

tablets”).

At this time no biometric data is collected except for the signature. If in the future it

this type of identification was implanted, and this consent had been granted,

will collect this data.

Once the consents have been collected, the agent consolidates and offers the tablet to the client with the

document "Framework Agreement" so that you can read it and see the section "Authorizations for the

Data processing” with the consents granted and denied and sign said contract,

which is done on the same Tablet.

Through the CAIXABANK website.

The procedure is carried out on the online platform of the inspected company through a

Guided form for taking data from the future client.

During the inspection, a simulation is carried out and it is verified that the first page

ask for the phone number and email. On this screen there is a

window with a text entitled "Processing of personal data and obligations

derived from the prevention of money laundering and financing of terrorism”. There's a

button called "Accept and Continue". Identification data is requested on the next screen

and domicile. Next, the identification is produced by video identification

or through the service for obtaining ownership of external accounts through the service

Iberpay. Then a screen is presented in which the purpose of the account is specified,

consent obtaining screen, account creation, and contract signing screen,

where you can download the complete "Framework Agreement". Once the check box is selected

verification of acceptance of the contract, we proceed to the signature by sending a code

number to the mobile phone provided by the customer.

Mobile banking via app.

It is possible to start the registration process through the application for mobile devices, but,

after the installation process, at the moment in which the data collection of the interested party begins,

the application redirects the interested party to the web application described in the previous point.

Telephonely. Registrations are not made by this means.

b) A demonstration is carried out on the procedure for modifying the

consents of a client through his personal space:

Initial situation: all consents “I do not accept”

Data treatment: I do not accept

Advertising: I do not accept

Telemarketing advertising: I do not accept

Advertising by electronic means: I do not accept

Advertising by postal mail: I do not accept

Advertising personal manager: I do not accept

Data transfer: I do not accept

Modification: the second level is modified and not the first level

Data processing: Does not support

Advertising: I do not accept

Telemarketing advertising: Does not accept

Advertising by electronic means: Does not accept

Advertising by postal mail: Does not accept

Advertising personal manager: If you accept

Transfer of data: Does not accept

It is detected that, although you have selected not to receive commercial communications from

generically, by being able to mark one of the means, the receipt of communications is accepted

this way and the granting is reflected in the document signed by the client (in

In relation to this matter, on 12/10/2019 a letter was received from CAIXABANK,

warning that it has included an informative text to point out to the interested party that, by marking one

of the media, accepts the reception of communications in this way: “If, despite not wanting

we contact you in a general way, you are interested in receiving information by

any of the following channels, you just have to mark it and we will use it to transfer you

our news and offers”).

A screenshot is attached in which all consents are denied and

copy of the document generated from the modification of consents. structure and

content of this screen coincides with the detail outlined in the Second Precedent,

section 2.B.b), in relation to the revocation of consents through the space

customer information on the Caixabank Now website.

Attached is a screenshot of enabling a second level consent while

the first in "I do not accept" for commercial communications and document generated from

of the modification of consents.

The content of the documents generated once the client's statements have been reflected

coincides with the text outlined in Annex II ("Consent Contract"), with the

variations that are indicated below and that are also outlined in said Annex II:

. The term "revocation" is added to the label of the document and it remains

“Authorization/revocation for the processing of personal data with

commercial purposes by CaixaBank, S.S. and companies of the CaixaBank group”.

. The mention of the “common repository” disappears in the presentation of the document, in the

that appeared with the indication “For this, your data will be managed from a repository

common information of the companies of the CaixaBank Group. The data that

incorporated into this common repository will be…”.

. The section dedicated to "the data to be processed" moves from the presentation

of the document to associate them with purposes 1 (analysis and study of data) and 2 (offer

commercial products and services). In addition, in section c) the mention of the

companies of the CaixaBank Group, and it remains “All those that CaixaBank or the companies of the

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

has the signatory as recipient, such as the management of transfers or receipts”.

. The following text is added: “The authorizations that you grant will remain

valid until their revocation or, in the absence thereof, until six months have elapsed.

since you cancel all your products or services with CaixaBank or any

CaixaBank Group company.

. In the authorization (ii) of the section corresponding to purpose 1 (Treatments of

analysis, study and monitoring for the offer and design of adjusted products and services

to the customer profile) the possibility of associating the data of the signatory with those of

other clients with whom you have some type of family or social bond, relationship of

property or administration, in order to analyze possible economic interdependencies

in the study of service offers, risk requests and contracting and products.

. In the section dedicated to the exercise of rights, mention is added to them,

that does not appear in the text of Annex II, a postal address is indicated for the exercise of

rights, which was not recorded either, and the possibility of exercising rights is extended to

through mobile applications.

. Two sections have been added corresponding to the data protection delegate and

the validity of the "Framework Agreement" once it has been signed by all the participants.

c) Exercise of rights.

Any channel in which the client has been identified is enabled for the exercise of

Rights. The revocation of consent is applied at the moment in which it is made and

applies to all group companies.

d) About the information provided to the client to consent to access to network data

social networks: it is accessed from the personal area of online banking and it is specified which network

Individually between Facebook, Twitter and LinkedIn access is granted. appears the

text “Information on the processing of personal data and communications

commercials” in a text box and a button with the text “Accept and continue”.

Annex III summarizes the information provided by CAIXABANK to its clients to collect their

consent to the access and use of data from social networks.

e) The account aggregation service requires a special contract, although the

Consent is given in the “Framework Agreement”. When starting the process, a text “Contract” appears

in a text region, with the possibility of generating a document in pdf format.

Annex IV outlines the contract formalized by the client requesting this aggregation service.

of accounts, which includes the information offered on the protection of personal data.

f) The treatment described in point 7.3.5 is not carried out. on the aggregated accounts of other entities. You can exercise the right to oppose the treatment collected in this point to through online banking and other authorized channels

g) Regarding the content of 8.ii.h), this possibility has been specified for possible uses. When a treatment of this type occurs, it will be assessed by the Impact evaluation.

h) About the mechanisms used to inform about the updating of the “Privacy Policy”. Privacy” and obtaining consent from customers, representatives of CAIXABANK stated that with the first version of the "Framework Agreement", dated June 20, 2016, new consents began to be collected. In May 2018 it they set all consents in the old format to “I do not accept”. Since this date The consents of the clients have been obtained through different channels. During the various updates, more than 15 million notifications have been sent. of which 5,663,683 were sent by post and 10,253,824 were made available to customers through their online banking through a warning pop-up window. The communication content is purely informative.

i) The information systems are accessed to verify the consents granted by the claimant, obtaining the following data:

Consents:

Data processing: Does not support

Telemarketing advertising: Yes it supports

Advertising by electronic means: Yes it admits

Advertising by postal mail: Yes it supports

Advertising personal manager: Yes it supports

Data transfer: -

It is verified that the claimant has not signed the "Framework Agreement", but did grant

consents on January 24, 2018, by signing the document found

in its contractual repository (this document corresponds to the one provided by the

claimant, signed on 01/24/2018, which is outlined in Fact One).

Additionally, it is recorded that the claimant modified through the entity Caixabank

Consumer Finance, E.F.C., S.A.U., one of the consents in May 2018, did not

admitting data processing (provides an internal email from 11/28/2019, which

informs about this modification: “consent 1 reached “not signed” from company 6

(CCF), was signed on May 18. Consents 3 to 6 were signed with the ALF00017

(winning moment) on Jan 18. The 7 is not signed on the ALF00017, so it is

pending signature”).

Capture of screens of the information systems of the

CAIXABANK corresponding to the data of the claimant, current consents, the

contract of LOPD clauses of January 24, 2018 and justification of the change of the

consents granted for data processing:

. The query on customer data, in its first section "Operational list", details the

contracted products and a review of your personal data (name, NIF, date of

birth, language, telephone numbers and the image of your ID. It includes two indications: “Program

Family: Does not comply due to income” and “Framework Agreement Resolver”.

In the “Person” section, personal data, economic activity and taxation are detailed.

It also contains subsections related to digital images (DNI and signature), alerts ("Edition

framework contract Resolve”), Commercial consents (Data processing does not admit,

telemarketing advertising If allowed, electronic media advertising If allowed, postal advertising

If you admit, advertising contact manager If you admit, transfer of data “Authorization/revocation

treatments by editing the framework contract…”), history of consents (“Last

movement 10/16/2019”), Right of access, revocation, rectification… (without annotations).

In the "Documents" section you can access the "Contract LOPD clauses" of 01/24/2018. In the

subsection "Digitalization" the boxes Open line, Branch, ATMs and

Telemarketing.

SIXTH: On 01/07/2020, the Agency Inspection Services accessed the

caixabank.es website, to the “Privacy” section, and the document

called "Processing of personal data based on legitimate interest". The

The full content of this document is reproduced in Annex VI.

SEVENTH: On 12/26/2019, the Subdirectorate General for Data Inspection

accesses the CAIXABANK website (“caixabank.es”) and obtains available information on the

entity.

In the "corporate information" that appears in the section "Who we are" of said

website declares itself "the leader in Iberian retail banking", with 15.7 million customers, 37,440

employees, a 29.3% share of penetration of individuals in Spain and €386,622 million of

total assets.

Financial information is also obtained, of which it is worth highlighting that relating to the

Income Statement, which "as of 09/30/2019" reflects an "Operating margin" of 2,035

millions of euros.

According to the information that appears in the Central Mercantile Registry, the "Subscribed Capital"

amounts to 5,981,438,031.00 euros.

EIGHTH: On 01/21/2020, the Director of the Spanish Agency for Data Protection

agreed to initiate a sanctioning procedure against the entity CAIXABANK, in accordance with the

provided for in article 58.2 of the RGPD, for the alleged infringement of articles 13 and 14 of the

RGPD, typified in article 83.5.b) of the aforementioned Regulation; for the alleged infringement of

article 6 of the RGPD, typified in article 83.5.a) of the aforementioned Regulation; and for the alleged infringement of article 22 of the RGPD, typified in article 83.5.b) of the RGPD; determining that the sanction that could correspond would amount to a total of 6,500,000.00 euros (2,000,000, 4,000,000.00 and 500,000 euros, respectively), without prejudice to what results from The instruction.

The actions outlined in the Background of this act are intended to analyze the information offered in general by CAIXABANK in terms of protection of personal data, through all the channels used by the entity ("Framework Agreement" and the "Consent Agreement" - "Revocation Authorization for the processing of personal data for commercial purposes by CaixaBank, S.A. Y companies of the CaixaBank group"-, the "Privacy Policy" accessible through the website of the entity and the information offered in relation to the personal data of social networks and aggregation service); the different treatments of personal data carried out by the entity according to the information offered, in relation to clients or people who maintain any other relationship with it, including the analysis of the mechanisms employees to obtain the provision of the consent of the interested parties; just like him compliance by the aforementioned entity with the rest of the principles related to the treatment established in article 5 of the RGPD.

The reasons that support the indicated imputations are, succinctly, the following:

a) Violation of articles 13 and 14 of the RGPD:

. The information offered in the different documents and channels is not uniform.

. Use of imprecise terminology to define the privacy policy.

. Insufficient information about the category of personal data that will be submitted to

treatment.

. Failure to comply with the obligation to inform about the purpose of the treatment and legal basis

that legitimizes it, especially in relation to the processing of personal data based on

in the legitimate interest.

. Insufficient information on the type of profiles that are going to be carried out, the uses

specific to which they will be used.

. The information provided on the exercise of rights, the possibility of claiming before the

Spanish Data Protection Agency, existence of a Data Protection Delegate

and your contact data, as well as that relating to data retention periods is not

uniform.

b) Violation of article 6 of the RGPD:

. Insufficient justification of the legal basis for the processing of personal data,

especially in relation to those based on legitimate interest.

. Failure to comply with the requirements established for the provision of a

valid consent, as a specific expression of will,

unequivocal and informed.

. Deficiencies in the processes enabled to obtain the consent of the

clients for the treatment of their personal data.

. Illicit transfer of personal data to companies of the CaixaBank Group.

c) b) Violation of article 22 of the RGPD: invalidity of the consent given by the

clients for the data processing regulated in this article.

Likewise, for the purposes provided in article 58.2.d) of the RGPD, in said agreement of

At the beginning, it was warned that the imputed infractions, if confirmed, may lead to the

imposition on the CAIXABANK entity of the obligation to adopt the necessary measures to

adapt to the personal data protection regulations the treatment operations that

performs, the information offered to its clients and the procedure by which they

give their consent for the collection and processing of their personal data, with the

scope expressed in the Legal Basis of the repeated agreement and without prejudice to what

resulting from the instruction.

NINTH: Once notified of the aforementioned initiation agreement, CAIXABANK submitted a brief of allegations

in which he requests that the non-existence of infringement be declared and, subsidiarily, the annulment

of the procedure for expiration and prescription described in the fifth allegation; or, in his

defect, the warning or the imposition of the amount of the sanction is agreed

corresponding to its minimum degree. In short, the aforementioned entity bases its request on the

following considerations:

1. The opening agreement does not correctly reflect the procedures followed by the entity

to inform and request the consent of its customers.

a) On this previous question, he makes two initial clarifications, to clarify, on the one hand, that

their allegations refer simultaneously to the processes of registering face-to-face and

online, unless expressly stated otherwise, which follow the same operation in

Regarding the information offered and collection of consents, one through the device

of the client and another through the Tablet that the branch makes available to the client, who operates

freely using this tool.

It also warns that CAIXABANK and the CaixaBank Group operate under the same concept

of brand, being that entity the backbone of the Group, so that the client

interacts with all the entities through the different CAIXABANK channels, such as

marketer of all products, as explained in the corporate information that

It is offered on the web, in the “Who are we?” section.

This scheme is transferred to the various facets of data processing, including the management

of the consents for treatments with commercial purposes, which is carried out in a

centralized. Understands that it would not be operative to manage consents separately

for treatments that are to be carried out jointly in the context of the

activities of the Group for the same purpose with the same means, in relation to data of the

that the entities of the Group are jointly responsible.

(…)

It is also a regulatory necessity required by the European Central Bank (...) and

equally necessary to comply with legal obligations that must be based on the capacity

of the Group to manage customer information in a coordinated manner, established in

regulations such as the Law of Sustainable Economy, Consumer Credit Contracts or

Prevention of Money Laundering and the financing of Terrorism.

As a consequence of the adoption of this “common repository” model, which was analyzed

in an Impact Assessment, several measures were implemented. Between them:

. Inform the interested parties that consent was granted at the Group level, to all

effects, so that if it is not provided for an entity none of them could deal with the

data;

. Centralized management of data protection rights, being possible to exercise them before

one entity or all of them, justified by the sector regulations that require the prevention of fraud,

money laundering and risk control;

. Revocation of consent also at Group level (withdrawal of consent to a

processing for commercial purposes to one entity also implies the same for the rest).

b) About the customer registration process, the information and decisions about the treatment of the

personal data, highlights that this decision is free for the client and is not predefined.

This phase of information/decision in the office is articulated through an interview between the

employee and client, with a content that must be addressed necessarily and

which is formalized with the signing of the "Framework Agreement", whose first version with references to the

GDPR is from June 2018 and not November. During the interview, after collecting the data

identification, tax, regulatory and economic information of the client, he is consulted about his

preferences and is asked to mark them by himself on the Tablet that is provided, in which

you can read and analyze the information provided for as long as you consider

necessary, and you can make inquiries to the employee, who has been trained to do so.

The result of this is incorporated into a file in pdf format that the system generates automatically.

individualized and unique for each client, which includes in its initial part their declarations

regarding the processing of your personal data. Bearing in mind that this document already

contains the particularities and preferences of the client, it does not include selection boxes, which

should not lead to the mistake of thinking that said "Framework Agreement" does not allow the client to choose

how your personal data will be processed. In fact, technically, the contract cannot

be generated without the client having pronounced in one way or another. Furthermore, the interested

you can review the copy of the contract that is displayed on the Tablet, check that it includes your

authorizations or consents, request its modification and sign it once you are satisfied with

what is reflected in it.

During this process of obtaining consent, the client is informed about their

meaning in a clear, simple and transparent way, you can ask the employee questions and

examine the version of the "Framework Agreement".

For online registration, the operation is essentially the same. In this case, the client marks the

boxes on your device, after reading the meaning of your choices in windows

informative that the system forces you to open, as verified in the inspection of 11/28/2019;

you can still review the document and sign it if you agree, or otherwise delete it.

In addition, although the "Framework Agreement" is the main axis of the relationship with the client, it

has additional information in the "Privacy Policy", in a language

adapted to the environment, simpler and friendlier; as well as in the specific contracts of the

products or services that you contract. These specific contracts incorporate conditions

specific or peculiarities that the new product or service entails, but they are arranged

on the basis of the "Framework Agreement", which they complement.

In the specific cases of social network and aggregation contracts, referred to in the

agreement to open the procedure, points out that they are not representative, due to the scarce

number of customers who have requested them. This merely complementary nature explains

that the information is reduced, given that they are clients who were informed in

under the "Framework Agreement". Regarding the social network contract, he warns that the

access to the service has been suspended for months and as of the date of the pleadings brief it is not

accessible.

In relation to the foregoing, CAIXABANK provides circulars and internal regulations regarding the

information on data protection and provision of consent, as well as some

examples of the training given to employees in relation to this matter and the

customer registration processes in particular, which is updated and complemented by

circular.

Provides two documents with the labels “Rule 47: Confidentiality and data processing

of a personal nature” and “Rule 122: Prevention of money laundering and financing

of terrorism”, as well as some circulars; all of them addressed to employees of the entity.

The first of the cited documents includes, among others, sections on the RGPD,

obligations and principles of treatment, exercise of rights, purposes and communications

of data. We highlight the following aspects:

(…)

Provides two circulars, dated 11/26/2019 "The client will complete the treatment of their

personal data” and 07/17/2019 “Resolve your doubts about the questions of the Framework Contract.

These are some of the answers to the questions of the Framework Contract”.

(…)

It also provides a document labeled "The General Regulations for the Protection of

Data”, also aimed at employees. This document explains the basic lines of the

regulations and employees are presented with different assumptions in this matter.

Finally, in relation to the issues mentioned in this section, it accompanies

printing of screens corresponding to the personal area of a client, to justify that in

it does not include the link to "My social network data".

c) The consent contract is used to document the modification of the

consents outside the registration process. In this case, the signature by the client is not required.

of the "Framework Agreement", which is designed to be signed only once, with few exceptions.

Only the texts related to the circumstances for which they are requested are presented.

consent or that you wish to modify or revoke. It is a single and clear document

focused on what the client wants to change.

d) In conclusion to what is indicated in this point, CAIXABANK reiterates that the various documents it has to regulate the processing of personal data are used in different times and scenarios, and not simultaneously. The customer experience is to receive a single document; the opposite of the image of disorganization and confusion that the

AEPD seems to have.

2. CAIXABANK has informed the interested parties in the terms provided in articles 13 and 14 of the GDPR.

a) Alleges that it complies with the provisions of article 13 of the RGPD, both in content and in form, according to the procedure you have described. The procedure is direct and simple. responds to the confusing image that the Home Agreement reflects, offers complete information and separately, step by step and intuitively.

On the other hand, the information offered in the "Framework Agreement" details the identity of the responsible, contact details of the DPD, purposes of treatment and legal basis, treatments based on legitimate interest, retention periods, rights, revocation of the consent, possibility of presenting a claim before the AEPD, communications of data, existence of automated decisions, and includes a link to the “Privacy Policy”. Privacy".

About the rest of the documents (“Privacy Policy”, product and service contracts and “Consent Agreement”), CAIXABANK points out that, considering that the “Agreement Framework” informs about the extremes required by the RGPD, it is not necessary that they return to

reproduce them. These other documents are not intended to comply with the provisions of article

13 of said Regulation, since they are addressed to already informed clients.

b) CAIXABANK does not carry out, within the framework of the provisions of the "Framework Agreement",

treatments that entail decisions based solely on automated treatment,

including profiling.

The alleging entity refers to the classification made by the Article 29 Working Group,

formed by the European Committee for Data Protection, in the Guidelines on

automated individual decisions and profiling for the purposes of the GDPR, which

distinguishes the following ways of using profiling (WP251 Guidelines):

“There are three possible ways to create profiles:

Yo)

Yo)

ii)

General profiling;

decisions based on profiling;

decisions based solely on automated processing, including the preparation of

profiles, which produce legal effects on the interested party or significantly affect them in any way

similar way (article 22, paragraph 1).

The difference between ii) and iii) is best seen with the following examples where a person requests

a loan through the internet:

. the case in which a human being decides whether to approve a loan on the basis of an elaborated profile

only through automated processing corresponds to option ii);

. the case where an algorithm decides whether the loan should be approved and the decision is carried forward

automatically to the person in question, without any prior and significant evaluation by a

human being, corresponds to option iii).

CAIXABANK simply prepares general profiles (option i) and makes decisions based on

profiles (option ii) from those listed in the Guidelines. Therefore, article 22 is not applicable.

of the RGPD and neither the duty of information included in article 13.2 f) of the same text

legal. Even so, CAIXABANK voluntarily and adequately informs the interested parties of the

ends provided for in the last article cited in compliance with the recommendations

established in those Guidelines, which determine:

“Although automated decision making and profiling do not meet the definition of Article 22,

paragraph 1, it will still be advisable to provide such information. In any case, the responsible

of the treatment must offer sufficient information to the interested party so that the treatment is fair and

meets the rest of the information requirements of articles 13 and 14”.

Consequently, although it is not obliged to do so, for transparency and voluntarily,

informs of all the extremes provided for in article 13.2 f) and 22 of the RGPD:

. In Clause 8 of the "Framework Agreement" the interested parties are informed of their right to obtain

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

explanation of the decision made on the basis of automated processing and to contest said

decision; that is, it is reported in line with the provisions of article 22.3 of the RGPD, despite

if not necessary.

. In line with the provisions of article 13.2 f), the existence of profiling is reported, the

importance of the treatment (very minor since it is based on consent) and the

consequence for the interested party (“If I authorize it, the offers that are sent to me will be

attached to my profile”).

. In relation to the applied logic, CAIXABANK's actions are consistent with the

recommendations of the AEPD published in the "Guide to Adaptation to the RGPD of treatments
that incorporate artificial intelligence. An introduction". It states that CAIXABANK agrees
that "comply with this obligation by offering a technical reference to the implementation of the
algorithm can be opaque, confusing, and even lead to fatigue. Therefore, it facilitates
Clause 8 (i) of the "Framework Agreement" a description of the different operations carried out
carried out and that "allows understanding of the behavior of the treatment".
. Considers that the obligation to inform about the right of opposition is not applicable, for
when decisions are not made based solely on automated processing. Add
which, however, warns in different places that the interested party can withdraw their
consent and informs in a generic way about the right of opposition in the section
which deals with data protection rights.
c) Informs about the content provided for in article 14 of the RGPD, despite the fact that the Agency
considers that this requirement is not met in a significant way in relation to the data
“supplemented and enriched” by data obtained from other sources.
It points out that, as it already explained in file E/01475/2018, that CAIXABANK considers
expired, it only supplemented data with bases that were not available at that time.
subject to the LOPD, obtained from companies that provide commercial information, sources
and with statistical and socioeconomic data. (…)
Currently, data sources and categories are reported in Clause 8 of the
"Framework Agreement", although the entity is working to update its clauses
informative and gain even more transparency on this point.
In addition, it is reported that the collection of data from third parties will be carried out by verifying that
meet the established requirements, which is guaranteed through the Evaluation process
of impact, recently shared with the Agency. The application of that protocol
guarantees that any hypothetical database acquisition entails measures to

inform their owners.

d) the assertions about the vagueness and lack of clarity of the information made by the Agency are subjective and constitute a mere unsubstantiated opinion without proof that determines that lack of clarity of the terms used or that shows what customers understand or not, which cannot be extrapolated to the generality of interested parties and does not it can be taken as a criterion of what constitutes understandable information or not.

On the contrary, CAIXABANK does periodically carry out tests with users and specialists to ensure that their registration processes are simple and transparent, from which arise initiative that are put into production. In 2018, it commissioned the external entity specialized in language a review of different contractual documents in order to verify what could be understood without difficulty for a profile of the average client. One of these documents analyzed was the "Framework Contract", about which they raised doubts and suggested modifications minors, concluding that the text was understandable by the average customer (he cites an example referring to the information on the transfer of data to third parties, in which the aforementioned company reduced the original format without changing the meaning of the text). These works are suspended until the impact of this procedure can be assessed.

Another element that has not been considered is the low volume of complaints (two cases).

e) On the other hand, the AEPD criticizes the lack of uniformity between the different documents of CAIXABANK, in relation to the rights of the interested parties, the possibility of claiming before the Agency, the retention period, the contact details of the DPD. However, understand CAIXABANK that the duty of information is fulfilled with the "Framework Agreement" and not with the rest

of documents, which are merely complementary. They are not uniforms because they pursue

specific purposes and the differences occur while updating the documents in

question.

f) On the lack of motivation for the six-month retention period after the

termination of the contractual relationship, states that it is a self-imposed measure

to protect your customers. Considers that consent for commercial purposes

could have been configured as valid until its revocation, unlike the

data processing based on the contractual relationship, at the end of which the provisions of

articles 17 RGPD and 32 LOPDGDD. In treatments based on consent, the

The rules of these articles would operate with their revocation, not depending on the passage of time.

It also points out that the Transparency Guidelines of the GT29 and the Guide of the AEPD do not

indicate or recommend informing about the reasons that motivate a retention period.

Finally, it states that the difference in term (6 months in some cases and twelve in others)

is motivated because each client has a contract, which means that for each client

There is a single retention period. Although he admits that the situation is not desirable and

informs that it is in the process of unification.

g) Regarding the aggregation contract, reports that it has been updated. Consider correct

the indication about the impossibility of offering the service in case of withdrawal of the

consent, because in that case the object of the contract would be frustrated, which consists,

precisely, in accessing data from other accounts.

In addition, it is the client who chooses the sources from which information is obtained by selecting

the accounts you want to add and inform yourself about the categories of data obtained, which are

those included in those accounts.

It does not share the indication contained in the opening agreement on the meaning given by the

Agency to the collection of information that this service entails and stresses that it is

subject to regulatory standards, specifically, article 39 of Royal Decree-Law 19/2018,

according to which the service provider will not use, store or access any data to

purposes other than the provision of the service and in accordance with the regulations for the protection of

data. The use of the data for commercial purposes will only be carried out if the interested party has

consented to such use, as provided in the "Framework Agreement".

CAIXABANK understands that the novelty of the service seems to have confused the Agency,

when the mechanism is exactly the same as that of a current account (the data that is

generated in the account statement are used for commercial purposes if the client authorizes it).

The following is indicated in the new contract model that accompanies:

(…)

3. CAIXABANK requests and obtains free, informed, specific and unequivocal consent

of those interested. Legitimate interest.

a) Currently, consent is requested with complete transparency, according to the

procedure described above, for four purposes:

. Profiling activities: this consent and the operations are clearly reported

carried out for this purpose, with the aim of being transparent in relation to

with what profiling implies.

. Commercial offer: receive advertising and commercial offers, with the option to mark the channel to

through which you want to receive offers.

. Assignment to third parties: considers that this purpose is self-explanatory and warns that it has not

made no assignment.

. Use of biometric data to verify identity and sign: this is a clause

dynamic. It alleges that the clause on data processing referred to by the Agency,

included in the version of the contract signed on 11/06/2019 corresponds to the face-to-face channel,

while the template provided focused on the online channel.

b) The three consents that are collected for commercial purposes (profiling, sending

commercial communications and transfer of data) are independent and are freely provided

by the interested party through an affirmative act that reflects a free will, specific,

informed and unequivocal.

Consent is free because you can choose whether to give it or not, it is presented in one part

differentiated and given the opportunity to analyze and tick the appropriate boxes for themselves

same, having established an equally easy procedure to withdraw it; is specific

because it is granted for well-defined and delimited purposes; It is unequivocal, considering the

act of deliberately checking the box by which you consent to the treatment with the

stated purposes; and is informed because all sufficient information has been provided

according to the Consent Guidelines of the Article 29 Working Group and the

Considering 42 of the RGPD.

c) With regard to the information provided regarding the consents, CAIXABANK considers

that the AEPD states that customers are not aware of the fact that they give their

consent and the extent to which they do so without substantiating this assertion and without any proof, and

Nor does it prove that any of the elements that make up the information are missing.

In any case, for clarification purposes, it highlights that there are treatments on which

informs in the "Framework Contract" that they have not been carried out in practice (the most

evident, the one related to transfers to third parties, already mentioned) and that, therefore, cannot

be considered to assess any infraction.

Operations relating to profiling include processing as a result of

that the clause was drafted in 2016, when there were no clear criteria on the

interpretation of the RGPD, when the truth is that some of the treatments become

legal obligations (fraud control and risk management) or are necessary for the

contractual relationship (monitoring of the relationship or adoption of recovery measures).

The information could be improved by explaining what "profiling" consists of, but this does not invalidate

The consent. In fact, removing some of the information makes it even clearer that

authorization is only requested for profiling. Details the following example of a reduced clause:

(…)

There has not been a lack of information, but, in any case, an excess of information,

but there are no hidden treatments in disguise. It is simply intended to explain what is

"profiling" for commercial purposes.

Therefore, in relation to this clause, no additional boxes are required to collect

other authorizations.

The fact that some information can be improved should not carry a sanction,

but perhaps the warning for the implementation of certain changes. In view of these

possible improvements, CAIXABANK is in a self-assessment process to improve

their texts and clarify their purposes and legal bases, as well as to eliminate treatments that

are not carried out. And you are planning a personalized communication process to the

totality of clients in which the consents granted are remembered and it is explained

new the meaning of the same by means of a debugged and improved clause.

d) Also in relation to profiling operations, CAIXABANK refers to the

grouping of consents discussed by the Agency. Indicates that you have designed your

consents for the four purposes indicated, describing the different operations

of treatments of each purpose, without seeking a block consent that covers a

purpose that surprises the client. What the entity intends, it indicates, is to facilitate its

understanding and detail, in accordance with the provisions of Recital 32 of the RGPD

(“Consent must be given for all treatment activities carried out with the

same or the same purposes”); as well as what is indicated by the Agency in point 2.4.1 of the

Frequently Asked Questions (FAQS) and in the "Report on privacy policies on the Internet,

adaptation to the RGPD” (page 4). If Clause 8 (i) of the "Framework Agreement" is analyzed, taking

carried out the purifications that have been indicated before, it is observed that the operations that are

indicate are nuances of the same profile.

e) CAIXABANK is the CaixaBank Group. The way in which this Group has been articulated

responds to regulatory reasons, as indicated above.

The entities that make it up, since the entry into force of the RGPD have held a kind of

of shared responsibility for the data that is collected and processed in the context of their

activities. Thus, it would be absurd to request different consents for treatments that

are to be carried out jointly in the context of the Group's activities for a

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

group are responsible. Otherwise, it would entail a greater risk for the interested parties than

they would lose real control of them.

Given the shared responsibility, it makes no sense to ask for a separate consent

for the "transfer of data" to other entities that, for regulatory, strategic and

operatives are equally responsible. There is no purpose of its own in the assignment, as it is

all direct and jointly responsible entities. Therefore, the consent is joint

and by purpose.

Instead of confusing with strange constructions, the client is asked a question

simple: whether or not you want the Group to process your data for commercial purposes. The interested party is

free to accept it or not. This “all or none” option does not limit the decision-making ability of the

client. It is simply a consequence of the corporate structure of the Group and its

regulatory obligations.

f) In relation to the processing of data for commercial purposes based on interest

legitimate, CAIXABANK clarifies the operation that follows from the application of RGPD in May

2018, (...) the data of those customers who have not consented to the processing of their data

for commercial purposes, or has revoked the consent previously given to

Therefore, they are not treated based on legitimate interest.

For clients prior to that date, it distinguishes between those who signed the "Framework Agreement" or the

of consents, (...) and those who were asked and did not answer, which are the

only clients whose data is used based on legitimate interest (until the client

signs the contract).

Thus, processing based on legitimate interest is reduced to marginal cases, such as a

temporary situation. In addition, it prepared an impact assessment and decided not to send the

“Consent Contract” to those pre-RGPD clients who, without having signed the

"Framework Contract", they had already expressed the "No".

It adds that the statements made by the AEPD are not true. On this, he points out that

carried out an impact assessment on all the treatments carried out with this base

legitimizing and, within that evaluation, has made the weighing judgment between the interest

legitimate of the entity and the rights of the interested parties; Second, it clarifies that the

The described policy prevents treatment from being carried out based on the legitimate interest that

would have been denied by the owner of the data. It equates the revocation of consent to

the opposition to the treatment for those cases in which CAIXABANK can carry out

treatments based on their legitimate interest (such as, for example, the AEPD analyzes and values in its

Report 195/2017, and as reported in clause 7 and on its website (see Fact

Fifth of the Start Agreement).

In the aforementioned Legitimate Interest Report of the Act of the CAIXABANK Privacy Committee, of

05/15/2018, it is indicated:

(…)

g) About the consents with the purposes indicated in the Aggregation Contract and the

Terms of Social Networks, warns that these additional documents inform of the

consent, but a new one is not obtained; consent is granted in the “Contract

Framework". This fact has been confused by the AEPD, on understanding that in said contracts

give a separate consent

4. Consent is requested for profiling for commercial purposes; and not for adoption

of automated decisions, which do not occur in this context.

According to CAIXABANK, the alleged infringement of article 22 of the RGPD is based on a supposed

erroneous, because it does not make automated decisions for commercial purposes that produce

significant legal effects on the owners of the data based on the execution of

automated treatments. Simply general profiles are drawn up and decisions are made

based on profiles (option (i) and (ii) of the WP251 Guidelines).

In this regard, it refers to the allegations already made about the duty of information and the

validity of the consent granted and alleges that the Agency has not even proved that

CAIXABANK is actually carrying out these treatments.

5. Subsidiarily, CAIXABANK alleges the nullity of the Initiation Agreement due to expiration of the previous actions number E/01475/2018 and because it sanctions infractions that would be prescribed in accordance with the LOPD.

The AEPD uses some previous actions initiated in January 2018 that were archived due to expiration, which are incorporated into new ones by means of a simple "chain" that makes the actions of the AEPD perennial, contrary to what persecuted by article 122 of the Development Regulation of the LOPD, approved by Real Decree 1720/2007.

These actions number E/01475/2018 began in January 2018, following a complaint, and they were archived due to expiration on February 1, 2019. However, when the preliminary investigation actions indicated with the number E/01481/2019 were initiated, that led to the agreement to initiate this sanctioning procedure, one of The first actions were to integrate the aforementioned expired actions. This action leaves It is clear that what is pursued with this procedure is to prosecute and resolve those facts past events that gave rise to expired actions, which were artificially prolonged up to two years, almost doubling the twelve-month limit indicated in the RLOPD.

In addition, the facts analyzed in the previous E/01475/2018, if they were infractions, would have prescribed in the terms provided in the LOPD applicable in January 2018. This would be the case of the infractions considered minor under the LOPD.

This conduct supposes a fraud of law (article 6.4 of the Civil Code), when hiding the AEPD

in an apparently legal action to achieve a result prohibited by law

legal; is contrary to article 95.3 LPAC; and entails the nullity of the initial agreement and the

procedure, proceeding your file.

6. Also in a subsidiary manner, requests that a sanction of warning be imposed or,

not consider said request, that it be sanctioned within the scale provided for in the sections

fourth and fifth of article 83 of the RGPD.

a) Considers the following graduation criteria applicable as mitigating factors:

. The measures taken by the controller (article 83.2.c) of the RGPD): CAIXABANK has

made an important effort over the last few years, especially since the

entry into force of the RGPD, to provide its customers with relevant information, including

providing for the intervention of third parties to verify the adequacy of the legal texts. East

effort is evident with the implementation of the measures recommended by FACUA

(provides a copy of emails related to the actions carried out to address the

recommendations of this entity) and for the actions it has planned to strengthen the

information, which contemplate the elaboration of a new version of the "Framework Contract" and the

Sending your clients a communication to remember the consents granted and their

meaning, as well as the possibility of revoking or modifying them; in a clear will

repair any focus errors that may have occurred.

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

situation and mitigate possible adverse effects (article 83.2.f) of the RGPD). CAIXABANK has

shown its willingness to collaborate and to implement measures aimed at solving

possible shortcomings, indicated in the pleadings itself. Indicate as an example of

this provision the attention given by the DPD to the claim formulated by FACUA and the

information provided on said action to the AEPD.

b) THE AEPD omits the aforementioned criteria and refers to a series of criteria that

lists, without any motivation or justification and without specifying whether they are applied as aggravating factors

or extenuating, which generates defenselessness to the entity. CAIXABANK states that, due to the disproportion of the sanctions, understands that the aforementioned criteria are interpreted by the AEPD as aggravating factors. Said entity considers that the following criteria collide with the reality:

. The nature, seriousness and duration of the infringement (article 83.2.a) of the RGPD). Considers that the AEPD intends to impose a high penalty for issues that do not have a especially serious, considering that we are not facing a case in which there has been no provided no information, but all the information is provided, although the AEPD considers that some aspect can be improved; no special categories of data.

To date, cases of absolute lack of information have been sanctioned with warning (PS/00224/2019 or PS/00041/2019), having imposed the highest sanction, for an amount of 250,000 euros, for a much more serious case (PS/00326/2018). The disproportion in this case is ostentatious.

In addition, it highlights that under the old LOPD and the LOPDGDD, for prescription purposes, the infraction due to lack of information is considered minor. However, the proposed penalty in the initial agreement exceeds the previous sanctions imposed, and is radical compared to the

new mood adopted in recent times to try to find a collaborative solution with the entities that were willing and resorting to a warning.

On the other hand, it emphasizes that there are only two claims, that no damage has been caused to clients given that the processing of personal data that is carried out is necessary

for the development of the activity and are carried out in accordance with the requirements demanded by the regulations, even when some aspect could be improved. This lack of harm is highlighted by the Article 29 Working Group in its Guidelines on the application and setting of administrative fines (WP253), assumed by the European Committee for the Protection of Data.

Nor did the complainant contest the filing of his complaint, which he could have done; and no There have been no other complaints or legal actions. That is, no damage has been done.

. Contrary to what was appreciated by the Agency, it considers that the criterion relating to the intentionality or negligence appreciated in the commission of the infraction (article 83.2.b) of the RGPD) should be appreciated as a mitigating factor for the diligent action of the entity, the establishment of clear procedures in relation to the information and provision of services consents, the training given to employees and the collaboration shown with the Agency, adapting and perfecting your texts.

. If the commission of an infraction is appreciated, CAIXABANK has not obtained any benefit any financial (article 83.2.k) of the RGPD), while it would mean, instead, a damage reputational. It does not monetize the personal data of its clients, nor as a sale for commercial purposes. commercial or for other actions.

In the first nine months of 2019, the CaixaBank Group had a growth in volume business (+4.4%), reaching 609,012 million euros, which is due "to the boost commercial and to the improvement of the connection" of the clients (as indicated in the note of attached press, published on 10/31/2019 under the title "CaixaBank obtains a profit from 1,266 million and reached 6,201 million revenue").

. The Agency includes among the concurrent graduation criteria the high volume of data and treatments, among which transfers to third parties stand out. However, these assignments are not made or proven in any way.

. Personal data of special sensitivity are not processed, which should be seen as a

extenuating.

. It is also stated in the startup agreement that CAIXABANK has not implemented

adequate procedures in the collection and processing of personal data, and that the

infraction is the consequence of a defect in the designed management system. In this regard,

Said entity alleges that the systematic and layered process of information and requests for

consents is exemplary and gives the data subject greater control. He adds that a possible

Information defect cannot be understood as a system defect.

. On the degree of responsibility of the person in charge, to which the Agency resorts in relation to

the infringement of article 6 of the RGPD, indicates that the measures taken during the last

years have been aimed at favoring transparency and compliance with the principles of

data protection, as a reflection of the principle of proactive responsibility and privacy

from design and default. Therefore, this criterion must be interpreted as mitigating.

In conclusion, he stresses that diligent and proactive collaboration must be taken into account,

the measures adopted to alleviate possible information errors, the lack of intentionality

and that the possible infraction would deal with matters of information that do not have a

special gravity; and based on this, in accordance with the position taken by the AEPD, it would proceed

a sanction of warning or, if this is not appreciated, a sanction within the scale

provided for in the fourth and fifth sections of article 83 of the RGPD.

As a proof proposal, he indicates that he intends to use the documentary that he already

It appears in the files of previous actions E/01475/2018, E/03677/2019 and

E/01481/2019, as well as the documentation provided with his pleadings brief.

TENTH: On 07/02/2020, the opening of the testing period was agreed. The writing
sent on that date to CAIXABANK, through its representation, was rejected,
as stated in the certificate issued by the Electronic Notification Service and
Electronic Address Enabled.

By means of a letter dated 07/16/2020, notified one day later, said
communication to CAIXABANK, informing said entity that it is deemed to have been reproduced
evidentiary effects the filed claim and its attached documentation, as well as the
documents and declarations obtained by the Subdirectorate General for Data Inspection
in relation to said claim in the information request process prior to admission to
Procedure; as well as the documents obtained and generated by the Inspection Services.

Likewise, the allegations to the initial agreement formulated
by CAIXABANK and the documentation that accompanies them.

On the other hand, it was agreed to require the entity CAIXABANK so that within a period of
ten business days provide the following information and/or documentation:

“a) Copy of the record of all personal data processing activities carried out under the
responsibility of CAIXABANK which are mentioned in the data collection form
called "Declaration of economic activity and data protection policy
personal”, in its initial version, together with any addition, modification or exclusion in the content
of the same.

b) Copy of the evaluation(s) of the impact on the protection of personal data relative to any
type of personal data processing operations carried out under the responsibility of
CAIXABANK, of those mentioned in the form "Declaration of economic activity and policy of
protection of personal data”, which entail a high risk for the rights and freedoms of the
natural persons, in its initial version and, where appropriate, with the detail of the modifications or
updates that may have been made.

Likewise, if there has been a change in the risk represented by the treatment operations

and if deemed necessary, the result of the examination that CAIXABANK may have been able to

be carried out to determine whether the processing is in accordance with the impact assessment relating to the

data protection (article 35.11 of the RGPD).

c) Copy of the documents containing the evaluation carried out by the entity CAIXABANK

on the prevalence or not of the interests and fundamental rights of the interested parties against the

interests of CAIXABANK in relation to personal data processing operations

carried out under the responsibility of CAIXABANK, of those mentioned in the form "Declaration

of economic activity and personal data protection policy", with which the

satisfaction of legitimate interests pursued by the CAIXABANK entity itself or by a third party".

In response to what was requested by CAIXABANK, the period granted was extended by five

business days.

On 08/07/2020, a response letter was received, which was accompanied by CAIXABANK

the following documentation:

1. Record of personal data processing activities.

(…)

2. Personal data protection impact assessments.

(…)

3. Evaluation of the prevalence of the legitimate interest of CAIXABANK or third parties against

the interests and fundamental rights of the interested parties.

(…)

ELEVENTH: On 11/24/2020, a resolution proposal was issued in the sense

Next:

"1. That the Director of the Spanish Data Protection Agency sanction the entity

CAIXABANK, S.A., for an infringement of articles 13 and 14 of the RGPD, typified in article 83.5.b)

and classified as minor for prescription purposes in article 74.a) of the LOPDGDD, with a fine for

amount of 2,000,000 euros (two million euros).

2. That the Director of the Spanish Data Protection Agency sanction the entity

CAIXABANK, S.A., for an infringement of article 6 of the RGPD, typified in article 83.5.a) and

classified as very serious for prescription purposes in article 72.1.b) of the LOPDGDD, with a

fine amounting to 4,000,000 euros (four million euros).

3. That, due to lack of evidence, the non-existence of an infraction is declared in relation to the imputation

for a possible violation of the provisions of article 22 of the RGPD

4. That the Director of the Spanish Data Protection Agency proceed to impose on the

entity CAIXABANK, S.A., within the period determined, the adoption of the necessary measures to

adapt the processing operations carried out to the personal data protection regulations,

the information offered to its clients and the procedure through which they must provide their

consent for the collection and processing of your personal data, with the scope expressed in the

Basis of Law X" of the proposed resolution.

TWELFTH: Notification to the entity CAIXABANK of the aforementioned resolution proposal,

a letter of allegations was received at this Agency, dated 12/18/2020, in which it requests the

annulment of the Sanctioning Procedure for (i) the flagrant defenselessness caused to that

entity by violating its presumption of innocence, (ii) breach of the principle of trust

legitimate, (iii) the defenselessness materialized in the previous activities of investigation without

subject to any guarantee and (iv) the expiration of the sanctioning procedure.

Subsidiarily, it requests the file of the proceedings due to non-existence of infraction and, in its defect, that the warning or the imposition of the amount of the sanction be agreed corresponding to its minimum degree. He bases his requests on the following considerations:

-

1. Violation of article 24.2 of the Constitution, presumption of innocence.

The presumption of innocence is broken if the person instructing the file or who is going to resolve it do not have the capacity to assess said evidence impartially, without any type of "pre-judgment", or if they have formed their will before having all the elements in their sight evidence.

In this case, the arguments at the opening of the procedure were presented on the date 03/04/2020. One day before, on 03/03/2020, without even having received the first allegations from CAIXABANK, at an ISMS Forum event held in Madrid, the Director of the AEPD, highest authority of the institution and competent person to resolve this file and on which the instructor depends hierarchically, publicly stated that "We already have two or three high-impact sanctioning procedures that are going to have a lot of repercussion media in relation to the financial sector, will be the first quantitative fines important by the Agency. Not conditionally, but as something that necessarily it's going to happen In CAIXABANK's opinion, it is difficult to find a greater sign of contempt for the presumption of innocence.

He adds that this is stated in the summary of this intervention made by the prestigious publication The Law, Francis Lefebvre. Likewise, in a tweet from a person present at the event, stated that "Mar España announces that two sanctions will be made public shortly exemplary in the financial sector. A bombshell" (provides screen impression relative to this tweet). In this regard, CAIXABANK states in its allegations that "a sanction already

we know, that of BBVA. And, either we are very wrong, or the other is ours”.

link

Provides "Web Verification Notarial Act", which incorporates the information obtained through

“https:/el derecho.com/los-pensaron-la-aprobacion-la-entrada-vigor-del-rgpd-la-

the

protection-data-would-decline-I-fear-they-were-wrong”. It corresponds to a review of the “XII

Privacy Forum” held on 03/03/2020, organized by ISM Forum and Data Privacy

Institute (DPI). It includes a section on the intervention carried out by the Director of the

AEPD, which includes the statements previously highlighted by CAIXABANK.

Former arts. 24.2, 103. 1 and 3 CE –and art. 6.1 of the ECHR-, any procedure should have

been guided by objectivity and impartiality. As indicated by the ECHR (sic) "justice

it not only has to be applied, but it must also be apparent that it is administered” (cf. De

Cubber v. Belgium, October 26, 1984) and “not only must justice be served, but it must also appear

what is done” Delcourt Judgment of January 17, 1970.

On the other hand, in this case, according to CAIXABANK, before knowing the allegations of the

entity, the person who has to resolve, far from keeping any appearance of justice, has already

decided (publicly) to sanction.

In accordance with article 12.2 i) of the Organic Statute of the AEPD (RD 428/1993 of March 26),

The Director of the Agency has the function of "Initiating, promoting the instruction and resolving the

sanctioning files referring to those responsible for private files”. is the

Director of the Agency, the one that informs that instruction impulse and the one that will determine the

upcoming resolution.

With this, there has been a flagrant violation of the fundamental right to the presumption

of innocence, which should lead to the immediate filing of this sanctioning file.

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2. Breach of legitimate expectations

There has been an absolute breach of the principle of legitimate expectations (article 3 of the Law

40/2015, of October 1, on the Legal Regime of the Public Sector -LRJSP), interrelated

with the principle of good faith and legal certainty. This principle implies that "the authority

The public cannot adopt measures that are contrary to a reasonable hope

induced on the stability in the decisions of the former, and based on which the

individuals have adopted certain decisions" (STS 173/2020).

In this case, CAIXABANK points out that the AEPD's assessments refer to a

documentary structure that was expressly communicated to said Agency shortly after

GDPR publication. Specifically, by email dated 08/02/2016, addressed to

to the Deputy Director of the AEPD, in which all the points of the "Contract

Framework". Said email was headed as follows "In accordance with what was discussed,

attached is the contract we intend to implement this fall. to make it more

understandable, I accompany you with a brief explanation of its purpose and content".

Regarding this query, CAIXABANK states that the AEPD "answers by telephone

(obviously we have no recording), making some minor suggestion (to be

implemented), without there ever being a meeting (this possibility was expressly declined).

That framework contract is practically the same (if perhaps worse) than the one that is today

presumably deserving of a 6 million euro penalty and, what is almost more serious, a

threat of nullity of everything acted under the same".

A year later, also after conversation, CAIXABANK sends to the same addressee

a general presentation on GDPR implementation and request a meeting again,

which is again denied. On pages 11 and 12 of this presentation he again does

reference to the "Framework Agreement", with, for example, a very clear mention of the now maligned

common repository of group companies.

4 and a half years, 2 detailed emails sent, 2 meetings denied and 14 million

contacts with clients later, and completely ignoring the legitimate conviction

of CAIXABANK to be acting correctly, a request for annulment of all

the done. CAIXABANK says: “We are not saying here that everything we have done is

OK, but could we have a "reasonable induced hope" that our way of

proceeding was in accordance with law? It seems hard to say no."

This clear violation of legitimate expectations should lead to the filing of the file or, as

minimum, to reconsider the decision to declare the consents obtained null and void.

Provide a copy of the emails to which this allegation refers, addressed by the

signatory of the allegations to the resolution proposal to the Deputy Director of the AEPD and the

answers of this

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3. Violation of article 24 of the EC: defenselessness caused to CAIXABANK by the

artificial and unlawful extension of the previous actions, also ignoring their

expiration.

a) The previous actions were not such: it was a penalizing procedure without guarantees.

CAIXABANK considers that the previous investigation actions supplanted the activity

instructor, since they were used as a true sanctioning procedure (without

guarantees), which constitutes a possible misuse of power in the use of the

mechanisms of instruction and generates defenselessness.

Considering the purpose that is intended with the initiation of preliminary investigation actions,

CAIXABANK understands that the Administration is obliged to initiate the procedure

sanctioning party as soon as he is certain of the commission of the acts and the identity of the

responsible, even if it is not fully accredited (STS of 06/09/2006).

He cites the STS of 12/26/2007 to state that these previous actions will only be

deserving of such consideration to the extent that "they serve the purpose that they really

justifies, that is, to gather the initial data and evidence that serve to judge the

pertinence of giving way to the sanctioning file, and they are not denatured by becoming

in a surreptitious alternative to the latter".

And the STS 06/09/2006, which has highlighted the need to safeguard the guarantees

constitutional rights of the company in cases such as the one at hand: "As a result of this

norm, prior information is not mandatory, having declared this Chamber in a judgment of

November 6, 2000 that "if there is sufficient data to initiate the file, the

Confidential information should not be practiced, because it is unnecessary and because the rights

fundamental defense of art. 24.2 of the C.E. demand that the granting not be delayed

of the condition of imputed or filed, thus avoiding the risk of using the delay

to carry out interrogations in which the person being interrogated would find himself in a situation

disadvantageous."

Well, the AEPD opened some preliminary proceedings that expired, some

seconds, and then a disciplinary proceeding was initiated. The AEPD has taken 3 years

to prepare a sanction already decided, with the formal support of two previous actions

(a first expired, which led to the opening of a second), without respecting any

essential guarantee of the sanctioning procedure, such as reporting the imputation,

remember the right not to testify against oneself, and a long etcetera, generating

helplessness in addition to the expiration of the file.

Thus, the motion for a resolution rests practically entirely on elements of

charges collected during the preliminary actions phase. The only charge items

contributed to the procedure during the investigation phase (impact assessments, registry

of treatment activities and prevalence assessment), have hardly been considered

later, or it is about circumstances whose requirement was superfluous, since already

were in the possession of the AEPD.

In this case, CAIXABANK points out that, although the preliminary investigation actions

accommodate the jurisdictional and procedural requirements that would enable their adoption, not

they adhere to the purpose they must cover according to the design of the legislator.

Given that the Motion for a Resolution rests de facto, solely and exclusively, on the

elements of conviction and evidence collected during the phase of preliminary proceedings, the

impossibility of using these elements means that the Proposal lacks the

elements necessary to undermine the presumption of innocence.

b) In addition, it meant the inclusion in the sanctioning file of actions from

of some previous expired first performances.

Article 95 of Law 39/2015, which expressly allows incorporation into a file

administrative “acts and procedures whose content would have remained the same had they not been

produced the expiration”, can hardly be applied to a sanctioning procedure. In the

case of a sanctioning procedure, the expiration becomes a guarantee of the defendant, who

cannot be in any way harmed by the inaction of the Administration.

In addition, the use of previous actions without a time limit is not acceptable,

beyond that of the prescription itself, which is the effect that would occur if it were allowed

incorporate expired actions into a sanctioning file

Regarding the block transfer of the expired file, it refers to what was declared in the STS of

02/24/2004: “We know that the expiration declaration does not prevent the opening of a new

sanctioning procedure insofar as the hypothetical infraction that originated the initiation

of the expired procedure has not prescribed... And this entails: ... That there is no room, on the other hand,

that in the new procedure the actions of the first take effect, that is, the

emerged and documented in it as a result of its initiation to verify the reality of what

happened, the person or persons responsible for it, the charge or charges attributable, or the

content, scope or effects of the responsibility, because then there would be no compliance

to the legal mandate to archive the actions of the expired procedure”.

Nor, according to CAIXABANK, is it appropriate to transfer the file en bloc from one procedure to

another because between the two, given their different nature, there are very divergent principles that

they prevent the actions taken in the previous actions from being transferred in full to the file

sanctioning or to the previous actions that were really nothing more than the instruction of the

sanction file. To these previous pseudo performances, actually true

instruction of the sanctioning procedure, they should not have arrived "the actions arising

and documented in it as a result of its initiation to verify the reality of what happened, the

person or persons responsible for it, the charge or charge attributable, or the content,

scope or effects of responsibility" something that, as has been verified, really

yes, it has been crossed through that catwalk of very difficult justification.

c) Additionally, this supposes the expiration of the sanctioning file

CAIXABANK considers that the previous actions have constituted an artificial and

undercover of carrying out instructing actions typical of the sanctioning procedure (citing the

STS of 05.13.2019 (RC 2415/2016) and 05.6.2015 (RC 3438/2012): “...this Chamber has

declared that this period prior to the initiation agreement <<... must necessarily be

brief and not cover up a contrived way of carrying out acts of instruction and masking and

reduce the duration of the subsequent file itself>> (judgment of May 6, 2015,

cassation appeal 3438/2012, F.J. 2nd)".

Based on this, said entity understands that the time used to carry out these

actions must be included in the calculation of the expiration period of the procedure. the day to

quo of this period coincides with the beginning of the preliminary investigation actions

This being the case, the expiration period would have passed sufficiently, without, on the other hand, the

AEPD has proceeded to the eventual declaration of expiration and “re-opening” of a new

penalty procedure. Finally, it adds that, once the file has expired, the infraction has

prescribed.

-

4. CAIXABANK has informed the interested parties in the terms provided in the

articles 13 and 14 of the RGPD and they have understood it.

Before going into the substance of the matter, CAIXABANK clarifies that it does not maintain that its

information was perfect, that there were no errors. In fact, thanks in part to the

experience of several years and, in part, to some of the statements made throughout

the different documents emanating from the AEPD throughout the file, has carried out a

exercise of improvement of its different documents. However, he understands that he does not want to

say that any non-compliance has been taking place: objectively, all the

information required in articles 13 and 14 RGPD and the clients understood the information

which was making it easy for them.

a) All the information required in articles 13 and 14 of the RGPD was provided.

39. The information on data protection that is provided to customers through the "Framework Agreement" complies with the provisions of article 13 of the RGPD. It is reported on the identity of the person in charge, contact details of the data protection delegate, purposes of the processing and legal basis (Clauses 7 and 8), processing based on legitimate interest (Clause 7.3.5), recipients or categories of recipients of personal data (Clauses 7 and 8), retention period (Clause 11.3), rights (Clause 9, as well as 7.3.5 with respect to opposition to processing based on legitimate interest), right to revoke consent (Clause 8), right to file a claim with a control authority (Clause 9, which includes a link to the Agency's website), communications of personal data that is a legal or contractual requirement (Clauses 7 and 8). A link to the "Privacy Policy" (Clause 7.3.6) is also included.

No automated decisions are made, so section 2.f) is not applicable.

of article 13 of the RGPD.

Likewise, CAIXABANK provides in any case the information required by art. 14 of the GDPR, on the categories of personal data and their source of origin (art. 14 d) and f).

Specifically, in Clause 8 of the "Framework Agreement" when reporting on the possibility to enrich and complement the data of the signatory with "data obtained from sources as well as by statistical, socioeconomic data (hereinafter, "Information Additional"), always verifying that they meet the requirements established in the current regulations on data protection.

b) Despite not being mandatory, the categories of data are extensively reported.

Although article 13 of the RGPD and the corresponding article 11 of the LOPDGDD do not require provide the interested parties with this information on a mandatory basis, CAIXABANK offers a Sufficiently descriptive list of the types of data that are treated based on the

consent, in accordance with the provisions of Guidelines 05/2020 on the

consent in accordance with Regulation 2016/679 of the European Committee for the Protection of

Data (“CEPD”). What the Agency cannot expect is to impose obligations that are not

establishes the applicable regulations. If a detailed list of all the data

specific personal issues that can be dealt with in this context, I would not be reporting

categories of data processed, but on specific data, which would imply fatigue

information that is difficult to beat and has been sanctioned in the past (PS/00082/2017).

Likewise, it alleges that the information provided on the processing of personal data is sufficient.

movements, receipts, payroll, claims and claims, considering that it is

products and operations of the client, who knows the information they include.

It adds that this information does not include sensitive data and warns in this regard that the AEPD does not

may require reporting of what is not done, based on suspicion. Still, in the

new "Privacy Policy" is expressly indicated, when defining the category of data

observed of the operation of the contracted products, that no personal data will be processed.

this nature.

The Agency intends to apply certain information standards to CAIXABANK that the regulations

does not foresee when it alleges that the fact of not informing about the categories of personal data

that are processed based on legitimate interest (which is not mandatory under the GDPR, nor is it

mentions the CEPD in its guidelines) invalidates the subsequent consents that may be

request for commercial purposes.

It is true, as you have indicated, that the information provided could be improved in

relation to his presentation, but in no case was it incomplete, so it is

clearly disproportionate the very serious level of reproach made in the Proposal for

Resolution. In addition, the New Privacy Policy improves the exposure of the

information, detailing in a specific section the specific categories of data and their

breakdown, and subsequently referring to each of them in relation to the

purpose in question.

c) There is no proof whatsoever by the instructor that the clients did not understand the information.

The agency does not prove that the expressions are unclear, beyond the sentence

summary of the instructor that said lack of clarity is "obvious and objective".

It is understandable that, if the person who is going to dictate the decision, and who is the

regulation in charge of promoting the instruction (the Director of the AEPD), has already indicated

publicly one year before the resolution is going to be sanctioning (we refer to the

first allegation), the instructor understands that the evidentiary effort is unnecessary. But

obviously said understanding supposes one (another), violation of the presumption of

innocence.

As indicated in the Guidelines on Transparency transcribed in the resolution, the

The requirement that the information be “intelligible” means that “it must be understandable

to the average member of the target audience”, and there is no record in the file that the instructor

have done some checking with average members of the target audience.

d) This part provides evidence that the clients understood (and understand) perfectly:

surveys.

Assuming a reversal of the burden of proof that clearly violates our

fundamental rights, has carried out a survey and a user test using a

expert and independent company (provides a copy of the reports of this external company).

(…)

e) This part provides evidence that the clients understood (and understand) perfectly:

linguist reports.

It has submitted the consent clauses to the analysis of a company specialized in

language and consultancy for communication, including legal information, having

The work was directed by a Professor of the Spanish Language (...), an expert and advisor to

communication.

It can be seen in the reports provided (a copy is attached) that two clauses were analyzed

different from the "Framework Contract) that with respect to the data processing clause the

recommendations are minimal and less than those made regarding the other clause

subjected to analysis, which does not concern us in this procedure.

In conclusion, it is verified that an expert analysis considered that the text of the

"Framework Agreement" regarding information on data protection was understandable by the

average CaixaBank customer, compared to the mere non-expert opinion of the AEPD. So continue

calling such information “unclear” would be nothing short of reckless.

In addition, CAIXABANK highlights that it has not received any claim for lack of

information, except for the two that serve as the basis for this resolution (among millions of

clients), who also do not state that they do not understand the texts that are presented to them.

The foregoing would be enough to understand the accusation dismissed. Nevertheless,

succinct comments are made on each of the specific blemishes that are made.

f) It is not true that non-uniform information is offered to customers.

The information on data protection that has been working in the various documents

provided to customers, has not always been completely uniform due to

solely to the process of updating such documents, being in any case something

temporal and consequence of the time intervals that an entity such as CAIXABANK

required for such updates.

In this regard, a copy of a "Framework Agreement" dated 06/08/2018 is attached, as

proof that this document was adapted to RGPD and that the one included in Annex I, as

November 2018 version, was actually implemented in June 2018.

Finally, CAIXABANK points out that the resolution seems to show that all customers

access to all documents and, singularly, that all clients have both the

consent contract as well as the framework contract, and both in all their different

versions, in a kind of documentary bombardment that produces confusion, which is

simply false. The vast majority of customers (over 95%) have signed the

"Framework Agreement", in the current version in each case, and only a residual percentage has the

"Consent Contract", without this implying any loss of information or

confusion. Obviously the privacy policy is common to all, but there is no

no discrepancy between this and the other documents.

In any case, in the indicated improvement process, an absolute consistency has been carried out

of all the documents, as set forth in the Sixth Allegation and the documents that are

they contribute

g) It is not true that imprecise terminology is used with vague formulations, lack of

specification of the personal categories of data processed, and lack of information on the

purposes and confusion of legal bases.

As for these three accusations, it is enough to point out what is accredited with the surveys provided, which CAIXABANK considers sufficient to distort the statements of the Resolution Proposal.

He reiterates his surprise that the instructor feels that they are not sufficiently descriptions of the data categories in which the mentions of movements are treated, receipts, payroll or claims. On this question, CAIXABANK asks if the purpose is that list in detail what microdata are obtained from each category of document, which would imply information fatigue that would be difficult to overcome.

h) There is no improper transfer of data between group companies: there is co-responsibility.

Both at a regulatory level (an area that the AEPD does not question) and at a commercial level, a transparent co-responsibility regime for the interested parties. Notwithstanding the improvement that at the level of transparency has been carried out in the New Privacy Policy, considers essential to point out three elements that the AEPD seems to confuse and that lead to the erroneous conclusion that the alleged transfers within the framework of the Group are illegal:

Yo. The Agency interprets that there is a transfer of data between the companies of the Group CaixaBank from controller to controller. This is wrong. does not occur, legally, any transfer of data; but a direct collection of data by the companies in the field of co-responsibility.

ii. The AEPD separates the non-existent transfer of data as a new and artificial purpose. In In no case is access by CaixaBank Group companies constituted as a purpose in itself. The "assignees" (actually co-responsible) do not access the themselves arbitrarily, but for the true purposes of which the interested parties are informed (these are, for regulatory purposes, "commercial purposes" and when it is necessary for the execution of the contract, as the case may be).

iii. The birth of co-responsibility does not derive from "intended purposes" but from the joint participation in determining the purposes and means of processing between the

entities of the CaixaBank Group (with CaixaBank at the helm). The AEPD does not deny the existence

of co-responsibility, although it claims that it is not applied (especially in relation to

"commercial" treatments) to the extent that the attribution of responsibility is not detailed

between the different companies. However, the AEPD errs again by forgetting that the place

where these responsibilities should be attributed that the strange Agency is not the Policy of

Privacy or the Framework Agreement, but rather the co-responsibility agreement in the terms

provided for in CEPD Guidelines 7/2020 (attach a copy of an agreement of

co-responsibility, which includes an annex for each of the "treatments subject to

co-responsibility and co-responsible"; These annexes detail the treatments, their

purpose and legitimizing basis, in addition to the data of the "co-responsible" companies.

No annex appears signed by these entities).

In conclusion, neither data transfers occur in the terms provided in the RGPD, nor the

co-responsibility requires a separate consent (within the framework of the "purposes

commercial") insofar as it is a de facto situation (it is not something that can be agreed upon or requires a legal basis).

legal under article 6 RGPD to attend). In addition, the impact assessment is provided

the AEPD alleges in Basis VI that CaixaBank did not contribute (…).

i) There is no deficient information about the legitimate interest.

Contrary to what is maintained by the AEPD, there is no confusion between treatments based on

legitimate interest and consent, nor are they coincident. There cannot be a situation where

a treatment on which it has been said "no" under the legal basis of the

consent, can be carried out based on legitimate interest, a circumstance that the AEPD does not

has tried.

In any case, the New Privacy Policy has proceeded to eliminate the treatment

based on the legitimate interest for commercial purposes that, as indicated in the answer to the

Opening Agreement, is a treatment that is not carried out, nor has it ever been carried out.

On the other hand, the New Privacy Policy reconfigures the differences already analyzed in

the Allegations to the Home Agreement between treatments based on legitimate interest and on

The consent.

In section VI of the Resolution Proposal, the AEPD concludes that "it is not possible to

determine the suitability (…), necessity (…) and proportionality…" of the treatments

based on legitimate interest and that the intrusion into the privacy of the interested party may be high,

the effects may have a negative impact on them. However, it does not provide

any proof that the legitimate interest does not concur, nor is it invalid or insufficient.

On additional measures or recommendations to reinforce the legitimate interest, it indicates

CAIXABANK that its absence does not invalidate the legitimate interest. Neither the RGPD nor the LOPDGDD

provide for the availability of the interested party of the impact assessments or the report of

weighting of legitimate interest, or reinforced opposition mechanisms.

j) There is no lack of information on profiling.

The AEPD argues that complete information is not provided on the types of profiles, their use

and the right of opposition of the interested party.

However, in the "Framework Agreement" the first of the purposes for which the

Consent is described as "data analysis and study treatments for the purpose of

by CaixaBank and the Companies of the CaixaBank Group", and in the detail of this title,

the concept is extended to the expression "analysis, study and monitoring for the offer and design

of products adjusted to their customer profile". Next, in the clause that supports the

collection of consent, the treatment operations that comprise

this purpose, where it is reported on the elaboration of profiles:

“a) Proactively carry out risk analysis and apply technical data to

statistics and customer segmentation with a triple purpose:

1) Study products or services that can be adjusted to your profile and business situation or

specific credit, all this to make commercial offers tailored to your needs

and preferences.

This information clearly details the purpose and, as demonstrated by the

provided surveys, is clearly understood by customers.

It adds that the error was made in this same clause (corrected in the New Policy on

Privacy), to list treatment operations that had nothing to do with consent

for profiling. And he lists those specific treatments that, in his opinion, can be covered by

other legal basis (the list of treatments to which this allegation refers is

outlined in the Foundation of Law VII, in the section that examines the processing of

data based on the consent of the interested parties).

It considers that this error, which has been recognized and corrected, is reprehensible, but it does not break

the principle of specificity of consent. Consent is only required to study

products or services that can be adjusted to the profile and commercial or credit situation

of the clients, to make commercial offers adjusted to their needs and

preferences and the rest of the clause, unfortunately it is superfluous, but it does not have as

Consequently, different purposes are authorized en bloc.

Finally, CAIXABANK has clarified and specified in the New Privacy Policy the

treatments that involve profiling to prevent the concept from being misunderstood by a

"common customer"

k) There is no lack of information on the retention periods and the exercise of

Rights.

CAIXABANK refers to what is indicated in its allegations to the initiation agreement and adds that

These aspects have been clarified and improved in the New Privacy Policy and in

New Framework Contract. Regarding the conservation of personal data once the

contractual relationship, warns that in reality it was not executed and that in the new policy the

mention disappears, canceling the ex officio data.

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5. There is a legal basis for the treatments and the consents are obtained from

lawful manner.

a) The consents meet all the legally established requirements

As detailed in the allegations to the initial agreement, the consents comply

all the requirements established by the RGPD as they have been interpreted by the CEPD, without

that the Agency has accredited that they have not been obtained legally. On the contrary, the

content of the file itself demonstrates that the consents obtained are free,

specific, unequivocal and sufficiently informed.

. The consents are free, since the client, at all times, has the absolute freedom

to grant them or not, without associated negative consequences, power imbalances,

conditionalities or dissociation of purposes. There is no combination of different

purposes under the same consent that would limit the freedom of choice of the owner. Thus

three consents are requested and no commercial treatment is carried out based on the

additional consent to these.

. Consents are specific in that, in line with the disassociation requirement,

separate and disaggregate the only activities that are carried out under the cover of consent, that is,

In other words, they are asked specifically and separately about the intended purposes (the

data profiling to offer customers products that may be of interest to them; the

choice of the communication channel for offers; and the possibility of transferring the data to

third parties).

The AEPD interprets that there is a dissociation between the indicated purposes and those

on which the interested party pronounces. Given this, CAIXABANK reiterates that a large part of the

treatments indicated in the version of the review documentation or are not carried out, or

are covered by another legal basis, or are simpler and more limited than what the AEPD

understands. As can be seen in the New Privacy Policy, consent to

profiling activities has been reduced to what is actually carried out under this

consent, and the rest of the activities that are carried out have been reported in

their respective and correct headings (treatments in execution of a contractual relationship,

or by legal obligation).

In addition, it must be remembered that the Working Group of art. 29 in its document “Guidelines for

consent under Regulation 2016/679” establishes that consent can

cover different operations as long as said operations have the same purpose. In the

case of CaixaBank, there are only three purposes, and it asks separately and specifically about

them, without causing any deviation from use. Made the mistake of including

within the examples some treatment operations that should have been included

in other treatments based on the execution of contracts or in compliance with laws,

such as, for example, collection actions consubstantial to credit agreements, not

distorts the specificity of the requested consent.

. The consents are unequivocal, since the interested party must carry out an affirmative act so that your consent is understood as granted. Consent is not based on acceptance of a policy or in a mere inaction, but is obtained from the client a manifestation, unequivocal positive or negative, corroborated in two steps (choice by marking box and signature).

. The consents are informed, having been refuted the reproaches about the validity of the information provided by the arguments and evidence provided in the fourth claim. The client receives all the legally required information and it has been demonstrated empirically he understands it.

The AEPD indicates that on the screens “Tablet Mode. Client” there is no link to the information of Data Protection. In this sense, it only has to be clarified, again and as it was verified in person at the inspection, that after giving consent (or not), the client accesses the complete content of the text of the contract immediately. Before signing, you are presented with the full text of the contract so you can read and review it, so you can not ratify your choice and technically “go back”. He is also introduced at various times to the consent scheme.

Finally, it points out that the AEPD omits the analysis of the consent collection process in the non-face-to-face channel (online banking) that you reviewed in your face-to-face inspection dated November 28, 2019, in which it was shown that the client must necessarily access to the information before giving consent, as already reiterated in the allegations to the opening of the procedure.

b) Reiterates that there is no commercial treatment based on legitimate interest, having reduced these treatments in the new policy to internal management operations, very low impact on data subjects.

c) Reiterates that there is no illicit transfer of data to group companies, but treatments in co-responsibility

d) The social network contract was absolutely residual, and the aggregation contract was perfectly lawful.

The Social Networks Contract was a “pilot” project that was deployed with respect to a negligible number of clients, which was unsuccessful and unsubscribed, although the AEPD continues failing this matter without taking into account those circumstances for the purposes of the sanction imposed.

With regard to the Aggregation Contract, the AEPD forgets that its signature is complementary to the "Framework Agreement", so that the consents for the "commercial purposes" in the framework of co-responsibility have been (where appropriate) duly obtained with the nuances typical of this type of contract (see the allegations to the initial agreement). It isn't true that this service is used to collect information, as indicated by the AEPD, because This service is provided for in the payment regulations and serves to avoid disposing of the entity regarding new actors. In any case, there is a new version of this last contract (provides a copy) that clarifies any possible doubts that customers and the AEPD may have, which, In addition, like the rest of the contracts, it is being revised to adapt it to the new design that we detail them in the Sixth Allegation.

-

6. Regarding the measures proposed in the Basis of Law X, of the proposal of resolution and remediation already operated by CAIXABANK. Inadmissibility of measures of cessation.

The references to the cessation of treatments that is made in the resolution proposal are

totally disproportionate for the present case, in which the only action that

reproaches is the writing of the informative texts, by means of which it informs its

clients of their treatments. The fair, proportionate and appropriate measure would be to urge

remedy these information deficits.

It must be taken into account that the AEPD has taken three years to substantiate this

procedures and, during this procedure, has not considered the facts sufficiently

serious enough to contact the company to urge a remediation of the treatments

or of the information, to which it should be added that the documentation was sent one year and

half before.

Likewise, it must be taken into account that the interruption of treatments or the collection of new

consents would have an irreparable impact, both on the Entity and on the users themselves.

customers, much more pronounced even in the current global health situation, which requires

restrict movements, visits that customers come to make arrangements at the offices.

Privacy Information Enhancements

On the contrary, the publication of a new privacy policy, the communication of the same to

all customers and the renewal of all consent collection processes, which

are already being implemented, as well as personalized communication of all changes to

all clients of the entity, reminding them in the same what were the consents

granted at the time, explaining them in accordance with the new drafting standards

adopted and reminding customers of the possibility of revoking them, are measures sufficiently

repair companies to estimate that CAIXABANK would have remedied any deficit estimated by the

AEPD.

These measures, which were intended to be implemented to coincide with the second anniversary of the RGPD, and that have been delayed due to the impact of this procedure and the situation current health system, is based on the following components (attach a copy of the documents and screenshots quoted):

- New structure of the documents through which customers are informed
- Privacy Policy (version 12/2020)
- Framework Agreement (version 12/20220)
- New screens for the processes of collecting consents on tablets and banking distance.
- Mass communication to customers informing of the changes

a) New structure of the documents through which customers are informed

The "Framework Agreement", which contains the general regulation of the client's relations with the entity, and that seemed the best option to also report on data processing, will be replaced by a new Privacy Policy, as a document dedicated to informing users clients on this matter, given the dimension of the information that in the interpretation current is estimated to be provided. To facilitate the permanent access of the clients to the same, the company (www.caixabank.com/politicaprivacidad) will stay permanently in the website of

The "Framework Agreement", which will continue to be the first contract signed by a client when interacting with the Entity, it will be used to obtain the consent of the clients, but only will collect the detailed information referring to the consents and the basic mentions that establishes art. 11 of the LOPDGDD, referring the client for more information to the second

layer, the Privacy Policy. Product contracts, and other forms, will contain

also only the basic mentions established by art. 11 of the LOPDGDD.

A total uniformity in the information is intended, as well as a much deeper detail

Of the same.

b) Privacy Policy (version 12/2020)

The Privacy Policy is already in force and published on the web, where it can be consulted and

download in pdf format. In his pleadings brief, he outlines the structure of this

document, which consists of 11 sections.

c) Co-responsibility agreement

Together with the Policy, a co-responsibility agreement has been drafted in the treatment of

data between the companies of the Group. This agreement defines the ends and means of the

treatments, as well as the basic rules to be observed by all the companies that make up

these treatments in co-responsibility. Information on this is also contained in the

policy and more detail in

the same

www.caixabank.es/empresasgroup.

the web address listed in

d) New Framework Agreement (version 12/20220)

The new Framework Contract is closed, in the process of being laid out and put into production in

the entity's information systems. The final implementation date is set for

systems update (IOP) January 2021.

The new Framework Agreement has been completely redesigned and has been redrafted format under the recommendations of a linguistic company, to provide it with a clear and transparent wording for users. The text is accompanied by examples and warning calls intended to reinforce the information offered to customers

All the information has been unified in a single clause, which offers basic information on data protection (responsible for the data, and the possibility of processing in co-responsibility, of the Data Protection Delegate, of the possibility of exercising the rights recognized in the RGPD and to present claims before the AEPD, of the categories of data that are processed and data processing), redirecting to detailed information to the Privacy Policy published on the Web, as established in art. 11 of the LOPDGG. The same terminology is used in both documents.

Although it is a document understood as the first layer, it continues to be the support to obtain consent. To ensure that this consent is informed, renewed and detailed information about them is given, maintaining the same wording than the Privacy Policy.

In his pleadings brief, he outlines the new structure of this document, which dedicates the section 4 to the processing of personal data.

e) New screens for the consent collection processes on a tablet for offices and distance banking (web and mobile).

This update, which will be in production in January 2021, improves the information and usability, providing examples and ensuring that the authorization process remains always in the power of the client (shared tablet screens). The obligation remains access to information and the provision of consent through a clear exercise affirmative, separately for each of the purposes.

New consents have been incorporated, although this is not a remedy.

New treatments have simply been planned in the entity that require

consent.

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f) Mass communication to customers informing of the changes

To publicize all the above changes, a statement has been prepared that

will be sent to the entire customer base informing about the new Privacy Policy, and

reminding them of the consents granted (including the new wording), the treatment

of your data in co-responsibility by the companies of the CaixaBank Group, the right to

oppose the treatments and other rights provided for in the RGPD.

With this communication, any information deficit that could be understood is remedied.

regarding all data processing carried out by CAIXABANK and reinforces any

understanding deficit that may have occurred.

He insists that these improvements are the result of 4 years of experience, his own and those of others, but he does not

they mean that the information currently provided violates any rule.

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7. On the necessary proportionality of sanctions and their graduation.

Disproportionate sanction imposed.

a) Subsidiarily, it considers that the following mitigating factors apply:

. Any measure taken by the person in charge or in charge of the treatment to alleviate the

damages suffered by the interested parties (art. 83.2.c) RGPD): In addition to what is indicated in

the Allegations to the Initiation Agreement [see section 6.1.a)], which continues to be

fully applicable and that the AEPD simply despises indicating that they lack the

“sufficient relevance”; CAIXABANK has proceeded to further clarify the information offered

to its clients and the procedure by which it requests consent, to the extent

that the imposition of the corrective measures proposed by

the AEPD (Grounds of Law X and Fourth Resolution Proposal of the Proposal for

Resolution). The potential infraction related to the alleged lack of information has been completely

regularized (if such regularization ever proved necessary) and any adverse effects

deleted.

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

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

indicated in the Arguments to the Initiation Agreement [see section 6.1.b)], and it is

highlighted in the actions carried out by CaixaBank throughout the procedure (within and

outside its framework), CaixaBank has done nothing but cooperate and walk hand in hand with

the AEPD to achieve greater clarity and protection of the interested parties. Actually yes

some lack of collaboration has been reciprocal, given the absolute reluctance of the

AEPD to meet with this entity.

b) Unprecedented disproportion of the sanction imposed

The AEPD recognizes that it is not a question of a lack of information and qualifies the

infraction as minor (and consequently, its evaluation must be limited to the behavior

of CAIXABANK in the year prior to the Start Agreement for obvious reasons of prescription).

Likewise, there are no transfers of data outside the framework of the co-responsibility of

facto and, at present, formal that exists in the CaixaBank Group (without the free will of

the subjects has been diminished in any case). However, it imposes on CAIXABANK a

unprecedented sanction 8 times higher than the highest fine imposed under the GDPR (if not

we take into account "the other" exemplary sanction of the financial sector, recently known).

And 3 times higher than the maximum foreseen under the previous regime for the most serious infractions.

serious, ignoring and simply denying the application of mitigating factors that CAIXABANK

detailed in the Allegations to the Initiation Agreement and which are hereby reiterated. Specific,

the application of those provided for in articles 83.2.a), b) and k) RGPD, as well as the

listed in sections c), d) and e) and f) of the Sixth Allegation of the Allegations to the

Home Agreement.

c) Possibility of warning

Finally, with regard to the warning, the AEPD seems to want to imply that the

warning is addressed only to natural persons, when it itself (see under title of

example PS/00072/2019; or PS/00096/2019) has resorted to this proportional measure in the

past with legal persons.

d) Conclusion

In conclusion, taking into account the new information that CAIXABANK customers are

to receive and the proactive and exemplary attitude of CAIXABANK, this entity understands that the

measures set forth in Legal Basis X of the proposed resolution remain

without effect, even before the final resolution, since all behaviors have been remedied, or

in the course of remediation due to technological imperatives, and that the proportional measure that the

AEPD, where appropriate and in a subsidiary manner, should apply the warning. Additionally

and taking into account the patent application of mitigating criteria, this part understands that

It would proceed to calculate the amount of the sanction that, if applicable, was imposed, applying, within

of the scale provided for in the fourth and fifth sections of article 83 RGPD, its minimum degree.

Finally, considering that strategic and sensitive data are provided for the

entity, requests that the information provided be kept confidential and not be

communicated to any third party.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: On 01/24/2018, this Agency received a claim made

by the claimant against CAIXABANK, in relation to the new conditions regarding

protection of personal data whose acceptance requires that entity, questioning the

transfer of your personal data to all the companies of the CaixaBank Group and the

procedure established to cancel said assignment, which, according to the claimant, requires directing

a letter to each of the companies. He requested that CAIXABANK be urged to modify

the mentioned conditions.

The claimant provided a copy of the

quoted conditional, which appears with the labels

“Authorizations for data processing” and “Exercise of right of access, cancellation

and opposition. Claims before the Data Protection Authority”.

In relation to this claim, CAIXABANK informed this Agency that the clauses

information to which the complaint refers were implemented on the occasion of the changes

contractual arrangements arranged for adaptation to Regulation (EU) 2016/679.

SECOND: On 03/29/2019, this Agency received a claim made

by the entity Association of Consumers and Users in Action – FACUA, against

CAIXABANK, in relation to the "Framework Agreement" signed by the clients of this entity,

through which their personal data is collected, the information is offered to them in

this matter and consents are obtained for the specified data processing.

FACUA denounces that the content of this contract cannot be negotiated by the interested party, that consent is imposed on the processing of your personal data and the transfer of the same to third companies with which it may not have a relationship (authorizations provided for in clause 8 and assignments mentioned in clause 10 of said contract).

FACUA provided a copy of a "Framework Agreement" dated 10/24/2017.

THIRD: The entity CAIXABANK has declared to this Agency that it began its adaptation to the RGPD in 2016 and that this adaptation was carried out, mainly, through the implementation in June 2016 of the personal data collection form called "Framework Agreement", used by CAIXABANK as a priority to comply with the transparency requirements in terms of personal data protection and so that customers can give their consent for the processing of their personal data at the of "Group", with the purposes indicated in the aforementioned document.

The "Framework Agreement" is presented as mandatory subscription for new customers, establishing that the signature of the document supposes that it “knows, understands and accepts its contents". It is expressly provided that the terms and conditions are applicable general to all the "commercial relations" of the interested party "with CaixaBank and the companies of the CaixaBank Group, and therefore, the signing and validity of this Agreement, respecting the corresponding rights of election that the Signatory grants the clause, is necessary for contracting and maintaining contracts for products or services”.

CAIXABANK has stated that in the case of existing customers, a notice was included in the client file indicating to the manager that the "Framework Agreement" had not been formalized.

In its response to the Inspection Services dated 11/20/2019, CAIXABANK stated that the "Framework Agreement" informs about all the treatments derived from the relationship contractual.

CAIXABANK has contributed six versions of the "Framework Agreement" to the proceedings, dated

06/20/2016, 11/22/2016, 03/14/2017, 11/12/2018, 12/20/2018 and 09/17/2019.

The first three versions refer to the LOPD and do not refer to specific issues

regulated in the RGPD, such as the legal basis of the treatment (legal obligation, interest

legitimate or consent); rights of deletion, limitation and portability; right to

file a claim with the Spanish Data Protection Agency; existence of a

data protection delegate and authorized means to contact them. The version

3rd constituted the information offered by CAIXABANK as of 05/25/2018.

In its response to the Inspection Services dated 11/20/2019, CAIXABANK provided a copy

of the "Framework Agreement corresponding to a client", which appears signed on 11/06/2019.

It is verified that its content does not fully coincide with any of the six versions

of the "Framework Agreement" provided by the entity itself (version 7).

Section 1 of the "Framework Agreement" contains the identification data of the client and his

declaration of economic activity. Among other data, there are those related to name,

surnames, tax ID, date of birth, nationality, address, marital status,

matrimonial regime, contact information, fixed and variable income, entity in which he provides

service or annual gross receipts.

The information provided to the interested party in this document in relation to the protection

of personal data is structured according to the legal basis that legitimizes the treatment of personal data.

data, devoting section 7 to the treatments "based on the execution of contracts,

legal obligations and legitimate interest and privacy policy” (includes a subsection

regarding the "processing of biometric data in the electronic signature of documents"), and the

section 8 to the "treatment and transfer of data for commercial purposes by CaixaBank and the companies of the CaixaBank group based on consent". Sections 9 are added "Exercise of rights in terms of data protection" and 10 "Data Protection Delegate Data", as well as a subsection dedicated to the "Data retention period", inserted in section 11 referring to the duration, resolution and modification of the contract.

During the contracting process, the client must express the consents for the processing of personal data that is requested from the interested party in clause 8, incorporating the options selected by the client to the header of the document, to the personal and socioeconomic data section. The consents requested from the client are grouped into the following three purposes:

"(i) data analysis and study processing for commercial purposes by CaixaBank and companies of the CaixaBank group

(ii) the processing for the commercial offer of products and services by CaixaBank and the companies of the CaixaBank group

(iii) the transfer of data to third parties".

In relation to these three consents, Clause 8 indicates: "In order to make your provision of a global offer of products and services, your authorization to (i) the treatments analysis and study of data, and (ii) for the commercial offer of products and services, in case if granted, it will include CaixaBank, and the CaixaBank group companies detailed at www.CaixaBank.es/empresasgrupo (the "CaixaBank Group companies") who may share them and use them for the indicated purposes".

The copy of the "Framework Agreement" provided by CAIXABANK with its response to the Services of Inspection dated 11/20/2019 (version 7), which appears dated 11/06/2019, contemplates the provision by the client of a fourth consent regarding the processing of data biometrics In the header of the document provided, under the heading "Authorizations for data processing" it is indicated: "Other purposes: Use of biometric data with

purpose of verification of identity and signature. You have indicated your acceptance and

consent".

It is declared reproduced in this act for evidentiary purposes the entire content of the "Contract

Marco", in its versions dated 03/14/2017, 11/12/2018, 12/20/2018 and 09/17/2019, as well

as the content of the "Framework Agreement" dated 11/06/2019 (version 7). The content of the

4th version, dated by CAIXABANK on 11/12/2018, as well as the modifications introduced

It is subsequently included as Annex I.

FOURTH: The formalization of the personal data collection form and provision of the

consent for the processing of personal data called "Framework Agreement"

takes place during the customer registration process, which can be done in person at

offices or through digital channels.

a) The registration process in branches is carried out through an interview between the client and the manager.

During this process, the manager must complete the sequence of screens provided in the

system incorporating the information (personal data) provided by the client. After

complete several screens (around fifteen), the screen labeled "Modification

of data protection of…", whose structure is as follows:

"High consents

CaixaBank data protection (GDPR)

The customer authorizes CaixaBank to:

1. Use your data to:

. Carry out studies and monitoring of operations

. Manage the alerts of the products you have contracted

. Study products and services adjusted to your CaixaBank Group profile

( ) Otherwise

2. Participate in promotional campaigns and commercial offers of the CaixaBank Group through the

channels

( ) Yes

( ) Telemarketing

( ) Electronic means such as SMS, email and others

( ) Postal advertising

( ) Business contacts of the entity's managers

( ) Nope

3. Transfer customer data to third parties

( ) Otherwise

(OK) (Cancel)".

For the provision of these consents, during this interview the client responds

verbally to the three questions that the manager asks about the indicated purposes, one

of them broken down into four options, and it incorporates the responses into the system. One time

At the end of the interview, the completed "Framework Contract" is printed on paper and signed

for the client.

In its response to the Inspection Services on 07/17/2018, CAIXABANK states that,

subsequently, it provided the entire office network with digitizing tablets, making it possible for the

"Framework Agreement" is signed, not on paper, but on the tablet itself.

CAIXABANK, with its response to the AEPD, dated 05/03/2019, provided documentation

referring to the training given to its employees in which it is indicated:

(…)

The operation followed in this process was modified again, establishing a system of

“shared screen” to allow the client to mark the selected options by himself

same on a tablet that the manager puts at your disposal.

CAIXABANK with its letter of 11/20/2019, sent in response to the requirements of

information from the AEPD Inspection Services provided screen printing

corresponding to the registration process of a client. After advancing about fifteen screens,

a screen is displayed with a message for the manager with the indication “According to the

General Data Protection Regulation, the client must authorize the use of their data. A

You must then hand the tablet over to the customer to complete the consents.”

Once the manager presses the "Accept" button on that screen, two screens are displayed

corresponding to the collection of consents for the processing of data

personal data, with the label “Authorization/Revocation of consents” and the indication “Mode

tablets. Client". The detail is as follows:

“Protection of personal data Caixabank group

I authorize the Caixabank group to:

1. Use my data for study and profiling purposes:

If I authorize it, the offers sent to me will be adapted to my profile

( ) Yes, I accept that the offers are based on my profile

( ) Nope

2. Receive advertising and commercial offers

If I do not authorize it, not even my manager will be able to contact me to inform me of products of interest to me.

( ) Yes, I agree to receive offers by the following means:

( ) Telemarketing

( ) Electronic means such as SMS, email and others

( ) Post mail

( ) Commercial contacts through any channel of my manager

( ) Nope

3. Transfer my data to third parties with whom the Caixabank group has agreements:

If I authorize it, at the time my data is transferred, I will be informed of which third party is the

recipient of the data and, if I do not agree, I can revoke this authorization

( ) Yes, I agree to transfer the data to third parties

( ) Nope

4. Use of my biometric data (facial image, fingerprint, etc.) in order to verify my

identity and signature: This authorization will be complemented in each case with the registration of the data

biometrics to use at all times. In order to verify the identity/signature of your customers,

Caixabank uses biometric recognition methods such as facial recognition systems,

fingerprint reading and the like. Currently, some of our ATMs already allow

operations using these methods.

( ) Yes, I accept the use of my biometric data

( ) Nope

The preferences that you have indicated here will be collected on the first page of your framework contract.

Once the options have been marked, the buttons are included in the final part of the screen.

“Accept” and “Cancel”. Pressing the first one offers the message “Your consents have been

indicated. Thank you for your cooperation. Please return the tablet to your manager”. (…)

The “Tablet Mode. Customer” do not contain any link to information on

protection of personal data contained in the "Framework Agreement".

In relation to this process, no screen was provided regarding the consolidation of the

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Nope

Nope

Nope

Yes

Yes

Yes

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document and its signature by the client.

b) The customer registration process through the CAIXABANK web portal and mobile application (the application redirects the interested party to the web application), it includes a step that shows a screen through which consents are collected for the processing of data with commercial purposes. The screen displays the following options:

<<Manage your data (i)

Do you want to find out about our news in a personalized way?

Processing of your data to receive a personalized service from the Caixabank Group

Treatment of your data for purposes of analysis, study and monitoring of the offer and design of products and services adapted to the customer profile by Caixabank and companies of the Caixabank Group.

More information

Processing of your data to receive offers of products and services from Caixabank

Treatment of your data for the commercial offer of products and services of Caixabank and companies of the Caixabank Group

More information

Transfer of your data to third parties with whom Caixabank and companies of the Caixabank Group have

agreements

Processing of your data by third parties with whom Caixabank and companies of the Caixabank Group have

agreements, to receive offers of products and services from said third parties.

More information

(Continue)>>

During this process of providing consent, access is made possible by the

client to clause 8 of the "Framework Agreement". At the end of the process, the "Contract

Framework" with the summary of the consents granted and the clauses, for signature by the

client ("View and download framework agreement"). A box is included to check "I have read and

I accept the contract" and the "Previous" and "Continue" buttons.

In the inspection carried out at CAIXABANK on 11/28/2019, the discharge was verified

of the "Framework Agreement" and that, once the acceptance box of the

contract, we proceed to the signature by means of a numerical code sent to the mobile phone

provided by the customer.

FIFTH: As reported by CAIXABANK to the Inspection Services in its response of

07/17/2018, this entity also obtains the consent of its clients for the treatment

of data with "commercial purposes" and transfer of data to third parties, through the document

labeled as "Authorization for the processing of personal data for purposes

commercial by CaixaBank, S.A. and companies of the CaixaBank group", which CAIXABANK

called "Consent Contract" and that is also used to modify them in

moments after the discharge process.

a) The process of formalizing this document in the office is similar to that of the "Framework Agreement"

and has followed the same evolution over time (printing and signing the document, digital signature and

"Tablet Mode"), but signing a document that only includes the points indicated.

Through this document, the provision of consent has been arranged separately

for the same purposes that are cited in the "Framework Agreement". The system displays the

screen enabled for the manager to register the revocation under the heading "Modification of

data protection", whose structure is similar to the one shown for the provision of the

consent during the client registration process, including the incorporation of the room

consent requested from the client in relation to the processing of data

biometrics, verified in the inspection carried out on 11/28/2019.

Three versions of this "Consent Contract" are included in the proceedings.

(the one provided by the claimant on 01/24/2018, outlined in Fact One -Version

1; that provided by CAIXABANK on 07/10/2018, outlined in Fact Two and

transcribed in Annex II -Version 2; and attached to the Inspection Act dated 11/28/2019,

outlined in Fact Four, Version 3 (also included in Annex II are the differences

of this Version 3 with respect to version 2).

In version 3 of the document, the one provided during the inspection of 11/28/2019, in the

denomination of

term "revocation" and it remains

"Authorization/revocation for the processing of personal data for purposes

commercial by CaixaBank, S.S. and companies of the CaixaBank group".

document is added

The information offered in the "Consent Contract" regarding the protection of

personal data coincides, almost literally, with clause 8 of the "Framework Agreement".

b) The process to revoke the consents through the private space of the client in the

CAIXABANK website shows a screen with the following structure:

<<Authorizations for commercial purposes

Modification

Below you can modify the treatment that Caixabank carries out on your information

I accept the treatment of my data to carry out monitoring and study of alerts of my products

contracted, studies and services adjusted to my profile. See detail Clause 8

I accept I do not accept

I accept that Caixabank contact me to find out about those offers of products and services, as well as

such as promotions and offers that may be of interest to me. See detail Clause 8

I accept I do not accept

Indicate whether Caixabank can contact you in any of the following ways

( ) Through my manager (office)

( ) Through postal communications

( ) By email, SMS and other electronic channels

( ) By telemarketing

I accept that my data be shared with companies with which Caixabank has signed agreements with

the purpose of being able to receive offers of products and services from these companies. See detail Clause 8

I accept I do not accept>>

During this process, access is made possible by the client to the information contained

in clause 8 of the "Framework Agreement". Once the options have been marked, the client is shown

a summary with the consents granted (“Operation not yet completed, Check

the data and confirm the operation”) and the contract that includes a

summary of these consents (“Read the contract carefully. Confirm the operation”).

c) In the CaixaBank Now mobile application environment, the customer can access

"Configuration - Exercise of rights" and is redirected to the Web portal.

d) CAIXABANK informed the Inspection Services, in its response dated 07/17/2018, that the

Client can revoke consents by using forms available in the

CAIXABANK corporate web portal (indicates that it allows you to revoke your consent to

any Group company) or on the web portal of each of the Group companies (at

access the page corresponding to the entity in question, the client is directed to a

screen common to all). It offers the possibility of marking three boxes with the detail

Next:

“( ) I do not wish to receive a personalized service from the CaixaBank Group (data processing with

purposes of analysis, study and monitoring for the offer and design of products and services

adjusted to your profile by CaixaBank and companies of the CaixaBank group)

( ) I do not want to receive offers of personalized products and services from CaixaBank and companies in the

CaixaBank group

( ) I do not want my data to be communicated for commercial purposes of third parties with whom

that CaixaBank has agreements”.

d) Revocation of consent through the telephone service: the Call Centers

have at your disposal a tool that allows you to deal with the revocation of the

consents. The structure shown by the aforementioned tool for the revocation of

consents is similar to the one indicated for the client registration process in the office (“Registration of

consents”).

CAIXABANK, in its response of 05/03/2019 to the transfer of the claim made by

FACUA, informed this Agency that the revocation of consents has effects for

all the companies of the Group and that can be exercised before any of them, by

any of the channels of each one.

According to CAIXABANK, these requests for revocation or modification of consent

are registered and sent to a centralized service for attention to rights, which

is in charge of giving them the corresponding procedure.

It is declared reproduced in this act for evidentiary purposes the entire content of the "Contract

of Consents", in all its versions (the content of version 2 and the differences of

version 3 with respect to version 2 are included as Annex II).

SIXTH: Section 7 of the "Framework Agreement" contains a reference to the privacy policy

of CAIXABANK, accessible through the entity's website ("You can find

complementary information to that provided in this contract, regarding the

processing of your personal data at www.CaixaBank.com/privacidad").

The document "Privacy Policy", with thirteen sections, informs in a generic way about

the identity of the controller (without referring to the existence of a "common repository" to

CAIXABANK and the companies of the Group), data collected, information obtained from

browsing the web and mobile applications, purposes, legal basis that protects the

data processing, security, data conservation, assignments, transfers

international, data protection delegate and rights of the interested party. It is interesting to highlight

that this "Privacy Policy", when referring to uses based on consent,

warns the interested party that they may use "all the data we have about you"; and in the

section "To whom are my data communicated?" informs about the exchange of information

with companies of the CaixaBank Group.

In its response to the Inspection Services dated 11/20/2019, CAIXABANK informed

this Agency that said privacy policy is intended to complement the

information provided to customers through the "Framework Agreement" between June 2016 and May

from 2018; and give complete information to customers who in May 2018 had not signed

the "Framework Agreement". Thus, since May 2018 it distinguishes two situations:

. All pre-existing customers have signed a framework agreement or have received the Policy of

Privacy (in addition to having it at your disposal on the entity's website).

. All new clients, in their first relationship with the entity, sign a "Contract

Framework", which includes all the information of article 13 of the RGPD.

It is declared reproduced in this act, for evidentiary purposes, the full content of the Policy

of Privacy accessible through the CAIXABANK website.

SEVENTH: The "Framework Agreement", in its section 8, details the personal data used with

the purposes described in that same section. These include "the data

obtained from social networks that the signatory authorizes to consult". It is accessed from the area

online banking staff and specifies the network for which access is granted

(Facebook, Twitter and LinkedIn). A text is included in a box with the indication "Information

on the processing of personal data and commercial communications"; and a button

with the text "Accept and continue". With this single action, the client gives his consent to

the collection of the personal data mentioned in that information and the treatments

that are detailed.

This information is declared reproduced in this act for evidentiary purposes (it is outlined

in full in Annex III):

EIGHTH: Section 8 of the "Framework Agreement" details the personal data used with the

purposes described in the same section. Among the data used for these purposes

Mention is made of "the data obtained from third parties as a result of requests for

aggregation of data requested by the signatory". This request is formalized by

subscription by the client of the so-called Aggregation Service Contract.

This service allows you to add the information of the products that you have contracted with other

entities (positions and movements of accounts and cards) and thus have a global vision

of all positions, alerts on receipts, expirations, etc., but not operating on the

products of the aggregated entities. The client adds or removes entities at will,

but only among those incorporated into the service.

The aggregation service request process is followed through the website of

CAIXABANK. After selecting the entity you intend to add to the service and

Enter the data that the client uses to access the selected entity online (keys

of access), the process requires the acceptance of the terms and conditions of the service.

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“On the one hand, Caixabank, S.A. and on the other the persons whose circumstances and representation

specified below, agree to formalize the contractual relationships that

are expressed, under the following conditions:

Contractor data

Name and surname

(link to a document in pdf format with the indication “Version to print or save”).

(link to download the Acrobat Reader program, with the indication "If you do not have the

program…, you can download Acrobat Reader”)

(Button "Accept and continue")

Document number".

Next, the process requires confirmation of the operation by entering

of a key. On the other hand, it does not include any verification that records the reading

of the document “Terms and conditions of service”.

It is declared reproduced in this act, for evidentiary purposes, the complete clauses of the

Aggregation service contract (it is fully outlined in Annex IV).

NINTH: In its response to the Inspection Services of this Agency, dated 05/16/2018,

CAIXABANK stated that, due to the changes brought about by the adaptation to the GDPR,

in 2016 it provided that the consents of the clients for the treatment of their data

Personal information for "commercial purposes" would be collected at the "group" level, jointly

for all the companies of the “group”.

Version 2 of the document "Consent Agreement" refers to a "repository

common” of personal data in the indication “For this, your data will be managed from a

common information repository of the CaixaBank Group companies. The data that

incorporated into this common repository will be…” (this mention of the “common repository” in the

presentation of the aforementioned document disappears in the 3rd version of the same).

(...) and a "common repository of consents", which stores the authorizations for

commercial treatments granted by customers to the companies of the Group, allowing

that a client revokes the consent from any company of the Group, and vice versa,

with effects automatically for all of them.

(…)

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each Authority of

Control, and according to what is established in articles 47, 48, 64.2 and 68.1 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection is competent to initiate and

resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU)

2016/679, in this organic law, by the regulatory provisions issued in its

development and, in so far as they are not contradicted, on a subsidiary basis, by the general rules about administrative procedures.

II

Previously, it is considered opportune to analyze the exceptions alleged by CAIXABANK, on the basis of which it requests the declaration of nullity of the actions, as well as as well as the formal questions raised by said entity.

-

1. Violation of article 24.2 of the Constitution, presumption of innocence.

In the first place, it invokes articles 24.2, 103.1 and 2 of the CE, and article 6 of the Convention European Court of Human Rights (ECHR), and alleges a possible violation of the principle of presumption of innocence due to lack of objectivity and impartiality of the body that has the competence to resolve the procedure, deducted by CAIXABANK from some statements made by the Director of the AEPD in a public act, through which the imposition of “quantitatively important” fines is announced. The statement to which CAIXABANK refers to is as follows:

“We already have two or three high-impact sanctioning procedures that are going to have a lot of media repercussion in relation to the financial sector, will be the first quantitative fines important by the Agency.

From this declaration, made during the term granted to the interested party to present allegations at the opening of the procedure, CAIXABANK deduces that the will of the body

that has the competence to decide was formed without even knowing those allegations

and without having in view all the evidentiary elements.

In the sanctioning administrative sphere, the impartiality of the decision-making body is

linked to the right of the interested party to a process with all the guarantees. It is guaranteed with

the reasons for abstention or recusal and with the due separation between the phases of

instruction and resolution of the sanctioning procedure, separation between phases that in this

case has not gone bankrupt and that is scrupulously respected in all procedures of this

nature followed in the AEPD.

For the sake of legal certainty, the grounds for abstention or recusal have been

regulated through an exhaustive list of circumstances that respond to objective reasons,

thus avoiding that the interested parties can appreciate causes of abstention or recusal

based on own or particular criteria.

In our administrative system, the appearance of partiality is estimated by the

concurrence, objectively justified, of the reasons regulated in articles 23 and 24 of the

Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP):

“Article 23. Abstention.

1. The authorities and personnel at the service of the Administrations in which some of the

circumstances indicated in the following section will refrain from intervening in the procedure and

They will inform their immediate superior, who will resolve what is appropriate.

2. The following are grounds for abstention:

a) Have a personal interest in the matter in question or in another whose resolution could be influenced by the

that; be an administrator of an interested company or entity, or have pending litigation with

any interested.

b) Having a marriage bond or assimilable de facto situation and blood relationship

within the fourth degree or of affinity within the second, with any of the interested parties, with the

administrators of interested entities or companies and also with advisors, representatives

legal or agents involved in the procedure, as well as share professional office or

be associated with them for advice, representation or mandate.

c) Having close friendship or manifest enmity with any of the persons mentioned in the

previous section.

d) Having intervened as an expert or as a witness in the procedure in question.

e) Have a service relationship with a natural or legal person directly interested in the matter, or

have provided in the last two years professional services of any kind and in any

circumstance or place.

Article 24. Challenge.

1. In the cases provided for in the previous article, a challenge may be filed by those interested in

any time during the processing of the procedure.

2. The challenge will be presented in writing stating the cause or causes on which it is based".

It is, ultimately, that the person making the decision has no

personal interest in the matter and has not intervened in the procedure as an expert or witness,

so that it can resolve according to the general interest, without any type of influence outside

that interest that can lead you to decide in a certain way.

On the other hand, in accordance with the doctrine of our Constitutional Court,

demanded of public servants is not the personal and procedural impartiality that is

requires judicial bodies, but that they act with objectivity and subjection to the law.

Thus, in the STC 174/2005, of July 4, the following is declared:

"In this regard, it should be remembered that although this Court has reiterated that, in principle, the requirements

derived from the right to a process with all the guarantees are applied to the administrative procedure sanctioning, however, special emphasis has also been made on the fact that said application must be carried out with the required modulations to the extent necessary to preserve the values essential that are at the base of art. 24.2 CE and the legal certainty guaranteed by art. 9.3 CE, as long as they are compatible with their own nature (for all, STC 197/2004, of 15 of November, FJ 2). More specifically, and with regard specifically to the guarantee of impartiality, it has been pointed out that it is one of the cases in which it is necessary to modulate its projection in the sanctioning administrative procedure, since said guarantee "cannot be predicated of the sanctioning Administration in the same sense as with respect to the organs judicial" (STC 2/2003, of January 16, FJ 10), then, "without prejudice to the interdiction of all arbitrariness and the subsequent judicial review of the sanction, the strict impartiality and independence of the organs of the judiciary is not, by essence, predicable to the same extent of an organ administrative" (STC 14/1999, of February 22, FJ 4), concluding that the independence and impartiality of the judge, as a requirement of the right to a process with all the guarantees, is a characteristic guarantee of the judicial process that does not extend without further ado to the administrative procedure sanctioning (STC 74/2004, of April 22, FJ 5)".

And the STC 14/1999, of February 22, states the following:

"An erroneous understanding of the content of the constitutional requirements of judicial impartiality and its intended transfer in totum to whoever intervenes in the sanctioning administrative procedure in

quality of Instructor, leads the appellant to affirm the injury of his right to a process with all the guarantee.

(…)

It is worth reiterating here again, as we did in STC 22/1990 (4th legal basis), that "without prejudice to the interdiction of all arbitrariness and the subsequent judicial review of the sanction, the strict impartiality and independence of the organs of the judiciary is not, by essence, predicable to the same extent as an administrative body".

What can be claimed from the Instructor, ex arts. 24 and 103 C.E., it is not that he acts in the situation of personal and procedural impartiality that is constitutionally required of judicial bodies when exercise jurisdiction, but rather act objectively, in the sense that we have given this concept in the SSTC 234/1991, 172/1996 and 73/1997, that is, performing their functions in the procedure with personal disinterest. To this end, the possibility of recusal established by the art. 39 of the Organic Law 12/1985, of the Disciplinary Regime of the Armed Forces (hereinafter L.O.R.D.F.A.) that refers to art. 53 of the Military Procedural Law, whose catalog of causes keeps, in this scope, evident similarity, with the one foreseen in the Organic Law of the Judicial Power, although the listed in one and the other obey, as stated, a different basis.

(…)

None of the reasons given can be addressed, not only because, in general, and according to As stated before, the doctrine cannot simply be transferred to the administrative sanctioning sphere. constitution elaborated about the impartiality of the judicial organs, but because in the case present, and in attention to the configuration of the legal causes of recusal, it is not possible to appreciate the concurrence of any element that demanded the departure of the Instructor for loss of the necessary objectivity. It is not observed in the Instructor questioned, nor has the interested party provided data justified in this regard, the presence of direct or indirect personal interest in the resolution of the disciplinary record (…)".

In this case, it must first be specified that CAIXABANK, despite its allegation of lack of impartiality of the decision-making body, has not formally raised the disqualification of the Director of the AEPD, nor does it refer to the reasons listed in

those items.

In this regard, it should be borne in mind that, in order to declare the nullity of the actions for the alleged reasons, it is necessary to fully demonstrate the concurrence of one of those reasons that could have effectively influenced the decision adopted by the present resolution.

However, it is considered opportune to record in this act the non-concurrence of any of the causes of abstention or recusal established in the precepts transcribed, which allows us to conclude that there is no alleged lack of impartiality. Does not have personal interest in the object of the procedure; no bond, friendship or enmity with the interested; nor has he intervened as an expert or witness in the proceeding.

This resolution is adopted in accordance with the law, according to objective criteria, and without that the decision-making body has prejudged the matter in question through actions prior formalities or through their intervention in earlier phases of the procedure. Is intervention has not taken place in any way, beyond the adoption of the agreement of opening of the procedure as established by the applicable procedural regulations.

The demonstration to which CAIXABANK has referred does not fit into the assumptions of recusal and abstention listed above and do not advance the decision, of so that they cannot be appreciated with the scope intended by said entity.

Neither that demonstration, nor any other circumstance, have broken the

impartiality of the investigating body, which has disposed of all the powers attributed to it by the legislation in question and full freedom to dictate its motion for a resolution, as evidenced by

the fact that said proposal has reduced the infractions that were imputed in the agreement to open the sanctioning procedure.

The intervention of the Director in the event held on 03/03/2020 is related, rather, with the adoption of the agreements for the opening of the procedures to which CAIXABANK refers in its allegations, both from the financial sector. The reference to these agreements as having a broad impact for the affected sectors and with media relevance It has to do with the novelties regulated in the RGPD and, in particular, those related to the new compliance and supervision model. In relation to the latter, the important amounts contemplated in the Regulation in order to what, how does said standard, may have a dissuasive character.

In the opinion of this Agency, to specify in the initial agreement issued the infraction that could have committed and its possible sanction is in accordance with the provisions of article 68 of the LOPDGDD and article 64.2 of the LPACAP (in this case, of the different corrective powers contemplated in article 58.2 of the RGPD, the Agency deemed appropriate the imposition of fine, in addition to the adoption of measures to adjust their actions to the regulations, considering the indications of infringement appreciated at the time of opening and without prejudice to what could result from the instruction of the procedure). Thus, it cannot be said to indicate the possible sanction that could correspond for the imputed infractions is determinant of defenselessness or that supposes a rupture of the principle of separation of the instruction and resolution phases.

On the other hand, the instruction of the procedure has been in accordance with the regulations procedural, without any irregularity being detected in the processing of the procedure, in which, in addition, all the guarantees of the interested party have been respected, including the presumption of innocence. CAIXABANK, in this case, has seen respect for all the guarantees of the interested party provided by the procedural regulations and it cannot be said that the determination of the amount of the fine in the opening agreement supposes no loss of

said guarantees causing defenselessness.

It should be noted that both in this proceeding and the other cited by the

entity CAIXABANK, the resolution issued has reduced the amount of the initial sanction in

attention to the arguments of the parties, as is the case in so many cases of

sanctioning procedures processed by the AEPD.

All you have to do is go to the Agency's website, where all the

resolutions issued in sanctioning procedures, to verify the large number of

them that end with a file resolution of actions, as well as those others in

which increased or decreased the amount of the sanction established in the opening agreement or

agreed to apply a corrective power other than the sanction of a fine, once a

proposal of the instructor or at the initiative of the decision-making body.

-

2. Breach of legitimate expectations.

On the other hand, CAIXABANK requests the filing of the file for a presumed

violation of the principle of legitimate expectations or the reconsideration of the declaration of

nullity of the consents obtained.

This request is based on the consultation made shortly after the GDPR was published,

through emails addressed to the "Deputy Director of the AEPD", regarding the

implementation of the RGPD and the documents analyzed in the file, especially the

"Framework Agreement", on which, according to CAIXABANK, only a few

Minor considerations in a telephone conversation, which were addressed by the

interested entity. It indicates that in those emails, it was repeatedly requested to hold

a meeting between the AEPD and CAIXABANK for this purpose, which was denied.

From the fact of having communicated to the AEPD the main actions that would lead to

carried out for the adaptation of its performance to the RGPD, including the reference to the so-called

“common repository”, CAIXABANK deduces its legitimate conviction of having been

acting correctly and that he could have a "reasonable induced hope" that his

manner of proceeding was in accordance with the law.

The aforementioned principle of legitimate expectations is contained in article 3

from the LRJSP:

“Article 3. General principles.

1. The Public Administrations objectively serve the general interests and act in accordance

with the principles of effectiveness, hierarchy, decentralization, deconcentration and coordination, with

full submission to the Constitution, the Law and the Law.

They must respect the following principles in their actions and relationships:

(…)

e) Good faith, legitimate trust and institutional loyalty”.

It is a manifestation of the doctrine of "proper acts" and is related to the

principle of legal certainty. The principle of legitimate expectations can be understood as the

confidence of the citizens in the future performance of the Public Administrations

taking into account their past performances, considering the expectations they generate, although

always safeguarding the principle of legality, so that principle cannot

invoked to save situations contrary to the norm.

The STS of December 18, 2007 refers to the principle of trust protection

legitimate citing the terms of a previous Judgment of May 10, 1999:

<<Thus, the STS of 10-5-99 (RJ 1999, 3979), recalls "the doctrine on the principle of protection of

legitimate trust, related to the most traditional in our security system

law and good faith in relations between the Administration and individuals, and which entails, according to the doctrine of the Court of Justice of the European Communities and the jurisprudence of this Chamber, the that the public authority cannot adopt measures that are contrary to the hope induced by the reasonable stability in the decisions of the former, and based on which individuals have made certain decisions. [...] On the other hand, in the STS of 1-2-99 (RJ 1999, 1633), it was recalls that "this principle cannot be invoked to create, maintain or extend, within the scope of the Public law, situations contrary to the legal system, or when the preceding act results a contradiction with the purpose or interest protected by a legal norm that, by its nature, is not capable of supporting one. discretionary conduct by the Administration that supposes the recognition of rights and/or obligations arising from acts of the same. […]

One thing is the irrevocability of the declarative acts of rights outside the channels of review established in the Law (articles 109 and 110 of the Administrative Procedure Law of 1958

[RCL 1958, 1258, 1469, 1504 and RCL 1959, 585], 102 and 103 of the Law on the Legal Regime of the Public Administrations and Common Administrative Procedure, Law 30/1992 [RCL 1992, 2512, 2775 and RCL 1993, 246] , modified by Law 4/1999 [RCL 1999, 114, 329]), and another respect for legitimate trust generated by its own actions that must necessarily be projected into the field of discretion or autonomy, not that of regulated aspects or normative demands against which, in Administrative Law, cannot prevail what is resolved in act or in precedent that was contrary to them. Or, in other words, it cannot be said that the trust that is deposit in an act or precedent that is contrary to mandatory rule">>.

The STS of February 22, 2016 (rec.1354/2014) refers to the requirements that must be

attend to assess legitimate expectations:

“It should be borne in mind that legitimate expectations ultimately require the concurrence of three essential requirements. Namely, that it is based on undeniable and external signs (1); that hopes generated in the administered must be legitimate (2); and that the final conduct of the Administration it is contradictory with the previous acts, it is surprising and incoherent (3). exactly what occurs in the case examined, according to the facts previously reported, which does not make the case insist.

Let us remember that, regarding legitimate expectations, we have been repeatedly declaring, by all, Judgment of December 22, 2010 (contentious-administrative appeal No. 257/2009), that «the principle The principle of good faith protects the legitimate expectations that may have been reasonably deposited in the behavior of others and imposes the duty of coherence in one's own behavior. what is so much like saying that the principle implies the requirement of a duty of behavior that consists in the necessity need to observe in the future the behavior that the previous acts made anticipate and accept the binding consequences that arise from the acts themselves, constituting a legal assumption. violation of the legitimate expectations of the parties "venire contra factum propium".

This same Judgment refers to the confidence in the stability of criteria of the Administration, evidenced in previous acts in the same sense.

On the other hand, the STS of September 21, 2015 (rec.721/2013), in its Basis of Fourth Law, declares the following:

“In the aforementioned judgment of this jurisdictional Chamber of February 23, 2000, the application of the principle of protection of legitimate expectations is conditioned not so much to the fact that any type of psychological conviction in the benefited individual, but rather to prove the existence of external signs produced by the Administration "sufficiently conclusive" to that reasonably induce him to trust in the legality of the administrative action”.

Therefore, this hope or confidence generated must be "legitimate" and be based on previous external acts, whose meaning is undoubtedly contrary to what was agreed subsequently, without including in this principle of legitimate expectations a mere

psychological conviction of the individual.

In this case, it is known that CAIXABANK sent several emails to

"Deputy Director AEPD", by way of consultation, attaching a copy of the "Framework Agreement"

provided by that entity as a personal data collection form and with the

informative clause on the protection of personal data, as well as a program

on the actions undertaken, in which, in addition, he requested the holding of a meeting

for the purpose of commenting on such documents and actions. It is also stated that this

meeting did not take place.

It is known that these emails were answered by the recipient, by the

same way, with the following messages:

. Email dated 07/27/2016:

“Subject: Meeting

Good morning…, in order to assess the possibility of holding a meeting, send me a brief

explanation about the policy you have adopted and the text of the informative clauses. We will talk

in September".

. Email dated 09/11/2017:

“Subject: RE: RGPD Presentation at CaixaBank

Good morning, I would appreciate if it is possible to send me the presentation in a format that I can

print since it is impossible for me to do so”.

In this case, CAIXABANK does not have prior external events (“signs

undeniable external factors”) that may be considered favorable to said entity in a

conclusive and sufficient to have induced it to think that the AEPD validated the

actions undertaken by the entity to adapt its actions to the RGPD.

Beyond the criticism that CAIXABANK could make of this AEPD for having been

unattended your queries or your requests for a meeting to analyze the documentation that

was preparing, the truth is that the responses of this Agency contained in the emails

provided by the interested party do not have any legally binding content nor do they contain

no pronouncement on the issues to which the allegations refer. In

definitively, they do not represent external acts of the Administration of which it could

result in a future violation of the principle of "legitimate trust of the company",

now summoned.

The actions of this Agency have not influenced in any way the conduct of

CAIXABANK determinant of the infractions analyzed, nor has this Agency carried out

any action that has allowed said entity to conclude that in the documentation of

data protection formalized by the same or in its processes of collection and treatment of

personal data there is no element that contravenes the provisions of the RGPD and

LOPDGDD. CAIXABANK cannot provide any pronouncement or action of this

Agency that led to this alleged confusion, simply because there is no action

something in that sense.

In short, projecting the doctrine of the Supreme Court to the present case, and in the

terms of the STS of December 18, 2007, it turns out that there are no circumstances that

allow us to understand that CAIXABANK has been surprised by the actions of the

Management.

Finally, it is considered opportune to point out, first of all, that the emails to

those referred to by CAIXABANK do not belong to or form part of any regulated action of the

Administration and, secondly, that the AEPD has enabled consultation channels to

that citizens and those responsible for processing personal data can raise

their doubts in the matter of their competence, but these channels cannot be used so that

this Agency fully supervises and validates the actions undertaken by these

responsible, unless a rule expressly provides for it.

Furthermore, it is surprising that CAIXABANK intends to fund the bankruptcy of the principle of

legitimate confidence in the sending of two emails to the Assistant to the Directorate of the

AEPD, in which a meeting was requested on the texts that were attached.

First of all, from a formal perspective, it should be noted that the allegations

they highlight in bold the recipient of the emails, which they incorrectly describe

calling him "Deputy Director of the AEPD", despite the fact that said job

did not exist in the list of jobs of the Agency, as is fully known

by CAIXABANK when in document number 3 that it provides in relation to this

The argument is addressed to the "Deputy AEPD". What I could suggest, beyond a mere mistake

material, an intentional will to give more importance at this time to the remission

of the aforementioned emails according to the relevance of the position to which they were addressed.

And, what is materially more relevant, is that it is intended to base said allegation

in compliance with the principle of proactive responsibility, regulated in the RGPD as a

essential element of the new compliance model designed by said standard. Interpretation

which is precisely the opposite of the provisions of the Regulation, in which the principle of

proactive responsibility sends to those responsible for the treatment the requirement to carry out

risk analyzes for the rights and freedoms of those affected and adopt

autonomously the measures that allow guaranteeing them through the measures that in the

themselves are described.

Maxime when in relation to said measures the only provision of the RGPD on

queries to the control authority is related to the Impact Assessments on the

Data Protection, when it shows that the treatment would entail a high risk if

the person in charge does not take measures to mitigate it, in accordance with article 36 of said regulation.

To which is added that, without having proceeded to analyze the documentation submitted or

manifest about it, CAIXABANK was informed that the meetings would not be held

arguing, precisely, that proactive responsibility requires the person responsible for the

treatment perform their own analyzes and autonomously adopt the measures that

guarantee and allow to demonstrate the fulfillment of its obligations.

For all these reasons, the allegation of violation of the principle of trust must be rejected.

legitimate and, otherwise, reaffirm the full responsibility of CAIXABANK in the analysis of

risks associated with initiatives developed to comply and demonstrate compliance

of the GDPR.

-

3. Expiration of previous actions.

In its arguments at the opening of the procedure, CAIXABANK invoked the expiration

of the previous investigation actions indicated with the number E/01475/2018, initiated

by reason of the claim filed on 01/24/2018, and whose documentation was

incorporated into the new investigative actions initiated under number E/01481/2019.

Based on this, it considers that the possible infractions analyzed in the proceedings

previous ones that were declared expired by resolution of 02/01/2019 would have prescribed,

in the terms provided in Organic Law 15/1999, of December 13, on the Protection of

Personal Data (LOPD).

Subsequently, in its allegations regarding the proposed resolution, CAIXABANK alleges

a possible violation of article 24 of the EC due to the defenselessness that the extension produces

artificial and unlawful nature of the previous investigative actions, also ignoring their

expiration. He bases this allegation on the following considerations:

. The previous investigative actions superseded the instructional activity, insofar as

used as a true sanctioning procedure, which constitutes a possible vice of

misuse of power in the use of instruction mechanisms. for this same

For this reason, the sanctioning procedure must be considered expired due to the expiration of the term

foreseen for its resolution, counted from the beginning of the previous actions of

research.

. It understands that such consideration is only attributed to actions that allow data to be collected

and indications about the acts committed and those responsible, and the investigation must be initiated.

procedure as soon as there is certainty about the commission of the acts and their perpetrator. According to

CAIXABANK, in this case, do not comply with the purpose set forth in the applicable regulations.

. The previous actions carried out (a first expired, which led to the opening of

a second) did not respect any essential guarantee of the sanctioning procedure, such

such as reporting the accusation, remembering the right not to testify against oneself, etc.

. Given that the Motion for a Resolution rests de facto, solely and exclusively, on the

elements of conviction and evidence collected during the phase of preliminary proceedings, the

impossibility of using them means that the proposal lacks the elements

necessary to weaken the presumption of innocence.

. The block transfer of the expired file is not acceptable, nor can it be

acted in the previous actions passes entirely to the disciplinary file.

. The use of previous actions without time limitation is not acceptable, beyond

of the prescription itself.

This allegation of CAIXABANK is articulated based on different pronouncements of

our Supreme Court, but it contains statements that are contradictory in

some cases or refer to assumptions of facts different from the one that concerns us in others.

Thus, for example, CAIXABANK alleges that the previous actions carried out did not

did not respect any essential guarantee of the sanctioning procedure, such as reporting

the accusation, remember the right not to testify against oneself, etc. However, it bases

this allegation in what was expressed by the Supreme Court in Judgment of 06/09/2006, referred to

to a disciplinary case of the Armed Forces.

In another order, it is not understood that, on the one hand, it is said that the proposed resolution

rests in its entirety on charge items collected during the proceedings phase

previous investigations and, on the other hand, it is defended that the previous actions

developed were denatured and did not adhere "to the purpose they should cover according to

to the design of the legislator", when, precisely, the purpose of carrying out such

investigations is none other than obtaining that evidence that justifies the processing of a

penalty procedure. For the same reason, it is not understood that defending the

immediate opening of the sanctioning procedure, even if it has not been fully accredited

the infringement.

Likewise, since that purpose is the basis for carrying out the

previous investigation, this Agency does not share the statement contained in the allegations of

CAIXABANK on the "impossibility" of use in the proposed resolution of the

elements of conviction and evidence collected during the preliminary proceedings phase.

On the other hand, it is argued that the actions of a procedure

expired cannot take effect in the new sanctioning file that may be initiated

when the infraction has not prescribed (STS of 02/24/2004). However, in this case, the

expiration occurred with respect to the previous actions E/01475/2018, and not of the

penalty procedure.

On this issue relating to the transfer or use of the documentation that forms part of

the previous actions that were declared expired, some of the

statements contained in the brief of arguments to the proposed resolution. In

Specifically, in said letter it is indicated that "there are very divergent principles that prevent

what has been done in the previous proceedings passes in full to the sanctioning file", or that

"to these pseudo previous actions, in reality true instruction of the procedure

sanctioning, the actions arising and documented in it should not have reached

root of its initiation". In this case, there has been no transfer of documentation

from the sanctioning procedure to the previous actions, but on the contrary, as is normal; Y

nor has documentation been transferred from an expired procedure to a new one

procedure, simply because the expiration of the sanctioning procedure has not been

produced.

Likewise, it is said by CAIXABANK that the previous actions did not comply "with the

purpose that they must cover according to the design of the legislator", but it is not said that another

"design" pursued the AEPD with the performance of these actions, which was not to achieve a

better determination of the facts and circumstances that justify the processing of a

penalty procedure.

It even alleges "a possible misuse of power in the use of the

mechanisms of instruction", understood as <<"a contravention of the teleological sense of

the administrative activity carried out" (STS of 7-4-86), "a distortion of the normal

purpose of the act" (STS of 4-11-89), a "non-use of the administrative power in a

objective, in accordance with the purpose pursued" (STS of 12-5-86). Said procedural deviation

can occur "not only when it is proven that the Administration pursues a purpose

private or an unspeakable purpose, foreign to any defense of general interests,

but this teleological deviation can also occur when an interest is pursued

foreign public and, therefore, different from that provided by the legal system for the case"

(Sentences of the Supreme Court of March 18, 2011 and May 11, 2012)">> (quotes

included by CAIXABANK in its allegations to the proposal).

In this regard, it argues that the repeated preliminary investigative actions

"they supplanted the instructor activity". However, CAIXABANK does not explain how

used in this case the sanctioning administrative power in a way not in accordance with the

purpose pursued, or what contravention of the teleological sense of the administrative activity

occurred or how the purpose of the administrative act has been distorted, nor

What private purpose or public interest other than that provided for in the legal system is pursued in this

Administration case.

On this issue, the Supreme Court, in a Judgment of 05/13/2013, has declared:

"In this regard, it should be noted that, in accordance with the jurisprudence of this Court, the

concurrence of misuse of power cannot be based on mere presumptions or conjectures, being

necessary to prove sufficient facts or elements to form in the Court the conviction that the

Administration, although it accommodated its action to legality, it did so with a purpose other than the

intended by the applicable norm, which, in this process, has not happened".

In this case, not only are sufficient facts or elements not proven to form the conviction that the Administration acted with a purpose other than that intended by the norm, but not even assumptions or conjectures have been exposed about the concurrence of the alleged misuse of power.

In the same way, CAIXABANK does not explain what specific procedure carried out in the framework of the preliminary investigation actions is actually an administrative procedure that should have been held within the sanctioning procedure, what procedure or procedures specific aspects of the sanctioning procedure have been superseded by previous actions, or what steps of the procedure have been avoided due to previous actions carried out, or what defenselessness all this has generated to the interested entity.

On the contrary, prior investigative actions were carried out perfectly justified, in order to achieve a better determination of the facts and circumstances (article 67 LOPDGDD), during which the necessary information was collected for the determination of the facts, without carrying out during the course of the same procedure any of the sanctioning procedure, which was initiated based on the evidence obtained and for the sole purpose of applying the established regulatory provisions.

A first claim was received, dated 01/24/2018, in which the obligation to accept the new conditions regarding the protection of personal data implemented by CAIXABANK (provided a copy), and it was decided to carry out actions preliminary investigations, indicated with the number E/01475/2018, for the clarification of the facts denounced and determine if there were circumstances that justified the initiation of a sanctioning procedure.

Within the framework of these preliminary actions, CAIXABANK received two requirements for said entity to provide essential information to assess the informative clauses offered by the entity to its clients. Among other information, it

asked said entity to provide details on the architecture and operation of the

“common repository”; procedure for exercising rights; collection of personal data

social networks, aggregation services and third parties; about him

data enrichment; detail on the mechanism implemented to collect the

unequivocal consent of the client for the processing of their data and mechanism for

revoke it; and information provided to the client at the time of obtaining the

consent in relation to the processing of personal data carried out by the

CaixaBank Group companies and their purpose.

Subsequently, the Agency received a new claim regarding the

"Framework Agreement", which was submitted to the prior admission process, following the

mechanism provided for in article 65.4 of the LOPDGDD, which consists of transferring the

same to the data protection delegates designated by those responsible or

in charge of the treatment, for the purposes provided in article 37 of the aforementioned rule, or to

these when they have not designated them, so that they proceed to the analysis of said

claims and to respond to them within a month. It is a optional process.

so that this transfer is carried out if the Agency deems it so.

The result of said transfer was not satisfactory, therefore, for the purposes foreseen

in its article 64.2 of the LOPDGDD, it was agreed to admit for processing the claim presented

by means of an agreement that was duly notified to the claimant, and not to CAIXABANK,

in accordance with the provisions of article 65.5 of the LOPDGDD.

In accordance with the provisions of article 67 of the LOPDGDD, it was agreed to start

new previous investigation actions, indicated with the number E/01481/2019, and the incorporation to them of the second claim received and the documentation that integrates the phase of admission to process of this. Also included was the entire documentation corresponding to the previous actions indicated with the number E/01475/2018, including the claim that gave rise to them.

It was determined as the object of these new preliminary investigation actions the analysis of the information offered in general by CAIXABANK in terms of protection of personal data, through all the channels used by the entity (CAIXABANK's compliance with the principle of transparency established in the articles 5, 12 and following of the RGPD, and related precepts); the different treatments personal data that the entity carries out according to the information offered, in relation to with clients or persons who maintain any other relationship with it, and within the framework of the new regulations applicable from 05/25/2018, including the analysis of the mechanisms employees to obtain the provision of the consent of the interested parties; just like him compliance by the aforementioned entity with the rest of the principles related to the treatment established in article 5 of the RGPD.

During the course of this new preliminary phase of investigation, a request was made of information to CAIXABANK (a copy of all versions of the "Framework Agreement" and possible addenda, information on the channels and methodology to accept the policy of privacy and granularity of consents, as well as the procedures enabled to publicize the updated privacy policy to customers prior to its validity and acceptance mechanisms) and an inspection visit was carried out to verify the process of Registration in person at the office, through the web and mobile application, and for the verification of the consent modification process, among other issues.

In view of the foregoing, it cannot be said that in this case the previous actions were not necessary or were not carried out to gather data and evidence on the facts

tasks and those responsible.

Indeed, the previous actions number E/01475/2018 were declared

expired by resolution of 02/01/2019, by the expiration of a period of twelve months

provided for in article 122 of RD 1720/2007, of December 21, which approves the

Development regulation of the LOPD. Said resolution warned about the provisions of

Article 95.3 of the LPACAP, which establishes that the expiration will not produce by itself

only the prescription of the actions of the Administration, and the opening of a new

procedure when the prescription has not occurred.

This expiration does not have the effect intended by CAIXABANK. Nothing prevents, therefore,

the opening of new investigations, with the incorporation of the documentation

that integrates expired actions. To this must be added the receipt of a new

claim on 03/29/2019, which caused these new actions of

investigation that had to be initiated were aimed at both complaints, the one that gave rise to

to investigation file E/01475/2018 and this other received on 03/29/2019.

No legal consequence can be attributed to this fact, beyond the rule of

the prescription and the effects attributed to it.

It is appropriate, on the other hand, to respond to the allegation about the expiration of the procedure

sanctioning manifested by CAIXABANK. Starting from the consideration maintained by this

entity regarding the supplanting of the instructor activity by the previous actions of

investigation, which, as has already been said, has no basis whatsoever, understands that the procedure

penalty must be considered expired by the expiration of the period provided for its

resolution, counted from the beginning of the preliminary investigation actions.

This allegation must also be rejected. The approach that CAIXABANK

makes on this issue in its allegations at the opening is not in accordance with the law. Must

It should be noted that the expiration period of this procedure, established in nine

months, is computed from the date on which its start is agreed, resulting inadmissible

add to this calculation, in order to measure the duration of the administrative file, no

another period, such as the time of the preliminary investigative actions, or the time that

elapsed between the completion of these actions and the opening of the procedure, nor the

time corresponding to the phase of admission for processing of the claims submitted.

This has been repeatedly declared by our Supreme Court. In Judgment of

10/21/2015 cites the Judgment of 12/26/2007 (appeal 1907/2005), which states the following:

“[…] the term of the procedure […] is counted from the initiation of the sanctioning file, which

obviously excludes from the calculation the time of the reserved information";" […] the greater or lesser

The duration of the preliminary phase does not entail the expiration of the subsequent procedure".

Also in the Judgment of the Supreme Court of 10/13/2011 (appeal 3987/2008) that

examines a ground of appeal related to the calculation of the expiration period of the procedure,

the following is declared:

“We cannot share the reasoning that the Trial Chamber exposes to set a dies a quo

different from the one established by the Law, indicating as the initial date of the computation the day following the

completion of the preliminary informative proceedings.

[…]

Well, once these preliminary actions have been carried out, the time it takes for the Administration to

agreeing to initiate the procedure […] may have the appropriate consequences in terms of the

computation of the prescription (extinction of the right); but cannot be taken into consideration

effects of expiration, since this figure is intended to ensure that once the

procedure the Administration does not exceed the period available to resolve. in the foundation

third of the appealed judgment, the Trial Chamber makes an interpretation of the norm that is not

in accordance with the nature of the institution of expiration, since unlike prescription, which is

cause of extinction of the right or responsibility in question, expiration is a way of

termination of the procedure by the expiration of the term established in the norm, for which its appreciation

does not prevent, if the term established for the prescription of the action of

restoration of urban legality by the Administration, the initiation of a new

process".

Finally, regarding the prescription of the infractions invoked by CAIXABANK

In accordance with what is established in the LOPD, it is enough to point out that it is not this norm that typifies the

infractions analyzed in this procedure.

The object of the sanctioning procedure, as well as that of the previous actions of

investigation, already indicated, which is perfectly defined in the Foundation of Law

following, is related to the information offered in general by

CAIXABANK in matters of personal data protection; the different treatments

personal data that the entity carries out according to the information offered, including the

analysis of the mechanisms used to obtain the provision of consent of the

interested; as well as compliance by the aforementioned entity with the rest of the principles

relating to treatment.

All this, within the framework of the new regulations, constituted by the RGPD, applicable

from 05/25/2018, and the LOPDGDD, in force from the day following its publication in

the Official State Gazette, which took place on 12/06/2018.

The two claims giving rise to the procedure, including the first one,

received on 01/24/2018, are related to the changes implemented by

CAIXABANK for its adaptation to the RGPD, and this has been recognized by the entity itself

interested.

The action developed by CAIXABANK from the application of the RGPD is analyzed,

that is, as of 05/25/2018, in relation to the extremes that constitute the object of the

procedure, and the presumed infractions assessed according to the regime are imputed

sanctioning regulated in the RGPD and the LOPDGDD. Thus, the prescription of

infractions must be assessed in accordance with the provisions of this sanctioning regime and not in

the one established in Organic Law 15/1999 (LOPD).

In this sanctioning procedure, the following infractions are imputed:

1. Infraction due to non-compliance with the provisions of articles 13 and 14 of the RGPD, typified

in article 83.5.b) and qualified as minor for prescription purposes in article 74.a) of the

LOPDGDD.

2. Infraction due to non-compliance with the provisions of article 6 of the RGPD, typified in the

article 83.5.a) and classified as very serious for prescription purposes in article 72.1.b) and

c) of the LOPDGDD.

In accordance with the provisions of articles 72.1 and 74.1 of the LOPDGDD, the

Infractions considered very serious will prescribe after three years and minor infractions

shall prescribe in one year, counted from the commission of the infraction and until the opening of the

procedure with the knowledge of the interested party.

In this case, all the factual circumstances that are revealed in the

The following legal grounds, which support the commission of the infractions that are

declares in this act, took place within the year prior to the opening of the procedure, in

in the case of a minor infraction, and within the previous three years, in the case of a minor infraction.

very serious; with the limit in the latter case of the date of application of the RGPD (05/25/2018),

attending to the object of the file indicated above.

Thus, neither of the two offenses committed had prescribed at the time

in which the notification to CAIXABANK of the opening of the procedure took place.

-

4. The enumeration of the graduation criteria in the opening agreement, without

any motivation and without specifying whether they are applied as aggravating or mitigating factors, it is

cause of helplessness.

In the opinion of this Agency, the agreement to initiate the procedure is in accordance with the provisions

in 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 whom the procedure is directed,

the infraction that could have been committed and its possible sanction (in this case, of the different

corrective powers contemplated in article 58.2 of the RGPD, the Agency considered appropriate

the imposition of a fine, in addition to the adoption of measures to adjust its actions to the

regulations, without prejudice to what could result from the instruction of the procedure).

In the same sense, article 64.2 of the LPACAP is expressed, which establishes

expressly the minimum content of initiation agreement. According to this precept, among others

details, 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 is

of the instruction".

In this case, not only are the requirements mentioned amply fulfilled, but

that goes further by offering reasoning that justifies the possible legal classification of

the facts valued at the beginning and, even, the circumstances that can influence

determination of the penalty.

In accordance with the above, it cannot be said that pointing out the possible sanction that

could correspond for the infractions imputed, with mention of the circumstances that

influence is their determination, be a cause of helplessness. CAIXABANK, in this case, has seen

respected all the guarantees of the interested party that provides for the procedural regulations and cannot

be said that the enumeration of the circumstances or graduation factors of the fine

supposes no reduction of said guarantees causing defenselessness.

Article 68 of the aforementioned LOPDGDD regulates the content that the agreement must include

initiation of the sanctioning procedure. However, it is the minimum required content,

of the elements that must be detailed in the aforementioned agreement to determine its validity.

But nothing prevents, as indicated above, mentioning the circumstances

that can influence the determination of the sanction, which will undoubtedly benefit

of the interested party, who sees his right of defense reinforced and favored.

III

The actions outlined in the Background of this act are intended to

analyze the information offered in general by CAIXABANK in terms of

protection of personal data, through all the channels used by the entity

(CAIXABANK's compliance with the principle of transparency established in the

articles 5, 12 and following of the RGPD, and related precepts); the different treatments

personal data that the entity carries out according to the information offered, in relation to

with clients or persons who have any other relationship with it, including the analysis of the mechanisms used to obtain the provision of consent of the interested; as well as compliance by the aforementioned entity with the rest of the principles regarding the treatment established in article 5 of the RGPD.

All this, within the framework of the new regulations, constituted by the RGPD, applicable from 05/25/2018, and the LOPDGDD, in force from the day following its publication in the Official State Gazette, which took place on 12/06/2018.

The CAIXABANK entity has reported that it began its adaptation to the RGPD in the year 2016, and that it was carried out, mainly, through the implementation of the document called "Framework Agreement" in June 2016, of which six versions since then, dated 06/20/2016, 11/22/2016, 03/14/2017, 11/12/2018, 12/20/2018 and 09/17/2019, according to which entity has informed this Agency. Too a declared that the "Framework Agreement" regulates the entire customer relationship with CAIXABANK and the companies of the Group whose products it markets, informs of all the treatments derived from the contractual relationship and request the necessary consents for the processing of personal data at Group level. This document, which serves as a personal data collection form and that the client signs with his signature, is the one employed by CAIXABANK as a priority to comply with the requirements of transparency and manifestation of consent by the clients for the treatment of your personal data.

Of the six versions, the 4th version will be reviewed in this procedure.

(Annex I), dated by CAIXABANK on 11/12/2018, and the two subsequent ones that modify it slightly (the 5th version presents some modifications in section 6.4 "Subscription of documents and contracts by electronic signature", and deletes section 7.2, referring to "Treatment of biometric data in the electronic signature of documents"; and the 6th version presents changes in section 4 "Compliance with regulatory obligations regarding

tax”, but without significant modifications in terms of data protection

personal), since these versions are the ones that appear with a greater adaptation to the

GDPR and also for temporary reasons.

The first three versions (1, 2 and 3) refer to the LOPD and do not refer to

specific issues regulated in the RGPD, such as the legal basis of the treatment

(legal obligation, legitimate interest or consent); rights of suppression, limitation and

portability; right to file a claim with the Spanish Agency for the Protection of

Data; existence of a data protection delegate and authorized means to contact

with the same.

In the proposed resolution it was indicated that the 3rd version of the "Framework Agreement"

constituted the information offered by CAIXABANK on 05/25/2018 and that it

shows the deficiencies expressed, among others.

In relation to this issue, CAIXABANK has argued that the 4th version is

implemented in June 2018 and not in November of that year, and provides a copy of a "Contract

Framework” signed by a client on 06/08/2018, whose content coincides with the

corresponding to this 4th version, outlined in Annex I.

It should be noted in this regard that it was the CAIXABANK entity itself that dated the

version 4 of this document in November 2019, as stated in the documentation

provided to the inspection services. In any case, this circumstance does not modify

None of the conclusions expressed in the motion for a resolution or in this act

on the defects of information appreciated and in relation to the treatment of the data,

based on the content of this 4th version and those subsequently prepared by CAIXABANK.

It has already been said that the changes produced in versions 5 and later with respect to the version 4 only affect the processing of biometric data in the electronic signature of documents and compliance with regulatory obligations in tax matters.

The aforementioned 4th version, dated by CAIXABANK on 11/12/2018, is the first version that refers to specific issues regulated in the GDPR, such as the legal basis of the treatment (legal obligation, legitimate interest or consent); deletion rights, limitation and portability; right to file a claim with the Spanish Agency for Data Protection; existence of a data protection delegate and authorized means to contact him. The complete content of this version, in relation to protection of personal data, appears in Annex I.

This "Framework Agreement", as stated in section 2, establishes the basic rules that will regulate the commercial, negotiation and contractual relations that are formalized between the client and CAIXABANK. Thus, this document dedicates sections 3 to 6 to inform and regulate about essential issues that govern Business Relations, such as relating to the prevention of money laundering and the financing of terrorism, the compliance with regulatory obligations in tax matters, the application of sanctions international economic-financial and the fight against fraud or the general aspects of the contracting of products and services, which will not be the object of the actions, except the mentions to the treatments that derive from these questions contained in the following sections of the contract.

The following sections of the "Framework Agreement" deal with the "Privacy Policy Privacy", the use and processing of personal data and authorizations for the use of the data that is carried out for the development of the commercial activity owned by CaixaBank and the companies of the CaixaBank Group, which are of interest for the purposes of present sanctioning procedure.

It is also interesting to analyze in this file the information on protection

of data offered in general by CAIXABANK and the mechanisms for providing the

consent enabled by other means, routes or channels, which are referred to in

the background of this agreement, based on the fact that the "Framework Agreement" contains a reference

specific to these other media. Specifically, we refer to the following documents:

. "Privacy Policy" available on the entity's website: section 7 of the "Contract

Framework" contains indicates "You can find supplementary information to which you are

provided in this contract, regarding the processing of your personal data in

www.CaixaBank.com/privacy".

. Social network contract: section 8 of the "Framework Contract" details the data

used for the purposes described in that same section. Among them is

they mention "the data obtained from social networks that the signatory authorizes to consult". Bliss

Authorization is provided in the so-called Social Networks Contract.

. Aggregation service contract: section 8 of the "Framework Contract" details the

personal data used for the purposes described in that same section. Between the

Data used for the purposes described in the same section 8 of the "Framework Agreement" is

mention "the data obtained from third parties as a result of requests for

aggregation of data requested by the signatory". This request is formalized by

called Aggregation Service Contract.

In addition to the aforementioned "Framework Agreement", to offer information on matters of

protection of personal data and obtain the consent of its clients for the

processing of data for “commercial” purposes and transfer of data to third parties, CAIXABANK uses the document called by said entity "Consent Agreement". According to appears on the label of this document, by means of which the client is requested "Authorization for the processing of personal data for commercial purposes by CaixaBank, S.A. and companies of the CaixaBank group”.

Of this "consent contract" there are incorporated into the actions three versions (the one provided by the claimant on 01/24/2018, outlined in Fact One -Version 1; that provided by CAIXABANK on 07/10/2018, outlined in Fact Two and transcribed in Annex II -Version 2; and attached to the Inspection Act dated 11/28/2019, outlined in Fact Four, the details of which are also included in Annex II -Version 3).

For temporary reasons, it is dispensed with in the procedure of examining the document provided by the claimant, prior to the date of application of the RGPD.

On the other hand, considering the object of the preliminary investigative actions previously expressed, the information offered in this matter in the forms used for the contracting of products or services that, due to their specialty, include their own data protection clauses, as reported by the entity CAIXABANK. Except for what is related to the aforementioned contracts, for which the client consents to access to personal data on social networks and "aggregation service".

Nor is the action that the companies that make up the so-called "CaixaBank Group" for compliance with the principle of transparency or the specific procedures that they have enabled to obtain the consent of their clients for the processing of personal data that they carry or intend to carry out, or in relation to the other aspects mentioned.

The analysis of the procedures established by CAIXABANK is also excluded. for the management of the rights of the clients, interested only in the mechanisms arranged so that the client can revoke the consents that he had given, in

to the extent that this mechanism is also used for the modification of said

consents, and therefore may entail the provision of new ones.

Likewise, although part of the information contained in the

Impact Assessments provided by CAIXABANK, which has been outlined in the

Background, no data security analysis is performed.

In accordance with the foregoing, the conclusions that could be derived from this

procedure will not imply any pronouncement regarding the previous aspects

discarded, nor in relation to the entities of the CaixaBank Group.

IV

In accordance with the delimitation expressed in the previous Law Basis,

The effects of this procedure are interested in the content related to data protection of

personal nature of the "Framework Agreement" and the "Consent Agreement" ("Authorization

Revocation for the processing of personal data for commercial purposes by

CaixaBank, S.A. and companies of the CaixaBank group"), the "Privacy Policy" accessible to

through the entity's website and the information offered in relation to personal data

social networking and aggregation service. The content of these documents consists

reproduced in Appendices.

The "Framework Agreement", which serves as a data collection form and is the

document used primarily to provide information on the protection of

personal data, is presented as mandatory subscription for the client, establishing

expressly that the signing of the document implies that it "knows, understands and accepts its

contents". It is also established that the terms and conditions are of general application to all the "commercial relations" of the interested party "with CaixaBank and the companies of the Group CaixaBank, and therefore, the signing and validity of this Agreement, respecting the corresponding rights of election that the Signatory grants the clause, it is necessary for contracting and maintaining contracts for products or services".

The options or "choice" referred to in the previous paragraph have to do with consents contained in the clauses of the "Framework Agreement" subject to its effective acceptance by the client, which must be provided during the contracting process and that are incorporated, once these options have been expressed by the client, in the data section personal and socioeconomic of the head. It is about the consents for the processing of personal data that is requested from the interested party in clause 8 (profiled and segmented, receipt of commercial impacts and transfer to third parties).

The information provided to the interested party in this document in relation to the protection of personal data is structured according to the legal basis that legitimizes the data processing, devoting section 7 to processing "based on the execution of contracts, legal obligations and legitimate interest and privacy policy", section 8 to the "treatment and transfer of data for commercial purposes by CaixaBank and the companies of the CaixaBank group based on consent".

The aforementioned section 7 includes a subsection related to the "processing of data biometrics in the electronic signature of documents" and provides information on the "treatments based on legitimate interest", included as one of the epigraphs of the subsection that reports on data processing "for regulatory purposes".

For its part, section 8 reports on processing based on the "consent", which CAIXABAN groups into the following three purposes, and also informs about the "data" that will be processed for the first two purposes of those mentioned below. continuation:

“(i) data analysis and study processing for commercial purposes by CaixaBank and companies

of the CaixaBank group

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(ii) the processing for the commercial offer of products and services by CaixaBank and the companies of the

CaixaBank group

(iii) the transfer of data to third parties”.

To what has been indicated, sections 9 “Exercise of rights in matters of

data protection” and 10 “Data Protection Officer”, as well as a subsection

dedicated to the "Data retention period", inserted in section 11 referring to the

duration, resolution and modification of the contract.

Section 11 is not related to the procedure (applicable legislation and jurisdiction). Y

section 13 corresponds to the signing of the document. It is labeled “Digitalization of the

signature and identification documentation of the client” and offers the following information:

“The rubric that the Signer stamps at the bottom of this Contract, in addition to having the purpose of

acceptance of the content of this Agreement, will be used for digitization and registration, for the purpose

to serve as a basis for verifying the signatures that are stamped on any document that is

present to CaixaBank…”.

“[…] for the identification of the client by the employees of the entity, the Signatory authorizes

CaixaBank, expressly, the digitization and registration of your official identification document, which

which includes the digitalization of its image contained in the photograph that it incorporates”.

In the Fundamentals of Law that follow, the content of the

document called by

"Consent Agreement"

(“Authorization/Revocation”), since its structure and content coincide almost literally

with Clause 8 of the "Framework Agreement" (the references that in these Basis of

Right are made to this clause 8 or section 8 serve equally to the "Contract of

Consents”, unless otherwise specified). It will, however, be necessary

differences that can be seen between the two documents.

CAIXABANK

Likewise, the document "Privacy Policy" available on the CAIXABANK website,

which is incorporated as Annex V, with thirteen sections, reports in a generic way on the

identity of the person in charge (without referring to the existence of a "common repository" to

CAIXABANK and the companies of the Group), data collected, information obtained from

browsing the web and mobile applications, purposes, legal basis that protects the

data processing, security, data conservation, assignments, transfers

international, data protection delegate and rights of the interested party. It is interesting to highlight

that this "Privacy Policy", when referring to uses based on consent,

warns the interested party that they may use “all the data we have about you”; and in the

section “To whom are my data communicated?” informs about the exchange of information

with companies of the CaixaBank Group.

Finally, in relation to the collection and use of personal data of the

interested in social networks or obtained from the aggregation service, is informed about data,

purposes, treatments based on the consent and rights of the interested party. In the last

case, in addition, information is reported on data processing based on legitimate interest and

data retention.

The full content of this information (except the sections excluded from analysis)

It is reproduced in the Appendices.

Article 5 “Principles related to treatment” of the RGPD establishes:

“1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be further processed in manner incompatible with those purposes; according to article 89, paragraph 1, further processing of personal data for archiving purposes in the public interest, scientific research purposes and historical or statistical purposes shall not be considered incompatible with the initial purposes ("limitation of the purpose»);

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”);

d) accurate and, if necessary, updated; All reasonable steps will be taken to Delete or rectify without delay the personal data that is inaccurate with respect to the purposes for which they are treated ("accuracy");

e) kept in a way that allows the identification of the interested parties for no more than the necessary for the purposes of the processing of personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with Article 89(1), without prejudice to the application of technical and organizational measures appropriate measures imposed by this Regulation in order to protect the rights and freedoms of the interested party (“limitation of the retention period”);

f) processed in such a way as to ensure adequate security of the personal data, including the
protection against unauthorized or unlawful processing and against loss, destruction or damage
accident, through the application of appropriate technical or organizational measures ("integrity and
confidentiality").
2. The controller will be responsible for compliance with the provisions of section 1 and
able to demonstrate it (“proactive responsibility”)”.
In relation to the aforementioned principles, what is stated in the
Considering 39 of the aforementioned RGPD:
“39. All processing of personal data must be lawful and fair. For natural persons, it must be
completely clear that data is being collected, used, consulted or otherwise processed
that concern them, as well as the extent to which said data is or will be processed. The
The principle of transparency requires that all information and communication regarding the treatment of said
data is easily accessible and easy to understand, and that simple and clear language is used. Saying
principle refers in particular to the information of the interested parties on the identity of the person in charge
of the treatment and the purposes of the same and to the added information to guarantee a fair treatment and
transparent with respect to the affected natural persons and their right to obtain confirmation and
communication of personal data concerning them that are subject to treatment. The
natural persons must be aware of the risks, standards, safeguards and rights
regarding the processing of personal data as well as the way to assert their rights in
relation to treatment. In particular, the specific purposes of the processing of personal data
they must be explicit and legitimate, and must be determined at the time of collection. The data
must be adequate, relevant and limited to what is necessary for the purposes for which
be treated. This requires, in particular, to ensure that their period of
conservation. Personal data should only be processed if the purpose of the processing could not be
reasonably be achieved by other means. To ensure that personal data is not retained
longer than necessary, the data controller must establish deadlines for its deletion or

Periodic revision. All reasonable steps must be taken to ensure that they are corrected or

Delete personal data that is inaccurate. Personal data must be processed in a manner

that guarantees adequate security and confidentiality of personal data, including for

prevent unauthorized access or use of said data and of the equipment used in the treatment".

SAW

Article 4 of the RGPD, under the heading "Definitions", provides the following:

"2) «treatment»: any operation or set of operations carried out on personal data or

sets of personal data, whether by automated procedures or not, such as the collection,

registration, organization, structuring, conservation, adaptation or modification, extraction, consultation,

use, communication by transmission, broadcast or any other form of authorization of access,

collation or interconnection, limitation, suppression or destruction".

In accordance with these definitions, the collection of personal data through

of forms enabled for this purpose constitutes data processing, in respect of which the

The data controller must comply with the principle of transparency, established

in article 5.1 of the RGPD, according to which personal data will be "treated in a

lawful, loyal and transparent in relation to the interested party (legality, loyalty and transparency)"; Y

developed in Chapter III, Section 1, of the same Regulation (articles 12 and following).

Article 12.1 of the aforementioned Regulation establishes the obligation of the person responsible for

treatment to take the appropriate measures to "provide the interested party with all information

indicated in articles 13 and 14, as well as any communication pursuant to articles

15 to 22 and 34 related to the treatment, in a concise, transparent, intelligible and easily

access, in clear and simple language, in particular any information addressed to a

little boy".

In the same sense, article 7 of the RGPD is expressed for cases in which the

consent of the data subject is given in the context of a written statement, such as

occurs in the present case. According to this article, said request for consent “is

presented in such a way as to be clearly distinguishable from other matters, in an intelligible manner

and easily accessible and using clear and simple language”. It is added to this provision that

no part of the declaration that constitutes an infringement of these Regulations will be

binding.

Article 13 of the aforementioned legal text details the “information that must be provided

when the personal data is obtained from the interested party” and article 14 mentioned is

refers to the “information that must be provided when the personal data has not been

obtained from the interested party.

In the first case, when the personal data is collected directly from the

interested party, the information must be provided at the very moment in which that

data Collect. Article 13 of the RGPD details this information in the following terms:

1. When personal data relating to him or her is obtained from an interested party, the data controller,

at the time these are obtained, it will provide you with all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of his representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the

responsible or a third party;

e) the recipients or categories of recipients of the personal data, if applicable;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, paragraph second, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been lent.

2. In addition to the information mentioned in section 1, the data controller shall provide the interested, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;

b) the existence of the right to request access to personal data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without affecting to the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the applied logic, as well as the importance and expected consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data for a

purpose other than that for which they were collected, will provide the interested party, prior to said

further processing, information about that other purpose and any additional information relevant to the

of section 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the

interested party already has the information".

Article 14 regulates the information that must be provided in relation to the data that

are not collected directly from the interested party:

"1. When the personal data has not been obtained from the interested party, the data controller

will provide you with the following information:

a) the identity and contact details of the person in charge and, where appropriate, of his representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the processing for which the personal data is intended, as well as the legal basis for the processing.

treatment;

d) the categories of personal data in question;

e) the recipients or categories of recipients of the personal data, if applicable;

f) where appropriate, the intention of the controller to transfer personal data to a recipient in a third party

country or international organization and the existence or absence of a decision on the adequacy of the

Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49,

section 1, second paragraph, reference to the adequate or appropriate guarantees and the means to

obtain a copy of them or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the data controller shall provide the

interested party the following information necessary to guarantee a fair treatment of data and

transparent with respect to the interested party:

a) the period during which the personal data will be kept or, when this is not possible, the

criteria used to determine this term;

b) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the

data controller or a third party;

c) the existence of the right to request access to personal data from the data controller

related to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the

treatment, as well as the right to data portability;

d) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2,

letter a), the existence of the right to withdraw consent at any time, without affecting

to the legality of the treatment based on the consent before its withdrawal;

e) the right to file a claim with a supervisory authority;

f) the source from which the personal data comes and, where appropriate, if they come from access sources

public;

g) the existence of automated decisions, including profiling, referred to in

article 22, paragraphs 1 and 4, and, at least in such cases, significant information on the logic

applied, as well as the importance and the anticipated consequences of said treatment for the

interested.

3. The controller will provide the information indicated in sections 1 and 2:

a) within a reasonable period of time, once the personal data has been obtained, and at the latest within a

month, taking into account the specific circumstances in which said data is processed;

b) if the personal data is to be used for communication with the interested party, no later than the

time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time the data

personal data are communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the personal data for a purpose other than that for which they were obtained, will provide the interested party, before said further treatment, information about that other purpose and any other relevant information indicated in the paragraph 2.

5. The provisions of sections 1 to 4 shall not apply when and to the extent that:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific research purposes or historical or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation referred to in paragraph 1 of this article may prevent or seriously impede the achievement of the objectives of such treatment. in such cases, the person in charge will adopt adequate measures to protect the rights, freedoms and interests legitimate rights of the interested party, including making the information public;

c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the data controller and lays down appropriate measures to protect the legitimate interests of the data subject, or

d) when the personal data must remain confidential on the basis of a obligation of professional secrecy regulated by the Law of the Union or of the Member States, including an obligation of secrecy of a statutory nature".

For its part, article 11.1 and 2 of the LOPDGDD provides the following:

"Article 11. Transparency and information to the affected

1. When the personal data is obtained from the affected party, the data controller may give compliance with the duty of information established in article 13 of Regulation (EU) 2016/679 providing the affected party with the basic information referred to in the following section and indicating a electronic address or other means that allows easy and immediate access to the remaining

information.

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2. The basic information referred to in the previous section must contain, at least:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU)

2016/679.

If the data obtained from the affected party were to be processed for profiling, the information

basic will also include this circumstance. In this case, the affected party must be informed of

your right to oppose the adoption of automated individual decisions that produce effects

legal rights over him or significantly affect him in a similar way, when this right of

in accordance with the provisions of article 22 of Regulation (EU) 2016/679".

In relation to this principle of transparency, it is also taken into account

expressed in Considerations 32, 39, reproduced in the Basis of previous Right,

42, 47, 58, 60, 61 and 72 of the GDPR. Part of the content of these is reproduced below.

Considerations:

(32) Consent must be given through a clear affirmative act that reflects a manifestation of

Free, specific, informed, and unequivocal will of the interested party to accept the processing of personal data.

personal character that concern him, as a written statement, including by means

electronically, or a verbal statement. This could include checking a box on an internet website,

choose technical parameters for the use of information society services, or

any other statement or conduct that clearly indicates in this context that the data subject

accepts the proposal for the processing of your personal data. Therefore, the silence, the boxes already
markings or inaction should not constitute consent. Consent must be given for all
the treatment activities carried out with the same or the same purposes. When the treatment has
various purposes, consent must be given for all of them. If the data subject's consent has been
to give as a result of a request by electronic means, the request must be clear, concise and not
unnecessarily disrupt the use of the service for which it is provided.
(42) When the treatment is carried out with the consent of the interested party, the data controller
treatment must be able to demonstrate that he has given his consent to the operation of
treatment. In particular in the context of a written statement made on another matter,
there must be guarantees that the interested party is aware of the fact that he gives his consent and that
the extent to which it does. In accordance with Council Directive 93/13/CEE (LCEur 1993, 1071),
A model declaration of consent previously prepared by the user must be provided.
responsible for the treatment with an intelligible and easily accessible formulation that uses a language
clear and simple, and that does not contain abusive clauses. For consent to be informed, the
The interested party must know at least the identity of the data controller and the purposes of the processing.
treatment to which the personal data is intended. The consent must not
be considered freely provided when the interested party does not enjoy a true or free choice or does not
You can withhold or withdraw your consent without prejudice.
(47) The legitimate interest of a data controller, including that of a data controller
may communicate personal data, or of a third party, may constitute a legal basis for the
treatment, provided that the interests or the rights and freedoms of the interested party do not prevail,
taking into account the reasonable expectations of the interested parties based on their relationship with the
responsible. Such legitimate interest could exist, for example, where there is a relevant relationship and
between the data subject and the controller, such as in situations where the data subject is a customer
or is at the service of the person in charge. In any case, the existence of a legitimate interest would require a
thorough evaluation, even if a data subject can reasonably foresee, at the time and in the

the context of the collection of personal data, that the treatment may occur for this purpose. In
In particular, the interests and fundamental rights of the interested party may prevail over the
interests of the person in charge of the treatment when proceeding to the treatment of the personal data in
circumstances in which the interested party does not reasonably expect that a treatment will be carried out
subsequent… The processing of personal data strictly necessary for the prevention of

fraud also constitutes a legitimate interest of the data controller concerned. The
Processing of personal data for direct marketing purposes can be considered carried out by
legitimate interest.
(58) The principle of transparency requires that all information addressed to the public or the interested party be
concise, easily accessible and easy to understand, and that clear and simple language is used, and,
In addition, in your case, it is displayed...
(60) The principles of fair and transparent processing require that the data subject be informed of the
existence of the processing operation and its purposes. The data controller must provide the
interested as much additional information as necessary to guarantee a fair treatment and
transparent, taking into account the specific circumstances and context in which the data is processed
personal. The interested party must also be informed of the existence of profiling and
the consequences of such elaboration. If personal data is obtained from data subjects,
they must also be informed of whether they are obliged to provide them and of the consequences in case they
they didn't do it...
(61) Data subjects should be provided with information on the processing of their personal data in
the time they are obtained from them or, if obtained from another source, within a reasonable time,

depending on the circumstances of the case...

(72) Profiling is subject to the rules of this Regulation that govern the

processing of personal data, such as the legal grounds for processing or the principles of

Data Protection…

CAIXABANK, according to proven facts, performs data processing

information obtained from customers, directly or "indirectly", as well as data

information obtained from sources other than those concerned or inferred by the

entity. Therefore, it is obliged to provide information in the terms established in the

RGPD and the LOPDGDD.

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The information offered to CAIXABANK customers is not uniform.

Analyzed the information on the protection of personal data offered by

CAIXABANK, considering the various documents and channels through which it is offered,

it is verified that it is not uniform, not even in terminology, it is not offered with the same

breadth to all clients and in all situations (in some cases the “Contract

Framework”, in others the “Consent Contract” and for other clients only the “Policy

of Privacy"), and it is not updated in the same way in each case.

CAIXABANK has argued that the duty of information is fulfilled with the "Contract

Framework” and not with the rest of the documents, which are merely complementary to the former, which

are used at different times and scenarios, and not simultaneously, and that are not intended to

object to comply with what is mandated by article 13 of said Regulation, since they are addressed to clients

already informed.

However, this allegation does not coincide with the verifications carried out. It's true

that the "Framework Agreement" is the document used primarily, which also serves

as a personal data collection form and for the provision of consent

collected by CAIXABANK for commercial purposes. But it has been proven that the

information on data protection was provided to some customers only

through the "Consent Contract" and the "Privacy Policy", without them having

signed the "Framework Agreement".

The "Consent Contract", although it has been used and is currently used

as a document to revoke and modify consents, it was conceived as a

document to "authorize" data processing based on this legal basis, as well as

than the "Framework Agreement", and has not lost that character (its initial name was

“Authorization for the processing of personal data for commercial purposes

by CaixaBank, S.A. and companies of the CaixaBank Group”; and the current “Authorization/Revocation

for the processing of personal data for commercial purposes by CaixaBank,

S.A. and CaixaBank Group companies”). It is proven that the method has not always been used

"Framework Agreement" for the collection of consents, not in the case of all clients.

The CAIXABANK entity itself, in its response to the Inspection Services of the

Agency dated 07/17/2018, stated that the "Consent Contract" is used, not

only to modify the consents given, but also to collect them. The

claimant is an example of a client who has not signed the "Framework Agreement" and provided his

consents through the "Consent Contract", signed on 01/24/2018 and

modified in May 2018, as verified in the inspection carried out on the date

11/28/2019 (as of this date, the claimant had not signed the “Framework Agreement”)

The same can be said of the "Privacy Policy" available on the website of the

entity. Although it is indicated in the "Framework Agreement" that it includes "complementary information to

the one provided in this contract", the Privacy Policy has also been the

unique information on protection of personal data that some clients have received, the

which did not sign the "Framework Agreement" or the "Consent Agreement".

CAIXABANK was consulted in this regard by the Inspection Services of the Agency

about the procedures enabled to publicize the updated "Privacy Policy"

to the RGPD to clients prior to the application of this norm and the mechanisms to collect

your acceptance. In its response dated 11/20/2019, CAIXABANK reported that said "Privacy Policy

Privacy" is intended to provide complete information to customers who in May 2018

they had not signed the framework contract; and distinguishes since May 2018 the situations

following:

. The one corresponding to "pre-existing" clients who signed the "Framework Agreement" or who

received the "Privacy Policy".

. That of new clients, who in their first relationship sign the "Framework Agreement".

In relation to the "Privacy Policy", you have provided details about your transfer to

existing customers as of May 2018, specifically, the sending of 15,917,507 communications,

of which 5,663,683 were made by mail and 10,253,824 through the bank to

distance with a warning pop up ("If you want to know more about our commitment to your

data and your privacy, you have a statement available in your MailBox -Access MailBox").

Also in its statement of arguments at the opening of the procedure, the aforementioned entity

refers to customers prior to May 2018, distinguishing between those who have signed the

"Framework Agreement", those who have signed the "Consent Agreement" and those others to whom

He asked and they didn't answer.

On the other hand, neither are these documents uniform in terms of their content,

as will be described in the following sections and Legal Basis.

As an example of these differences, we can highlight at this time the

valued between the "Framework Agreement" and the "Consent Agreement", being the most

significant that this last document offers information equivalent, basically, to the

Clause 8 of the "Framework Agreement", so that the clients who sign this document

do without essential information. But this is not the only difference in terms of

information content:

. Version 2 of the "Consent Contract" (Annex II) referred to the management of

the data “from a common information repository of the Companies of the CaixaBank Group”

that does not appear in the "Framework Agreement" (this indication disappears in Version 3 of that

document).

. Differences regarding the exercise of rights, existence of a Delegate for the Protection of

Data and the term of conservation of the data, which are detailed in the last two sections

of this Legal Basis.

. Version 3 of the "Consent Contract", in the authorization (ii) of section

corresponding to purpose 1 (“Analysis, study and monitoring treatments for the

offer and design of products and services adjusted to the customer profile") adds the possibility

to associate the data of the signatory with those of other clients, which does not appear in the "Contract

Framework".

As can be seen, the different information that clients receive has to do with

the document used in each case to provide the information, in addition to its different

content, beyond the updating processes of those documents alleged by

CAIXABANK to justify this deficiency.

CAIXABANK says nothing about those circumstances in its written pleadings to

the proposal, in which it only indicates that said proposal seems to imply that all the

clients have access to all documents and, singularly, that all clients have both

the "Consent Contract" as the "Framework Contract", which does not coincide with what

exposed.

CAIXABANK denies this lack of uniformity, but, at the same time, alleges that the

process of improvement that it has developed has supposed a cohonestation of all the

documents.

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Use of imprecise terminology and vague formulations

In accordance with the foregoing, at the time of collecting personal data, the

Responsible for the treatment must provide the interested parties with the information established in

the aforementioned standards, “in a concise, transparent, intelligible and easily accessible form, with a

clear and simple language.

CAIXABANK does not report clearly and systematically on data processing

neither the purposes for which they will be used.

Sometimes, information on key aspects such as data categories

personal data processed, the purposes or the legal basis that enables the treatment, uses

unclear and imprecise expressions, or vague formulations, with ambiguous meanings in

some cases, and whose true scope is not developed; expressions that are repeated and that

CAIXABANK uses to justify different actions, treatments, purposes or

legitimations.

In addition, with some of these expressions, the data protection policy is shown as a benefit for the client, implying that its non-acceptance will mean the loss of benefits as a customer.

Expressions such as “getting to know you better”, “personalize your experience”, “commercial offers adjusted to your needs and preferences”, “improving the design and usability of the products”, “products and services adjusted to your profile”, “information generated from the products themselves”, “analysis and study”, “study products and services” or “design products and services”, “for our own management”, “give you a better service”, “communicate your data to third parties with whom we have an agreement”, “expectation reasonable to receive”, “management needs”, “analysis, study and follow-up for the offer and design of products and services adjusted to the profile”.

Nor can the interested party clearly deduce the meaning of these expressions from the context in which the information is offered and the expression of will is obtained of the interested party, or from the very context of the contractual relationship that binds the concerned with the responsible entity. On this contextual basis or factual context, the client is not able to understand the data that will be registered or the meaning of the purposes pursued by CAIXABANK with the treatment, when these are not specified clearly, especially considering the variety and complexity of the purposes of the processing of personal data carried out by CAIXABANK in its capacity as entity that occupies a relevant position in the market, which demands an effort when specifying the information on the aforementioned aspects.

From all this it follows that the information offered in this matter is indeterminate in the aspects indicated and difficult to understand by any interested party, regardless of your qualification, and demonstrates the extent to which you need to be an expert to understand such information and its scope.

The terminology in those expressions, in short, is alien to compliance

strict adherence to the principle of transparency, and prevents interested parties from knowing the meaning and real meaning of the indications provided and the real scope of the consents that can be provided, which means understanding the right to data protection violated personal, understood as the capacity of the affected person to decide on the treatment.

CAIXABANK, in its arguments at the opening of the procedure, limits itself to qualifying these arguments as subjective assessments, without evidence to show what customers understand or not, adding that external work has been carried out to verify that the contractual documents can be understood without difficulty by an average customer, the which does not contribute

However, in the opinion of this Agency, the lack of clarity of those formulas or

expressions is self-evident and objective, as demonstrated by the difficulty of concluding its real and concrete scope.

The expressions so often repeated by CAIXABANK in the documents reviewed are included as examples of bad practices in the Article Working Group document 29 “Guidelines on transparency under Regulation 2016/679”, adopted on 11/29/2017 and revised on 04/11/2018.

These Guidelines discuss the scope to be attributed to the elements of transparency established in article 12 of the RGPD, according to which the person in charge of the treatment will take the appropriate measures to “provide the interested party with all information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 related to the treatment, in a concise, transparent, intelligible and easily

access, with clear and simple language", which must be related to what is expressed in

Considering 39 of the aforementioned Regulation. From what is stated in these Guidelines, it is

highlight the following at this time:

"The requirement that the information be "intelligible" means that it must be understandable to the user.

average member of the target audience. Intelligibility is closely linked to the requirement of

Use clear and simple language. A data controller acting responsibly

proactively you will know the people about whom you collect information and you can use this

knowledge to determine what said audience is capable of understanding…".

<<Clear and simple language

In the case of "written" information (and where written information is communicated verbally, or

by auditory or audiovisual methods, also for those with vision problems), have

of following the best practices for writing clearly. The EU legislator has already used

previously a similar linguistic requirement (appealing to the use of "clear and understandable terms") and

it is also explicitly mentioned in the context of consent in recital 42

of the GDPR. The obligation to use clear and simple language implies that the information must be

be provided in the simplest way possible, avoiding complex sentences and linguistic structures. The

information must be concrete and categorical; should not be formulated in abstract or ambivalent terms

nor leave room for different interpretations. In particular, the purposes and legal basis of the treatment

of personal data must be clear.

Examples of poor practice

The following statements are not sufficiently clear regarding the purpose of the treatment:

. "We may use your personal data to develop new services" (since it is not clear from

what "services" are involved and how the data will help develop them);

. "We may use your personal data for research purposes" (since it is not clear to what type

"research" refers to); Y

. "We may use your personal data to offer you personalized services" (since there is no

clear what this “personalization” implies).

Examples of good practices

. “We will keep your purchase history and use details of the products you have purchased

above to suggest other products we think you might be interested in as well" (it's clear what

types of data will be processed, that the interested party will be subject to personalized product advertising and

that your data will be used in this sense);

. “We will retain and evaluate information about your recent visits to our website and how

navigate through the different sections of the same in order to analyze and understand the use that the

people make our website and to be able to make it more intuitive” (it is clear what type of data is

they will treat and the type of analysis that the person in charge is going to carry out); Y

. “We will keep a record of the articles on our website that you have clicked on and we will use

that information to personalize, based on the articles you have read, the advertising that we show you

on this website to suit your interests” (it is clear what personalization and

how the interests attributed to the interested party have been identified)>>.

The foregoing must be interpreted, in any case, taking into account the principles

established in article 5 of the RGPD, especially the principle of loyalty. Recital 42

of the same text also refers that the form in which the information is offered in

matter of protection of personal data must not contain unfair terms.

-

Information on the processing of personal data based on the relationship

contractual.

In the section dedicated to purpose 1 "Management of commercial relations",

CAIXABANK informs about the processing of the following personal data:

. The personal data provided by the client.

. Personal data derived from business relationships.

. Personal data derived from commercial relations of CAIXABANK and

companies of the CaixaBank Group with third parties (this section does not refer to the relationship

business of the interested party/client with CAIXABANK, but to relations of this entity and those that

integrate the Group with third parties; without explaining the nature of these relationships with third parties and

without detailing what data of these relations are necessary for the execution of the contract

signed by the interested party/client, nor who is the owner of that data).

. Personal data "made from them" (without specifying if it refers to the last

indicated or all of the above).

. Digitization and registration of identification documents and signature.

It is estimated that the information included in this section must be rectified and

conveniently completed so that it allows to assess and determine with certainty if the

treatments outlined can be covered by this legal basis (the execution of the contract) or,

on the contrary, its collection and subsequent treatment requires the consent of the interested party. It is

necessary to know what CAIXABANK understands by data derived from relationships

commercial or data "made from them" and what use is given to them for the

fulfillment of the contractual relationship.

Likewise, it is necessary to point out the confusion that it produces on the legal basis of the

treatment (treatments for the execution of the contract or based on consent) the

mention made in this section to “Commercial relations” and to what CAIXABANK

called "commercial purposes". The label of the subsection indicates "Treatments of

personal data for the purpose of managing business relationships”, within

a more general section related to treatments “based on the execution of the contract”,

while in the text reference is also made to the treatments that the signatory accepts

for commercial purposes. The text reads as follows: “The personal data of the signatory…

will be incorporated… to be processed in order to comply with and maintain the

themselves (commercial relations), verify the correctness of the operation and the purposes

commercial terms that the signatory accepts in this contract”.

-

Information on the categories of personal data subject to treatment;

and on the specific categories of personal data that will be processed for each

one of the specific purposes.

The information offered is incomplete in relation to key aspects, such as the

categories of personal data processed.

In accordance with the criteria stated by the European Committee for the Protection of

Data, that information would be necessary in relation to those data treatments whose

legal basis is determined by the consent of the interested party. This is how the group understood

Article 29 Working Group in its document “Guidelines on consent under the

Regulation 2016/679”, adopted on 11/28/2017, revised and approved on 04/10/2018 (these

Guidelines have been updated by the European Committee for Data Protection on

05/04/2020 through the document “Guidelines 05/2020 on consent under

to Regulation 2016/679”, which keeps the parts that are transcribed literally identical

next).

The Article 29 Working Group draws its conclusions from the definition

of the "consent" contained in article 4 of the RGPD, which is expressed in the terms

following:

“11) «consent of the interested party»: any manifestation of free, specific, informed and

unequivocal by which the interested party accepts, either through a declaration or a clear action

affirmative, the treatment of personal data that concerns you”.

From this definition, they are specified as necessary elements for the validity of the

consent the following:

. Manifestation of free will

. specific

. informed and

. unequivocal by which the interested party accepts, either through a declaration or a clear

affirmative action, the treatment of personal data that concerns you.

In relation to the element "specific manifestation of will" it is said:

“3.2. Specific declaration of will

(…)

Ad. ii) Consent mechanisms should not only be separated in order to fulfill the

requirement of "free" consent, but must also comply with the consent

"specific". This means that a data controller seeking consent to

several different purposes, you must facilitate the possibility of opting for each purpose, so that users

may give specific consent for specific purposes.

Ad. iii) Finally, data controllers must provide, with each data request,

separate consent, specific information on the data that will be processed for each purpose, with the

in order that the interested parties know the repercussion of the different options that they have. of this

In this way, data subjects are allowed to give specific consent. This issue overlaps with the

requirement that those responsible provide clear information”.

In addition, consent, to be valid, must be informed. This item is

analyzes in the aforementioned “guidelines” as follows:

3.3. Manifestation of informed will

The GDPR reinforces the requirement that consent must be informed. In accordance with the

article 5 of the RGPD, the requirement of transparency is one of the fundamental principles,

closely related to the principles of loyalty and legality. Provide information to stakeholders

before obtaining your consent is essential so that they can make informed decisions,

understand what they are authorizing and, for example, exercise their right to withdraw their

consent. If the person in charge does not provide accessible information, the control of the user will be

illusory and consent will not constitute a valid basis for data processing.

If the requirements regarding informed consent are not met, the consent will not be valid.

and the person in charge may be in breach of article 6 of the RGPD.

3.3.1. Minimum content requirements for consent to be “informed”

In order for the consent to be informed, it is necessary to communicate to the interested party certain elements that

are crucial to be able to choose. Therefore, the WG29 is of the opinion that at least the information

following to obtain valid consent:

i) the identity of the data controller,

ii) the purpose of each of the treatment operations for which consent is requested,

iii) what (type of) data will be collected and used,

iv) the existence of the right to withdraw consent,

v) information on the use of data for automated decisions pursuant to article

22, paragraph 2, letter c), when applicable, and

vi) information on the possible risks of data transfer due to the absence of a

decision of adequacy and adequate guarantees, as described in article 46>>.

The information provided in the "Framework Agreement" on the types of data

clients who undergo treatment is not contained, in general, in

a specific section, but is included in each of the sections outlined below.

detail the structure of the document, articulated around the legal bases, purposes and

intended data processing.

In view of the interpretive criteria on the notion of "informed consent"

offered by the European Data Protection Committee, it is considered that CAIXABANK does not

provides sufficient information on the type of data that will be submitted to

treatments whose legal basis is the consent of the interested parties.

This insufficiency is observed in the "Framework Contract" and in the "Contract of

Consent" in relation to the purposes of "analysis and study of data" and "for the

commercial offer of products and services", which is reported in section 8

"Processing and transfer of data for commercial purposes by CaixaBank and the companies of the

CaixaBank Group based on consent". This section indicates that they will be treated,

among others, the following data:

"b) All those generated in the contracting and operations of products and services with CaixaBank,

with the Companies of the CaixaBank Group or with third parties, such as account or card movements,

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

insurance, claims, etc.

"g) Those obtained from the navigations of the signatory through the digital banking service and other websites of

CaixaBank and the CaixaBank Group Companies or CaixaBank mobile phone application and the

Companies of the CaixaBank Group, in which it operates duly identified. This data may include

information related to geolocation.

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

established between the parties.

All this refers to the data processed by reason of the products and services

contracted, so that, although these are known by the user, he cannot know the

that will be selected from the use of such products and services. The same can be said

regarding the navigation data and those obtained from the communications that are

established between the client and the entity.

This information warns the interested party that CAIXABANK may process "all" the

data that “are generated in the contracting and operations of products and services”.

It then gives some examples, preceded by the expression "such as" and ending

with the expression, “etc.”, the use of which should be avoided when offering information on

Data Protection.

Nor are the examples given descriptive enough to

understand the categories of data that will be processed (“movements”, “receipts”, “payroll”,

“claims” and “claims”). In relation to "direct debits" it is indicated that

they will deal with the “details” of the same; and with respect to all these examples it is indicated, as already

It has been said that “all” data will be processed.

In view of this information, it is clear that CAIXABANK will process data

personal generated in the contracting and operation of products and services contracted with

that entity.

With this information it is not clear what personal data CAIXABANK will record

for each “movement”, “receipt”, “payroll”, “loss” or “claim” (will you record the concept

and issuer corresponding to the payment of a union dues?). It could even happen that the information collected by the responsible entity from the products and services contracted was made up of sensitive data or special categories of data personal, for example, the union dues already mentioned or dues paid to parties politicians, or to entities of a religious nature, or for the use of services provided by entities health or religious.

It is not concluded that CAIXABANK performs personal data processing such as those indicated in the previous paragraph. It is said here, simply, in a foundation that analyzes the information offered by CAIXABANK to its customers, that this information is defective in the to the extent that it does not allow the recipient of the information to know with certainty all the categories of personal data that will be used by that entity and that, even, the repeated information, due to its lack of specificity, could be covering a collection and unacceptable processing of personal data.

The "Privacy Policy" also refers to the use of data generated from the contracted products and services (“Basically, it is your data identification and details of the professional or work activity, your contact information and the financial and socioeconomic data, both those that you have provided us and those that are generated from the contracted products or services. Also… we may process data that we obtain from the provision of services to third parties when you are the recipient of the service…").

Also when referring to the personal data that will be used for treatment of

data based on the legitimate interest of the entity, the "Framework Agreement" informs about the use of information “generated from the products contracted during the last year”. In This section of the "Framework Agreement" regarding legitimate interest says:

“We will also treat your information (account movements, card movements, loans, etc.) to personalize your shopping experience on our channels based on past usage, to offer you products and services that fit your profile, to apply benefits and promotions that we have in force and to which you are entitled, and to assess whether we can assign you credit limits pre-granted that you can use when you deem it most appropriate.

In these treatments we will only use information provided by you, or generated from the own products contracted during the last year”.

In this case, the insufficient information on the categories of data to be processed is not related to the need for informed consent, given that it is about processing based on the legitimate interest of the entity. However, taking into account the possible relationship between these processing of personal data based on the interest legitimate and the treatments based on the consent of the interested parties. The use of personal data based on legitimate interest gives rise to the creation of profiles, which may be subsequently used for processing with commercial purposes based on the consent of the interested parties; and such personal data, including profiling, is communicated to the companies of the CaixaBank Group. Thus, the defects in the information in relation to data processing based on legitimate interest equally affect the validity of consent.

The obligation to inform about the category of data that will be submitted to treatment is also breached in relation to the data that are not provided to the responsible for the interested party, but are obtained by him from external sources or are inferred by the entity itself. Provide information on the types of personal data subjected to treatment that are not collected directly from the interested parties, it is required

expressly in article 14.1 d) of the RGPD.

As detailed above, CAIXABANK not only uses personal data

generated in the contracting and operation of products and services contracted with that

entity, but also those generated from products and services contracted by the interested party

with third parties (“All those generated in the contracting and operations of products and

services… with the Companies of the CaixaBank Group or with third parties”). In relation to these

data, the same examples mentioned above are detailed ("movements", "receipts",

"payroll", "claims" and "claims"), on which the aforementioned objections serve

regarding them.

It follows that CAIXABANK, under the condition of data controller,

collects and uses personal data that it does not obtain directly from the interested parties. Is about

personal data from third parties that CAIXABANK uses for the purposes

expressed in the information provided to the interested parties.

This is not the only reference to personal data obtained from third parties, external sources

or inferred by the CAIXABANK entity itself contained in the "Framework Agreement":

. In relation to the treatments necessary for the execution of the contract, it is reported on the

incorporation into the files of the data entity derived from the relationships

commercial of CAIXABANK and the companies of the Group with third parties; and data made

from the above.

. In the section that informs about "Processing of personal data with

regulatory purposes”, the following references are included:

“(ii) Checks will be made of the information provided by the Signatory, contrasting it with external sources, such as the databases of the General Treasury of the Social Security or other public bodies, Public Registries, Official Gazettes, or companies providing Information services".

“(iv) The information available regarding the Signatory will be exchanged (transferred and received) with CaixaBank Group companies

(v) The performance, current or past, of positions of public responsibility by the signatory.

(vi) The Signatory's relationship with companies will be verified with internal and external sources and, in its case, their position of control in their ownership structure.

(vii) The Signatory will be classified in different grades in accordance with the Admission Policy of Customers, based on the information provided and that resulting from the operation carried out by the Signatory".

. In the same subsection regarding data processing for regulatory purposes information is also provided on the consultation of data registered in compliance files or breach of monetary obligations (wrongly included in this subsection) and to the Risk Information Center of the Bank of Spain, CIRBE (wrongly included in this subsection):

“7.3.3 Communication with compliance files or non-compliance with monetary obligations.

The Signatory is informed that CaixaBank, in the study of the establishment of Commercial Relations, may consult information held in files of compliance or breach of obligations monetary”.

“7.3.4 Communication of data to the Risk Information Center of the Bank of Spain

The Signatory is informed of the right of CaixaBank S.A. to get from the Central Information on Risks from the Bank of Spain (CIR) reports on the risks that it could have registered in the study of the establishment of Commercial Relations”.

. In section 8, relating to data processing based on consent (and

also in the "Consent Contract") it is expressly added that the data of the

client “may be complemented and enriched by data obtained from companies

providers of commercial information, by data obtained from public sources, as well as by

statistical, socioeconomic data (hereinafter, "Additional Information") provided

verifying that these comply with the requirements established in the current regulations on

data protection”, without providing any details about the categories of personal data that

will be obtained from these external sources.

Likewise, the Privacy Policy” includes information on data processing

of health “in the commercialization of certain insurance products (health, life…)”. On

this personal data, it is clarified that the responsible party is the insurance company:

“When we market these products, the person responsible for the health data is the company

insurance company, so we want you to know that all insurance companies whose products

we market respect and strictly comply with data protection regulations”.

With the information provided, as indicated above, it is not clear what

personal data is processed or what data CAIXABANK will record.

The use by CAIXABANK of personal data from products and

services from third parties, from external sources or inferred by the entity itself, requires that

provide interested parties with adequate information and have a legal basis that protects

the treatment.

It should be noted that the collection of personal data is not questioned in this case.

from files of compliance with monetary obligations and CIRBE to manage
the contracted products and services, whenever it is necessary for the execution of the
contract. This is the basis that determines access to this information.
However, the use of these personal data by CAIXABANK is not
limited to verifying the situation of the interested party for the formalization of an operation of
risk, but also for purposes based on consent. Taking into account
that clause or section 8 informs about the treatment of “all” the data provided
in the establishment or maintenance of commercial or business relations, it is estimated
It is appropriate for CAIXABANK to report on the specific categories of personal data that
will be obtained from the files of compliance or non-compliance with monetary obligations and
from CIRBE.
On the other hand, in the case of personal data from products and services of
third parties, the responsibility for these personal data corresponds to the entity that owns the
product purchased by the interested party or provider of the service contracted by the same.
When it comes to products or services of third parties marketed by
CAIXABANK, as in the case of insurance products, this entity accesses such data
under the condition of treatment manager, for her mediating intervention. This Agency
questions the use of these data by that entity and with the purposes that
are indicated, considering that they are not their own products. The condition of manager
of the treatment under which CAIXABANK intervenes in these cases limits the possibility of
use the information in question for their own purposes.
In short, personal data is collected and processed without the owners of the same
are aware that CAIXABANK is accessing them to register them in their
information systems, submits them to treatments about which the client is not informed
in a clear, precise and simple way, and with non-explicit and indeterminate purposes, against
of the principles related to the treatment established in article 5 of the RGPD (loyalty,

limitation of the purpose and minimization of data), because, based on the information provided, considering its inconcretion, the interested party cannot know, as indicated in the Constitutional Court, “to what use is it being put and, on the other hand, the power to oppose that possession and uses”. This lack of precision renders the information provided ineffective. about the data processing that is intended.

What is indicated above contrasts with the information provided through the website of the entity on the personal data collected from social networks:

. Twitter: Name, username, tweets and user profile information, including biography and location information.

. Facebook: User ID, email address, gender, date of birth, city current, and preferences expressed by you by clicking on "Like" (or Likes).

. Linkedin: Registered user, name and surname, email address, profile URL, profile information and Groups.

And not only does it not specify what data will be processed, but it is also not duly informs in all cases about the specific categories of personal data that will be processed for each of the specified purposes.

The need to complete the information offered to customers in the sense expressed is especially relevant when it comes to data not provided by the customer, but inferred by the entity itself from the use of products, services and channels.

It is not possible to admit that all information is destined for all uses, that all data collected, from the interested party or from third parties, or inferred can be used for all

purposes, without limitation.

This occurs in relation to the purpose expressed in section 8 of the “Contract Framework” and in the “Consent Contract” regarding the “transfer of data to third parties” with the consent as a legal basis. With the information offered, it is not possible for the The interested party has a clear idea about the personal data that will be transferred to the entities of the sectors indicated.

In this regard, the Opinion of the aforementioned Article 29 Working Group, “Guidelines on consent under Regulation 2016/679”, adopted on 11/28/2017, revised and approved on 04/10/2018, and revised again in May 2020, When referring to the obligation to inform about the data that will be collected and used, it refers to the Opinion 15/2011 on the definition of consent, as a "manifestation of specific will”:

“To be valid, consent must be specific. In other words, the consent indiscriminate without specifying the exact purpose of the treatment is not admissible. To be specific, the consent must be understandable: refer clearly and precisely to the scope and consequences of data processing. cannot refer to an indefinite set of treatment activities. This means, in other words, that the consent applies in a limited context.

Consent must be given in relation to the various aspects of the treatment, clearly identified. This implies knowing what the data is and the reasons for the treatment. this knowledge it should be based on the reasonable expectations of the parties. Therefore, the "specific consent" it is intrinsically related to the fact that consent must be informed. Exists a requirement of precision of consent with respect to the different elements of data processing data: it cannot be claimed to cover “all legitimate purposes” pursued by the controller of the treatment. Consent must refer to processing that is reasonable and necessary in relation to the purpose.

In general, as has been said, the principle of transparency must be understood as a

fundamental aspect of the principles of lawful and fair treatment. It is interesting to reiterate

expressed in Recitals 39 and 60 and the references they contain to the need to

Provide information to ensure fair and transparent processing:

“39. All processing of personal data must be lawful and fair. For natural persons, it must be

completely clear that data is being collected, used, consulted or otherwise processed

that concern them, as well as the extent to which said data is or will be processed... Said

principle refers in particular to the information of the interested parties on the identity of the person in charge

of the treatment and the purposes of the same and to the added information to guarantee a fair treatment and

transparent with respect to the affected natural persons and their right to obtain confirmation and

communication of personal data concerning them that are subject to treatment. The

natural persons must be aware of the risks, standards, safeguards and rights

relating to the processing of personal data”.

“60. The principles of fair and transparent processing require that the interested party be informed of the

existence of the processing operation and its purposes. The data controller must provide the

interested as much additional information as necessary to guarantee a fair treatment and

transparent, taking into account the specific circumstances and context in which the data is processed

personal”.

And in the also cited document of the Working Group of Article 29 “Guidelines

on transparency under Regulation 2016/679”, adopted on 11/29/2017 and

revised on 04/11/2018, which analyzes the scope that should be attributed to the principle of

transparency, it is indicated:

“A fundamental consideration of the principle of transparency outlined in these provisions is that the interested party must be able to determine in advance the scope and the consequences derived from the treatment, and that he should not be surprised at a later time by the use that has been made of your personal information".

In relation to information about the category of personal data that is collected and used by CAIXABANK, alleges that article 13 of the RGPD does not require provide data subjects with this information on a mandatory basis, although, however, offers a sufficiently descriptive list of the types of data that are treated based on the consent, in accordance with the provisions of Guidelines 05/2020 on the consent in accordance with Regulation 2016/679, of the European Committee for the Protection of Data (CEPD).

Likewise, it alleges (i) that the information it provides on the treatment of data of movements, receipts, payroll, claims and claims, considering that deals with products and operations of the client, who knows the information they include; and (ii) that that information does not include sensitive data.

He warns in this regard that the obligation that the AEPD intends to impose would suppose, for On the one hand, the need to report on specific data, which would imply information fatigue hard to beat; and, on the other hand, it would also mean reporting on what is not done, in based on suspicion of processing sensitive data.

This allegation cannot be upheld, in accordance with the arguments already set forth. in this section. This Agency considers that the review of those concepts (movements, receipts, payroll, claims and claims), without including the detail of the data categories that they include, is insufficient to understand that the obligation to report on the categories of personal data that are collected and subjected to treatment and, ultimately, so that the interested party can have the essential and necessary information for taking their

decisions and understand what you are authorizing, as well as for the exercise of your rights.

Without forgetting that those concepts are included as examples, preceded by the

expression "such as" and followed by the term "etc."

Regarding the suspicion of this Agency about the possibility that CAIXABANK

could be protecting, with the information offered, the collection and treatment of categories

special data, it must be reiterated that it results from the information offered in

the documents subject to the proceedings. On the one hand, it is said that data can be obtained

of products and services contracted by the client, “such as account movements or

cards, details of direct debits, payroll direct debits…, etc.”, and, on the other hand,

It is also indicated that "all the data generated in the contracting and

operations” of those products and services. Then, nothing prevents understanding that they could

be collected by CAIXABANK categories of data such as issuer and concept of receipts

domiciled, which could refer to the payment of a union fee, payments to an entity

health care, dues to a political party or donations to a religious entity,

civil society associations or political activism groups, which could serve to

link the interested party with certain ideological positions, race, religion, etc.

In any case, this question has not determined any imputation to

CAIXABANK for data processing of this nature, although this is included

circumstance, as has been said, to the extent that the information provided is

defective and could serve as coverage for the collection and processing of personal data

unacceptable.

The aforementioned is used both for obtaining personal data
generated in contracting products and services with CAIXABANK, such as those generated
in contracting products and services with third parties.
On the other hand, in relation to the information on the category of personal data
that are not obtained from the interested party, CAIXABANK alleges that it complies with this obligation
informing in Clause 8 of the "Framework Agreement" when it is indicated that "the data of the signatory
may be complemented and enriched by data obtained from companies that provide
commercial information, by data obtained from public sources, as well as by data
statistical, socioeconomic (hereinafter, "Additional Information") always verifying that
These comply with the requirements established in the current regulations on the protection of
data".
However, with this information the interested party does not have details about the types of
data that will be collected from these external sources or how they will be complemented and
enriched. It is not sufficient for such purposes to indicate that data will be collected from
external sources, from supplier companies or public sources, which are not categories of
personal information; nor is it sufficient to indicate that the customer's data is
They will be complemented with statistical and socioeconomic data without further detail that delimits the
categories that will actually be covered.
Nothing is indicated either by CAIXABANK in its allegations about the data
made from all of the above.
It is also alleged by CAIXABANK that this information cannot be required in
relation to the categories of data that are processed based on legitimate interest. Nevertheless,
This Agency does not require this information as expressed by CAIXABANK. What I know
defends is the need to inform in such cases when the information processed based on the
legitimate interest, including the profiles prepared with this legal basis, is also used
for treatment based on consent.

In the same way, in case of processing of personal data based on interests
legitimate made with personal data that was not obtained from the interested party, the obligation
to inform about the categories of personal data used in this treatment comes
determined, also, by the provisions of article 14 of the RGPD.

Also in relation to information on the categories of personal data
CAIXABANK warns that it improves the information in its new Privacy Policy. There is not
more than see the information on categories of data that CAIXABANK has included in this
new document, contributed to the actions together with their allegations to the proposal of
resolution, to understand that the information analyzed cannot be understood as satisfactory,
that it is not enough to refer to movements of accounts or cards, receipts,
payroll, claims and claims. Here are some examples taken from this new Policy
of Privacy to illustrate categories of data that CAIXABANK does not detail in the
documents that are the subject of these proceedings, nor could the interested party deduce from the
information provided: family unit or circle; fiscal data; tax data;
information on investments made and their evolution; or grouping of clients in
categories and segments based on age, wealth, operations, consumption habits,
preferences, demographics.

Finally, CAIXABANK considers that the incorporation of all the information
regarding the typology of data would lead to an excessively long document,
likely to cause information fatigue in the interested parties. The WG29 Guidelines on
Transparency recommend avoiding this consequence, but such a purpose cannot be taken

as a justification for omitting necessary information. Forces to structure the information adequately, but not to limit it.

Those Guidelines require controllers to demonstrate responsibility proactive in the development and use of methods to comply with the requirements of transparency that avoid the fatigue of the interested party. Although they offer many recommendations and examples of different ways to provide information, warns that those responsible for the treatment are those who decide the tools of information they use.

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Information on the purposes to which the personal data of the users will be used. clients and the legal basis of the treatment. Confusion of legal bases.

Regarding the purposes to which the personal data of the clients will be used and the legal basis of the treatment, the entity CAIXABANK, in the "Framework Agreement" refers similar treatments in relation to different purposes, protected by legitimate interest in some cases and consent in others. This may mean that a treatment does not consented by the interested party is finally carried out under the legitimate interest of the responsible, undermining the ability of customers to decide on the destination of their personal information.

In relation to the treatments based on legitimate interest, information is provided on the purposes in the following terms:

. "We will send you updates and information about products or services similar to those already have contracts".

. “personalize your commercial experience in our channels based on previous uses”

. “offer you products and services that fit your profile”.

. “apply benefits and promotions that we have in force and to which you are entitled”

. “assess if we can assign pre-granted credit limits”.

In relation to treatments based on consent, information is provided

on the purposes in the following terms:

. “Study products or services that can be adjusted to your profile and commercial or credit situation”

. “make commercial offers tailored to your needs and preferences”

. “Design new products or services”

. “define or improve user experiences in their relationship with CaixaBank and the Companies of the

CaixaBank Group”.

. “Send commercial communications both on paper and by electronic or telematic means,

relating to the products and services that, at any given time: a) market CaixaBank or any of its

CaixaBank Group Companies b) market other companies in which CaixaBank has a stake and

third parties".

The information offered can cause confusion, to an average citizen, about the

legal basis that justifies the treatment, in the sense expressed.

In this case, (…) it follows that this entity was aware of the deficiencies

described above, assessed in relation to the information on the legal basis of the

treatment.

(…)

On the other hand, in the document through which the client signs the registration in the

aggregation service is included as an object of the contract the personalization of offers

adjusted to the profile and situation of the contracting party by CAIXABANK and the

improvement of risk analysis and suitability for contracting products and services

requested by the contracting party and the improvement of the management of non-payments and incidents derived from the contracted products and services; and between the treatments that are cited for the purpose of managing the service includes the improvement of the management of non-payments and incidents and the product tracking; while in the "Framework Contract" the consent of the client to carry out personal data processing with these purposes (the mention of the treatments indicated in the object of the contract of the service of aggregation and in relation to service management has been removed in the new version of this contract provided by CAIXABANK with its statement of arguments).

Information about purposes, in general, is closely linked to the principle of limitation of the purpose, regulated in article 5.1 b) of the RGPD, which establishes the following:

"1. The personal data will be:

b) collected for specific, explicit and legitimate purposes, and will not be further processed in manner incompatible with those purposes; according to article 89, paragraph 1, further processing of personal data for archiving purposes in the public interest, scientific research purposes and historical or statistical purposes shall not be considered incompatible with the initial purposes ("limitation of the purpose")".

The importance of this principle is determined by its object, which is none other than establish the limits within which personal data may be processed and the

extent to which they can be used, in addition to determining the data that may be collected.

To be “explicit”, an aim must be unambiguous and clearly expressed, with the detail enough so that the interested party, any interested party, knows in a certain way how they will be or

data not processed and favoring the exercise of their rights and the evaluation of the

regulatory compliance. To be “explicit”, the purpose must also be disclosed, which

that must take place at the time the personal data is collected

On this issue, the Article 29 Working Group ruled in its Opinion

03/2013, on purpose limitation. In this work, it was considered that they should be rejected,

unspecific, the purposes expressed with vague or too general formulas,

such as "improving the user experience", "marketing purposes" or

“future research”.

This Opinion indicates that the more complex the data processing

personal, the purposes must be specified in a more detailed and exhaustive way, “including,

among other things, the way personal data is processed. They must also

reveal the decision criteria used for the preparation of customer profiles”.

In accordance with the foregoing, the purposes for which the data will be processed

about which CAIXABANK informs its clients, do not adjust to the

aforementioned transparency requirements, especially if we consider the sheer amount

of personal data that it submits to treatment, individually or globally considered, and the

complex technical processes to which they are subjected, especially for the elaboration of

profiles, which are used for all the purposes described in the information offered to

Your clients:

. “personalize your commercial experience in our channels”.

. “offer you products and services that fit your profile”.

. “analysis, study and monitoring treatments for the offer and design of products and services

adjusted to the customer profile.

. "Study products or services that can be adjusted to your profile and business or credit situation."

. “commercial offers adjusted to your needs and preferences”.

. “define or improve user experiences”.

CAIXABANK's allegations deny, once again, the conclusions

obtained by this Agency from the analysis of the documents in question, this time in relation

with the confusion caused by the information about the data processing carried out in

based on legitimate interest and consent, previously highlighted, and, again, once again,

warns that the New Privacy Policy “reconfigures the differences between the

processing based on legitimate interest and consent”.

And in this case, too, he does not offer any explanation for the above shortcomings,

which CAIXABANK does not refer.

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Information on the legitimate interest of the person in charge

Likewise, the aforementioned precepts establish the obligation of the person in charge of informing

about the legitimate interests on which the processing of personal data is based (the

Articles 13 and 14 of the RGPD establishes the obligation to inform about “the legitimate interests

of the person in charge or of a third party”). However, the information offered by CAIXABANK

remains undefined as to the basis of the treatment, so that it does not substantiate

duly this authorization for the processing of data, resulting, therefore, contrary

to the principle of transparency.

Recital 47 of the RGPD is especially clarifying in the task of specifying

the content and scope of this legal basis for processing, described in letter f) of the

article 6.1 of the RGPD. From what is stated in this Recital, it is interesting to highlight as a criterion

interpretive, that the application of this legitimizing basis must be foreseeable for its

recipients, taking into account their reasonable expectations.

The Article 29 Working Group prepared Opinion 6/2014 on the “Concept of

Legitimate interest of the data controller under article 7 of the

Directive 95/46/CE”, dated 04/09/2014. Although this Opinion 6/2014 was issued to

favor a uniform interpretation of Directive 95/46 then in force, repealed by the

RGPD, given the almost total identity between its article 7.f) and article 6.1.f) of the RGPD, and given

realize that the reflections that the Opinion offers are an exponent and application of principles

that also inspire the RGPD -such as the principle of proportionality- or principles

principles of community law – the principle of fairness and respect for the law and the

Law- many of his reflections can be extrapolated to the application of current regulations,

the GDPR.

The mentioned Opinion refers to the "Concept of interest" in the following Terms:

“The concept of “interest” is closely related to the concept of “purpose” mentioned in

Article 6 of the Directive, although they are different concepts. In terms of protection of

data, “purpose” is the specific reason why the data is processed: the objective or intention of the

data processing. An interest, on the other hand, refers to a greater involvement than the

data controller may have in the processing, or to the benefit that the data controller

treatment obtains -or that society may obtain- from the treatment.

For example, a company may have an interest in ensuring the health and safety of its personnel.

Work at your nuclear power plant. Therefore, the company may have as its purpose the application of

Specific access control procedures that justify the processing of certain data

specific personnel in order to ensure the health and safety of personnel.

An interest must be articulated clearly enough to allow the balancing test

is carried out contrary to the interests and fundamental rights of the interested party.

In addition, the interest at stake must also be "pursued by the data controller". This

requires a real and current interest, which corresponds to present activities or benefits to be

look forward to the very near future. In other words, interests that are too vague or

Speculative will not suffice.

The nature of the interest may vary. Some interests may be compelling and beneficial to

society in general, such as the interest of the press in publishing information on corruption

government or interest in conducting scientific research (subject to appropriate safeguards).

Other interests may be less compelling for society as a whole or, in any case,

the impact of their search on society may be more disparate or controversial. This can, for

example, apply to a company's economic interest in learning as much as possible about its

potential customers in order to better target advertising on their products and services.

In the conclusions section of this Opinion, the following is added:

“The concept of “interest” is the broadest implication that the data controller may have

in the treatment, or the benefit that he obtains, or that society may obtain, from the treatment.

This can be pressing, clear or controversial. The situations referred to in the article

7, letter f), may therefore vary from the exercise of fundamental rights or the protection of

important personal or social interests to other less obvious or even problematic contexts.

…It must also be articulated clearly enough and must be specific enough to

allow the balancing test to be performed against the interests and rights

fundamentals of the interested party. It must also represent a real and current interest, that is, it must not be

speculative".

The "interest" goes beyond the "purpose". In terms of the GT29 it represents “a greater

involvement that the data controller may have in the processing, or the benefit

that the data controller obtains"; while "purpose", in terms of

data protection, "is the specific reason why the data is processed: the objective or the

intention of data processing.

In this case the "interest" is not expressed. The CAIXABANK entity does not report in the

"Framework Agreement" nor in the "Privacy Policy" on any specific interest when referring to

the data processing that it plans to carry out under this legal basis. is limited

to indicate the treatments carried out with this legal basis and the purposes, mainly

commercial, for which personal data is processed, but no legitimate interest of

CAIXABANK in the sense expressed.

This Agency considers that these treatments of personal data, such as

are based on the documents through which the interested parties are informed

in terms of data protection, they cannot be covered by the legal basis of interest

legitimate, which requires an evaluation to determine the interests or rights that prevail.

This weighting must take into account "the reasonable expectations of the interested parties

based on their relationship with the person in charge", understood as what the interested party can

perceive or infer as reasonable in and of itself based on the specific circumstances that

occur in each case, what could be foreseen at the time of data collection in a

reasonable.

The concept of "reasonable expectation" should always be used sparingly.

taking into account the position held by the person responsible and interested and the legal nature of

the relationship or service that links them, which could give rise to the subsequent use of the data

his personal. The context is taken into account in order to define, based on all this,

the further processing of the data that the interested party can expect to be carried out. Is

The customer's "reasonable expectation" has to be inferred by itself.

The information offered by CAIXABANK on the use of data based on the

legitimate interest is contrary to the previous approach, since said information is

insufficient to justify this legal qualification and to carry out the weighting judgment that

allows to determine if said reasons prevail over the interests and rights of the

interested, limiting the possibility that the client can correctly weigh the

entity's action. The specific determination of CAIXABANK's interest, articulated

with sufficient clarity, it will allow the interested party to oppose their own interests. enables,

likewise, a better analysis of the reality and timeliness of said interest.

All this without forgetting what has already been indicated in relation to the use of imprecise terms

and vague formulations in the information provided, in particular as regards the definition of

the purposes.

On the legitimate interest of the person in charge and the weighting test, the document

of the Article 29 Working Group “Guidelines on Transparency under the

Regulation 2016/679”, adopted on 11/29/2017 and revised on 04/11/2018, offers the

following criteria:

“The specific interest in question must be identified for the benefit of the data subject. As a matter of

good practice, the data controller may also provide the data subject with the information

resulting from the “weighting test” that must be carried out in order to benefit from the provisions

in article 6, paragraph 1, letter f), as a lawful basis for the treatment, prior to any

collection of the personal data of the interested parties. To avoid information fatigue, this can

be included within a privacy statement/notice structured in levels (see section 35).

In any case, the position of the WG29 is that the information addressed to the interested party must make it clear

that he can obtain information about the weighting test upon request. This turns out

essential for transparency to be effective when stakeholders doubt whether the examination of weighting has been carried out loyally or wish to file a claim with the authority of control".

On the other hand, regarding the data processing carried out based on the interest legitimate, both the "Framework Agreement" and the "Privacy Policy" indicate the following:

. Sending “updates and information about products or services similar to those you already have hired”.

. Treatment of information “personalize your commercial experience in our channels based on previous uses.

. Offer of products and services "that fit your profile"

. Data processing "to apply benefits and promotions that we have in force and to which we have the right”

. Data processing “to assess whether we can assign you pre-granted credit limits”.

However, it has been verified that CAIXABANK performs other data processing based on legitimate interest about which it does not inform at any time to the interested. (…)

Some of these treatments, and others, are also mentioned in the document called "Processing of personal data based on legitimate interest", which can be accessed through the website "caixabank.es", incorporated into the actions by the Agency Inspection Services dated 01/07/2020, which is reproduced in Annex VI:

. Follow-up of the fulfillment of the objectives, incentives or prizes set for our employees.

. Communication of data between CaixaBank and the companies in which it has a stake for the purpose of make internal reports (without personal data), which allow us, among other aspects, carry out market studies and mathematical models to establish the business strategy of the CaixaBank Group.

. Creation of statistical models (without personal data) that help the Entity to know

better the preferences and tastes of our clients, collaborating in the improvement of the design and execution

of commercial actions, as well as carrying out aggregated reports on the result of the models

to monitor customer behavior.

. Structuring and profiling of the information processed by the Entity to maintain the resources and

technical systems prepared to efficiently meet management needs.

. Control and supervision of the Entity's activity through sampling and self-assessments with the

purpose of identifying and assessing possible risks in the marketing of products, controls and

evaluate compliance with internal rules and regulations.

. Control and supervision of operations in order to prevent fraud, both to customers and to the

own entity.

However, this document is not provided to the interested parties nor is there any

reference to it in the "Framework Agreement", the "Consent Agreement" or in the "Policy

of Privacy", so that CAIXABANK cannot be certain about the access of the

clients to this information nor is it in a position to prove this access.

About this document called "Processing of personal data in

based on legitimate interest" it is also interesting to highlight that the list of treatments based on

in the legitimate interest that it contains, it is presented as an open list that "will be updated

permanently to include new treatments, or cancel those that are no longer

realize". CAIXABANK's approach must be rejected as it could lead to

the performance of data processing about which the users are not promptly informed.

interested in the documents they sign on personal data protection,

as it happens in the indicated examples.

If the interested parties are not duly informed about the treatments, and even less

about the specific interest pursued by the person in charge with these treatments on which

not informed, they can hardly confront the legitimate interests of CAIXABANK

their own interests and rights, nor do they have the opportunity to even exercise the right to

opposition.

In its written arguments for the proposed resolution, CAIXABANK does not

no mention of this lack of information on the legitimate interest pursued, which supposes

a breach of the provisions of article 13.1.d) of the RGPD, nor to the other

circumstances expressed in this section.

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Profiling Information

Another important aspect related to the matter analyzed has to do with the use of

personal data for the preparation of customer profiles, understood as any

form of treatment of personal data that evaluates personal aspects related to a

Physical person. According to art. 13.1.c) of the RGPD, the person in charge must inform the interested party of

the purposes of the treatment, as well as its legal basis, which means that you must inform

on the elaboration of profiles when the person in charge has foreseen such purpose and specify the

legal basis that protects the treatment for that purpose.

Article 11 of the LOPDGDD establishes the minimum content of the basic information

that must be provided to the interested party:

"two. The basic information referred to in the previous section must contain, at least:

(…)

If the data obtained from the affected party were to be processed for profiling, the information

Basic will also include this circumstance.

Recital 60 of the RGPD also refers to the obligation to “inform the

concerned about the existence of profiling and the consequences of such

elaboration".

On the principles relating to the processing of personal data, when these

consist of profiling, the Guidelines of the Article 29 Working Group

on automated individual decisions and profiling for the purposes of

Regulation 2016/679, adopted on 10/03/2017 and revised on 02/06/2018, indicate the

Next:

“Transparency of processing is a fundamental requirement of the GDPR.

The profiling process is often invisible to the data subject. It works by creating data

derived or inferred about individuals ("new" personal data that has not been directly

provided by the interested parties themselves). People have different levels of understanding and

it can be difficult to understand the complex techniques of the profiling processes and

automated decisions.

“Taking into account the basic principle of transparency that underpins the GDPR, those responsible for the

treatment must guarantee that they explain to people in a clear and simple way the operation

of profiling or automated decisions.

In particular, when the processing involves decision-making based on the preparation of

profiles (regardless of whether they fall within the scope of the provisions of Article 22), you must

clarify to the user the fact that the treatment has the purpose of both a) profiling and

of b) adoption of a decision on the basis of the generated profile

Recital 60 states that providing information about profiling is part of

of the transparency obligations of the controller according to article 5, paragraph 1,

letter a). The interested party has the right to be informed by the data controller, in

certain circumstances, about your right to object to "profiling"

regardless of whether there have been individual decisions based solely on the

automated processing based on profiling".

"The person responsible for the treatment must explicitly mention to the interested party details about the right

of opposition according to article 21, paragraphs 1 and 2, and present them clearly and apart from any

other information (article 21, paragraph 4).

According to article 21, paragraph 1, the interested party can oppose the treatment (including the elaboration

profiles) for reasons related to your particular situation. Those responsible for the treatment

are specifically obliged to offer this right in all cases in which the treatment is

based on article 6, paragraph 1, letters e) or f).

The information object of the actions refers to the elaboration of profiles in

numerous times when describing the purposes for which the data will be used, or

the purposes that are detailed entail these profiling operations. so can

be understood, for example, in relation to the personalization of offers or the experience of the

customer or the purpose of "knowing you better".

Therefore, CAIXABANK processes the personal data of its customers to

proceed to its profiling, which it subsequently uses. In most of the cases in which

that refers to the elaboration of profiles or the use of data that are the result of

profiling activities, the basis for its action is based, according to the information

that it facilitates to the interested parties, with their consent (Clause 8 of the Framework Agreement);

except in what refers to the "personalization of the experience" of the client or sending of

information in which he may have an interest, which CAIXABANK protects in the interest

legitimate, on which it has already been indicated that the information is insufficient.

For the reasons already expressed in relation to the lack of justification of the interest legitimate, treatment operations that include the preparation of data must be rejected. profiles or that are based on these profiles and that have a legal basis in the legitimate interest of the person in charge.

In addition, in relation to the profiling operations, in the opinion of this Agency, the information requirements described. CAIXABANK limits itself to reporting on actions that you can develop adapted to the "client profile" or "personalized", but not offers information on the type of profiles that are going to be carried out, the specific uses to that these profiles will be used or the possibility that the interested party can exercise the right of opposition in application of article 21.2 RGPD, when the profiling is related to direct marketing activities.

In the terms of GT29, they do not “explain to people in a clear and simple way the profiling operation” nor are they warned about the adoption of decisions “based on the generated profile”, regardless of whether they fall within the scope of the provisions of article 22.

The concept of profiling is not dealt with in a systematic way by CAIXABANK. Of In fact, the Privacy Policy only talks about "getting to know you better, that is, studying your needs to know what new products and services fit your preferences and analyze the information that allows us to have determined in advance what your credit capacity”, omitting the preparation of profiles, despite the fact that this purpose, as stated, it is necessary to make a preliminary profile.

This implies a breach of the provisions of article 11 of the LOPDGDD.

In this case, moreover, the treatment operations based on the profiling of the

customer go beyond improving the experience or sending commercial offers

adjusted to the needs and preferences of the client, to the point that said profiling

is used by CAIXABANK for the design of products and services or to improve the design and

usability of existing ones, that is, for your own business.

CAIXABANK devotes a subsection of its allegations to the preparation of profiles,

but without offering any explanation about the deficiencies appreciated, to which it does not refer.

In relation to the profiling operations, in his arguments at the opening of the

procedure warns CAIXABANK that treatments were included in the clause written

in 2016 (referring to Clause 8 of the "Framework Agreement", the one related to treatments based on

in the client's consent), when there were no clear criteria, which could

rely on another legal basis other than consent, such as legal obligations

(fraud control and risk management) or the contractual relationship (monitoring and adoption of

recovery stockings). He adds that what has occurred is an excess of information.

Subsequently, in his allegations to the motion for a resolution, he reiterates this allegation.

indicating that the error was made in that clause (corrected in the New Policy on

Privacy), to list treatment operations that had nothing to do with consent

for profiling. And he lists the specific treatments that, in his opinion, can be covered by

another legal basis other than legitimate interest (the list of the treatments to which it refers

this allegation is outlined in the following Legal Basis).

However, this allegation is not related to the deficiencies found in the

information offered on the elaboration of profiles, previously expressed, and is subject to

analysis in the following Legal Basis, in the section that examines the processing

of data based on the consent of the interested parties. It should be clarified now that it has been the

CAIXABANK entity itself, which decided to protect the profiles in the consent.

On the other hand, it should be added that the conclusions expressed do not judge the

information offered due to its breadth (CAIXABANK alleges an excess of information and provides

an example of a reduced clause), but whether it is sufficient and appropriate to the norm is assessed.

In relation to this issue of profiles, CAIXABANK alleges that in the Clause

8 of the "Framework Contract", information is given on the purposes indicating that the

consent for the "analysis, study and monitoring for the offer and product design

adjusted to your customer profile", and information is provided on the preparation of profiles by explaining the

treatment operations that include this purpose ("Study products or services

that may be adjusted to your profile and specific commercial or credit situation").

It has already been said above that the information offered sometimes refers to the

profiling by describing the purposes for which the data will be used

personal. But that information contained in Clause 8 of the "Framework Agreement" does not save

that other information on purposes that entail profiling operations on

which the customer is not notified. Furthermore, CAIXABANK does not explain the lack of information, in

general, on the types of profiles and the uses to which they are going to be put, so that the

The interested party has clear knowledge of the operation of these profiles and, above all, of

the consequences of its elaboration. These circumstances are not mentioned by CAIXABANK

in his allegations, and nothing is said in them to justify not informing the

interested party about the possibility of exercising the right of opposition, when appropriate.

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Information on the exercise of rights, possibility of claiming before the Agency

Spanish Data Protection Officer, existence of a Data Protection Delegate

Data and your contact data and retention periods.

On the other hand, the information provided by CAIXABANK on the exercise of

rights, possibility of claiming before the Spanish Data Protection Agency,

existence of a Data Protection Delegate and their contact details is not uniform in

all documents analyzed.

CAIXABANK's "Framework Agreement" and "Privacy Policy" inform about the

rights that correspond to the interested party in terms of personal data protection,

including the revocation of the consents granted, as well as the channels for

exercise them. They also report on the possibility of filing a claim with the

Spanish Agency for Data Protection and on the existence of a Protection Delegate

Data of the CaixaBank Group of companies, indicating the means to contact

the same.

The “Consent Contract” or document of “Authorization/Revocation of

consents”, on the other hand, in its version 2, it reported on the possibility of exercising the

rights, but without mentioning those established in the applicable regulations, nor

it referred to the existence of a Data Protection Officer; although, you are

deficiencies were corrected in version 3 of the document.

To refer to the use of data based on legitimate interest, the "Framework Agreement"

expressly warns about the possibility of opposition. In the Privacy Policy it is not

mentions the right of opposition, but it is indicated "... if you prefer that we do not do it, only

you have to tell us, in…". It is also reported on the right of opposition in the

document posted on the CAIXABANK website regarding the "Processing of personal data

based on legitimate interest.

The information offered for access to personal data of customers in

social networks informs about the rights collected in the LOPD, not in the RGPD:

"You may exercise your rights of access, rectification, cancellation and opposition in accordance with the

data protection regulations. To exercise these rights, you must go to the address of

CaixaBank…".

Likewise, the contract that regulates the aggregation service informs about the rights

and channels for its exercise, the possibility of contacting the Protection Delegate of

Data and to claim before this Agency, but it does not expressly mention the possibility of

revoke the consent and on the right of opposition the following is indicated:

"The non-acceptance or subsequent opposition to the processing of your data, with the purposes below

detailed, implies that CaixaBank will not be able or (as the case may be) must stop offering you the service of

aggregation".

This information is modified in the new stipulations of the Service Contract of

Aggregation, (...)

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Information on retention periods of personal data

As indicated in relation to the issues indicated in the previous section,

the information provided on data retention periods is also not uniform in

the documents subject to the proceedings.

Regarding data retention, the "Framework Agreement" includes a section

specific on this issue (11.3) with the following content:

"Your data will be processed while the contractual or business relationships remain in force.

established or the commercial use authorizations granted.

Once the use authorizations have been revoked, or six months after the relationship has ended

contractual or established business, not being your data necessary for the purposes for which

were collected or processed, your data will no longer be processed.

In accordance with the regulations, the data will be kept for the sole purpose of complying with those

legal obligations imposed on CaixaBank and/or Group Companies, and for the formulation, exercise or

defense of claims, during the prescription period of the actions derived from the relationships

contractual or business contracts signed".

However, in section 7.1 "Processing of personal data with the

purpose of managing Business Relations" indicates that the data will be canceled with

the cessation of all commercial relations, without mentioning the period of six months

after commercial relations:

"… at the time of cancellation by the Signatory of all Business Relationships, the

aforementioned data processing will cease, and your data will be canceled in accordance with the provisions

in the applicable regulations, keeping them by CaixaBank, duly limiting their use until they have

prescribed the actions derived from them".

By

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other part,

called

"Consent Agreement"

either

“Authorization/revocation for the processing of personal data for purposes commercial by CaixaBank, S.A. and companies of the CaixaBank group”, for its part, indicated in its version 2 that the data would be processed while the authorizations of use granted or established contractual or business relationships, but without warning about the use during the six months after the end of these contractual relationships. That six-month data utilization period was added in version 3 of this document, with a scope similar to that outlined in "Framework contract":

“The authorizations you grant will remain in effect until revoked or, in the absence of this, until six months after you cancel all your products or services with CaixaBank or any company of the CaixaBank Group”.

Similar content contains the section of the "Privacy Policy" regarding the preservation of personal data.

In none of the cases is the conservation of the data motivated during the six months after the contractual or business relations.

Information regarding access to personal data of customers on social networks does not contain any indication on the conservation of personal data; Meanwhile he contract that regulates the aggregation service, although it informs that the data will be processed while the contractual relations remain in force, warns that, in the event that the data is processed in accordance with your consent, may be processed while not withdraw, even after the relationship. In the clauses of the contract for this aggregation service indicated:

“The data will be processed while the relationships derived from the relationships remain in force. contractual, and will be kept (during the limitation period of the actions derived from such relationships) for the sole purpose of complying with the required legal obligations, and for the formulation, exercise or defense of claims. However, in the event that the data is processed

in accordance with your consent, they may be processed as long as you do not withdraw it.

Notwithstanding the foregoing, CaixaBank informs you that it will proceed to remove the data from its systems collected by the aggregation service:

(i) in the event of elimination of a financial institution, CaixaBank will proceed to the elimination of the data of the financial institution eliminated.

(ii) in the event that the contracting party informs us of their withdrawal from the Service, CaixaBank will proceed to elimination of the data of all third-party financial entities".

(In the new clauses of the Aggregation Service Contract, the information

on the conservation of personal data in relation to the treatments with the purpose commercial, indicating that they will be treated until the revocation of consent or until twelve months after the end of the contractual relationship).

CAIXABANK has argued that the retention period of six months after the contractual relationship is a self-imposed measure, that there is no legal obligation to motivate that term and that the indication of a term of six months in one case and twelve in others responds to the fact that each client has a contract, so there is no single term of conservation.

On this issue, it should be clarified that the opportunity and regularity of these deadlines, whether or not they comply with the principle established in article 5 of the RGPD, but the information offered, which is not uniform in the information offered to the interested. The imputed entity itself has highlighted in its pleadings the convenience of regularizing this information.

These differences in terms of the retention period cannot be justified by the

contract that links the client with the entity, given that the term in question does not refer to the

conservation of the data linked to the business relationship, but refers to the

use authorizations.

Throughout this Legal Basis, the deficiencies have been described.

assessed in relation to compliance with the duty to provide information on protection

of data by CAIXABANK, which can be succinctly summarized as follows:

. The information offered to CAIXABANK customers is not uniform. Documents

arranged by CAIXABANK to inform customers use a different terminology

to refer to the same issues and do not have the same content, so they are not

it offers the information with the same breadth in all cases.

. Imprecise terminology and vague formulations are used, with ambiguous meanings in

some cases, and whose true scope is not developed, making it difficult for the recipient of

the information can conclude its real and concrete scope.

. The information offered on the processing of personal data based on the relationship

contract does not allow to assess whether all the treatments included in this section can

rely on that legal basis.

. Information on the categories of personal data subject to treatment; and about the

specific categories of personal data that will be processed for each of the purposes

specific. This requirement is not met in relation to:

. Data processing whose legal basis is determined by the consent

of the interested party, for which personal data obtained from the use of the

products and services contracted by the client, navigation data and those obtained from

the communications established between the client and the entity.

. Data processing whose legal basis is determined by the legitimate interest of

CAIXABANK and whose purpose is to prepare profiles that are subsequently

used to carry out data processing based on the consent of the

interested.

. The personal data obtained by CAIXABANK from external sources or inferred by the

entity itself. These include the data obtained by CAIXABANK on products

and services contracted by the interested parties with third parties, including those of those

third-party products and services marketed by CAIXABANK; as well as the data

that derive from the commercial relations of CAIXABANK itself with third parties and the

data compiled from the above.

. The categories of personal data are not duly informed in all cases

that will be treated for each of the specified purposes.

. Information on the purposes to which the personal data of the clients will be used and

the legal basis of the treatment. Confusion of legal bases.

. The "Framework Agreement" refers to similar treatments in relation to different purposes,

protected by legitimate interest in some cases and by consent in others.

. The document signed by the client for registration in the aggregation service informs

on purposes linked to the object of the contract that in the "Framework Contract", on the other hand, is

associated with treatments for which the client's consent is required.

. Information on the legitimate interest of the person in charge:

. The "interest" is not expressed. The CAIXABANK entity does not report in the "Framework Agreement" or

in the "Privacy Policy" about any specific interest when referring to the

data processing that it plans to carry out under this legal basis.

. The information is insufficient to justify this legal authorization and to carry out the

weighting judgment that allows determining if said reasons prevail over the

interests and rights of the interested party, limiting the possibility that the client may

correctly weigh the performance of the entity.

. CAIXABANK processes personal data based on legitimate interest in

those who do not inform the interested parties at any time.

. The document called "Processing of personal data based on the

legitimate interest" includes a list of treatments based on the legitimate interest that

It is presented as an open list.

. Profiling Information

. The legitimate interest of CAIXABANK in the preparation of profiles for the

"personalization of the experience" of the client or sending of information in which the client

may be interested.

. No information is offered on the type of profiles that are going to be carried out, the uses

specific to which these profiles or their operation are going to be used and the

consequences of its preparation.

. There is no information about the exercise of the right of opposition, when the profiling is

related to direct marketing activities.

. The Privacy Policy omits the elaboration of profiles in relation to the

purpose of "getting to know you better, that is, studying your needs to know what new

products and services are adjusted to your preferences and analyze the information that we

allows you to determine in advance what your credit capacity is".

. Information on the exercise of rights, possibility of claiming before the Spanish Agency

of Data Protection, existence of a Data Protection Delegate and their personal data.

contact and retention periods.

. The "Consent Contract" informed about the possibility of exercising the rights,

but without mentioning those established in the applicable regulations.

. The right to object is not mentioned in the Privacy Policy.

. The information offered for access to personal data of customers in networks

social reported on the rights contained in the LOPD, not in the RGPD.

. The contract that regulates the aggregation service did not expressly mention the

possibility to revoke the consent and to exercise the right of opposition.

. The information on personal data retention periods is not uniform:

. According to section 11.3 of the "Framework Agreement", personal data will no longer be processed

six months after the contractual relations have ended; while in the section

7.1 of the same document, said term is not mentioned and it is reported that the treatments

will cease with the cancellation of contractual relations.

. The so-called "Consent Contract", in its version 2, did not warn about the

use of personal data during the six months after the end of

these contractual relationships. That six-month data utilization period

was added in version 3.

. The information related to the access to personal data of the clients in social networks does not

contains no indication on the conservation of personal data.

. The contract that regulates the aggregation service reported that data processing

based on the client's consent may be carried out as long as it is not withdrawn, even

relationship ended. The new clauses of this contract indicate that they will be

treated until the revocation of consent or until twelve months have elapsed since

the termination of the contractual relationship.

CAIXABANK, in its allegations, limits itself to affirming in a generic manner that it complies

the requirements established in the applicable regulations, in articles 13 and 14 of the RGPD, or

either to deny the exposed conclusions, without offering in any case any justification on

the irregularities observed, which he does not even mention.

On many occasions, it simply qualifies those defects or noncompliance as a

mere error to which no effect can be attributed. At other times, while

denies those breaches, admits the defects, and alleges that the improvement process

developed has corrected them. He goes so far as to state that he does not maintain that the information was

perfect or that there were no errors, but that does not mean that there was

any breach.

This is the case, for example, in relation to the lack of uniformity of information

offered; the confusion about the legal bases generated by the information offered by the

data processing carried out based on legitimate interest and consent;

information on the legitimate interest pursued and the processing of personal data

made for commercial purposes covered by this legal basis; in relation to the

profiling; or in relation to the information provided on the exercise of

rights and the term of data conservation.

In general, CAIXABANK presents this alleged regularization as sufficient to

prevent any type of responsibility from being demanded, without considering that it is

substantive or substantive breaches that affect the validity of the information and

basic principles of personal data protection.

On the other hand, in its arguments to the proposed resolution, CAIXABANK

refers primarily to the issue of text compression, in relation to the

use of imprecise terminology and vague formulations, despite the fact that it is only one of

the many highlights in the summary above. The aforementioned entity alleges that it has not been

proven that the expressions used are not clear and understandable for the "member

medium of the target audience" (Guidelines on Transparency), violating the principle of

presumption of innocence, and provides the result of a survey and a user test

carried out by an external and independent company that, according to CAIXABANK, certify that

clients fully understand the information provided (the details of these works

external are listed in the Twelfth Precedent). In this regard, it clarifies that

by providing this evidence you are assuming a reversal of the burden of proof

violator of their fundamental rights.

These external studies were carried out through telephone surveys of 171 clients,

the first, and 100 non-customer users, the second.

The first of these surveys consisted of reading to the respondent an extract from the

Clause 8 of the "Framework Agreement", to later ask them some questions about the

same (...)

In the second work, the data collection screens were transferred to the users.

consent, its dynamics and context, as well as the integrity of clause 8 of the "Contract

Framework", simulating the experience of a signer of this document in an office. (…)

CAIXABANK also provides a report from a company specializing in linguistics

on the analysis made of two clauses of the "Framework Agreement", one of them Clause 8,

in which the recommendations made are minimal.

With the result of this study and those surveys, according to which a percentage

average higher than 90% had understood that the information offered in the aforementioned Clause 8

included the content of the questions, CAIXABANK intends to provide an answer, not only to the issue relating to the use of imprecise terminology, but also to many other breaches outlined in this Legal Basis, such as the lack of specification of the categories of personal data processed, the lack of information on the purposes and confusion of legal bases.

This Agency does not share the ideas expressed by CAIXABANK in its allegations. In the preceding sections, it has been demonstrated with sufficient rigor and detail that CAIXABANK does not meet the information requirements established and that the Non-compliances found are not the result of mere errors, so the proposal must be rejected. exoneration of liability to CAIXABANK based on the alleged regularization of those errors, committed by the one who invokes them.

As for the lack of evidence regarding the non-comprehension by the clients of the texts analyzed, alleged by CAIXABANK, it is understood that this Agency has tested the use of the expressions that are cited in the corresponding section of this Law Foundation and has sufficiently substantiated the reasons why the terminology and expressions used should be rejected.

This conclusion is based on consolidated criteria, such as those expressed by the Group of Labor of Article 29 in its “Guidelines on transparency under the Regulation 2016/679”, which are known by CAIXABANK. The Article 29 Working Group established by virtue of Directive 95/46/CE with an independent and consultative character, and whose opinions and recommendations serve as an interpretive element in the matter that we

occupies, admitted by the jurisprudence. It is currently the European Committee for the Protection of Data the body with competence to issue guidelines, recommendations and good practices in order to promote the consistent application of the GDPR.

On the other hand, the use of these indeterminate expressions occurs throughout all the text of the documents that are analyzed, and not only in Clause 8 of the "Contract Marco", to which the studies provided by CAIXABANK refer. Therefore, the The conclusions of these studies prove nothing to the contrary regarding the lack of definition of the information offered, in general.

It is not said here that the information offered is not fully understandable, since that, obviously, the difficulties in understanding ambiguous expressions or indeterminate words affect the parts of the text in which they are used. But if it can be said that the understanding by the client of a part of the text of a document does not mean that it is understand all the text of all the documents.

And it should also be noted that the information is not valid for the sole reason that be understandable. The studies provided do not refer to important aspects that are questioned in this resolution, whose understanding by customers does not change the conclusions of this Agency and the consequences of non-compliance respective. This can be said, for example, (i) in relation to the defects appreciated on the lack of information on the legal basis of the treatments: although the interested parties understand that their data will be provided to the companies of the Group, this circumstance does not saves the lack of information on the legal basis of this transfer of data; or (ii) with respect to the use of personal data obtained from “the contracting and operations of products and services with third parties”: the fact that the client understands that these data will be used does not

saves the lack of information on the categories of personal data that are collected and undergo treatment; or (iii) on the data processing cited in Clause 8 that have a purpose other than the three indicated in the repeated Clause 8: although the client understood these treatment activities, it does not resolve that they are carried out without legal (as will be seen in the following Foundation of Law).

From a technical point of view, the work carried out indicates nothing about the selection of the sample of clients who were interviewed (they only indicate that they have been selected people who signed the "Framework Contract" in the last year); the statements of the questions are schematic, not precise and clarifying the content of the information, and They do not have essential aspects as their object, such as those related to profiles, their elaboration and utilization; and it is not acceptable that the survey is carried out on an extract of the information, whose content, moreover, does not exactly coincide with that of Clause 8 of the "Framework contract". It is, in short, a minimal survey compared to the purposes and data processing contemplated in the information provided by CAIXABANK to its clients regarding data protection.

Consequently, in accordance with the exposed evidence, the facts described in this Law Ground suppose a violation of the principle of transparency regulated in articles 13 and 14 of the RGPD, which gives rise to the application of the corrective powers that article 58 of the aforementioned Regulation grants to the Spanish Agency for Data Protection.

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Articles 6 and 7 of the same RGPD refer, respectively, to the "Legality of the treatment" and the "Conditions for consent":

Article 6 of the RGPD.

"1. The treatment will only be lawful if at least one of the following conditions is met:

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 a party or for

the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person in charge of the

treatment;

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 the public interest 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 said interests do not prevail the interests or

fundamental rights and freedoms of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by the

public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions in order to adapt

the application of the rules of this Regulation with respect to the treatment in compliance with the

section 1, letters c) and e), establishing more precisely specific treatment requirements and other

measures that guarantee lawful and equitable treatment, including other specific situations

of treatment under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) Union law, or

b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, in relation to the

treatment referred to in section 1, letter e), will be necessary for the fulfillment of a mission

carried out in the public interest or in the exercise of public powers conferred on the person responsible for the

treatment. This legal basis may contain specific provisions to adapt the application of

rules of this Regulation, among others: the general conditions that govern the legality of the

treatment by the controller; the types of data object of treatment; the interested

affected; the entities to which personal data can be communicated and the purposes of such

communication; purpose limitation; the terms of conservation of the data, as well as the

processing operations and procedures, including measures to ensure proper processing

lawful and fair, such as those relating to other specific situations of treatment under the chapter

IX. The law of the Union or of the Member States will fulfill an objective of public interest and will be

proportional to the legitimate aim pursued.

4. When processing for a purpose other than that for which the personal data was collected

is not based on the consent of the interested party or on the Law of the Union or of the States

members that constitutes a necessary and proportionate measure in a democratic society to

safeguard the objectives indicated in article 23, paragraph 1, the controller, with

in order to determine if the treatment for another purpose is compatible with the purpose for which they were collected

initially the personal data, will take into account, among other things:

a) any relationship between the purposes for which the personal data were collected and the purposes

of the envisaged further treatment;

b) the context in which the personal data were collected, in particular as regards the

relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when special categories of data are processed

personal, in accordance with article 9, or personal data relating to convictions and offenses

criminal, in accordance with article 10;

d) the possible consequences for data subjects of the envisaged further processing;

e) the existence of adequate guarantees, which may include encryption or pseudonymization".

Article 7 of the RGPD.

"1. When the treatment is based on the consent of the interested party, the person in charge must be

able to demonstrate that he consented to the processing of his personal data.

2. If the data subject's consent is given in the context of a written statement that is also

refers to other matters, the request for consent will be presented in such a way that it is distinguished

clearly from the other matters, in an intelligible and easily accessible manner and using clear and

easy. Any part of the declaration that constitutes an infringement of this document will not be binding.

Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The withdrawal of

consent will not affect the legality of the treatment based on the consent prior to its withdrawal.

Before giving their consent, the interested party will be informed of it. It will be so easy to remove the

consent how to give it.

4. In assessing whether consent has been freely given, account shall be taken to the greatest extent

possible whether, among other things, the performance of a contract, including the provision of a

service, is subject to consent to the processing of personal data that is not necessary for

the execution of said contract.

In relation to what is established in the reviewed articles, it is taken into account the

expressed in recitals 32 (already outlined), 40, 41, 42 (already outlined), 43, 44 and 47 (already cited in the Legal Basis above) of the GDPR. From what is stated in these considerations, the following should be noted:

(43) To ensure that consent is freely given, it should not constitute a valid legal basis for the processing of personal data in a specific case in which there is a clear imbalance between the data subject and the controller, in particular when said controller is a public authority and it is therefore unlikely that the consent was freely given in all the circumstances of that particular situation. I know presumes that the consent has not been given freely when it does not allow the separate authorization of the different personal data processing operations despite being appropriate in the specific case, or when the performance of a contract, including the provision of a service, is dependent on the consent, even when this is not necessary for such compliance.

(44) The processing must be lawful when it is necessary in the context of a contract or the intention to conclude a contract.

It is also appropriate to take into account the provisions of article 6 of the LOPDGDD:

“Article 6. Treatment based on the consent of the affected party

1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party any manifestation of free, specific, informed and unequivocal will by which he accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data concerning you.

2. When it is intended to base the processing of the data on the consent of the affected party for a plurality of purposes, it will be necessary to state specifically and unequivocally that said Consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the treatment of the data. personal data for purposes that are not related to the maintenance, development or control of the contractual relationship.

In the present case, CAIXABANK contemplates in the "Framework Agreement" signed by the clients the use of their personal data for the following purposes (excluding those purposes referred to by said entity as “regulatory”):

1. Manage business relationships: comply with and maintain them, verify the correction of the operation, verify the identity of the signatory, establishment and maintenance of business relationships.

2. Sending information and updates about products or services similar to those already have hired; personalize the customer's commercial experience in the channels of the entity based on previous uses, to offer you products and services that fit your profile, to apply benefits and promotions that we have in force and to those who have right, and to assess whether we can assign you pre-granted credit limits that you may Use when you deem it most appropriate.

3. Commercial purposes:

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

. Commercial offer of products and services of CaixaBank and the Group Companies CaixaBank.

. Transfer of data to third parties.

4. Transfer of personal data to CaixaBank Group companies.

5. Manage the client's signature and, where appropriate, verify the identity of the signatory in successive operations, through the use of pattern contrast methods. This purpose is persecuted by processing biometric data.

In relation to these purposes, CAIXABANK refers to compliance with the

contractual relationship as a legitimizing basis for the purposes indicated in number 1

previous; to the legitimate interest as a legal basis for the use of the data for the indicated purpose

in section 2 above; and consent in relation to the purposes indicated in the

paragraph 3.

CAIXABANK does not inform about any legal basis that enables the transfer of data

to the companies of the CaixaBank Group.

Information on the processing of biometric data was initially included in the

"framework contract" as a subsection of section 7 ("Processing of personal data

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

privacy policy), but without clearly specifying the legal basis of the treatment; Y

currently rely on the consent of the interested parties.

-

Processing of personal data based on the consent of the interested parties

contemplated in the "Framework Agreement" (clause 8) and "Consent Agreement".

In accordance with what has been expressed, data processing requires the existence of a

legal basis that legitimizes it, such as the consent of the interested party validly provided,

necessary when there is no other legal basis mentioned in article 6.1

of the RGPD or the treatment pursues a purpose compatible with that for which the data were collected.

data.

Article 4 of the GDPR) defines “consent” as follows:

“11) «consent of the interested party»: any manifestation of free, specific, informed and

unequivocal by which the interested party accepts, either through a declaration or a clear action

affirmative, the treatment of personal data that concerns you”.

Consent is understood as a clear affirmative act that reflects a

manifestation of free, specific, informed and unequivocal will of the interested party to accept

the processing of personal data that concerns you, provided with guarantees

enough so that the person in charge can prove that the interested party is aware of the

fact that you give your consent and the extent to which you do so. And it should be given to all

the treatment activities carried out with the same or the same purposes, so that, when

the treatment has several purposes, consent must be given for all of them in a

specific and unequivocal, without the execution of the contract being subject to the fact that the affected party

consent to the processing of your personal data for purposes that are unrelated

with the maintenance, development or control of the business relationship. In this regard, the law

of the treatment requires that the interested party be informed about the purposes for which they are intended

data (informed consent).

Consent must be given freely. It is understood that consent

is free when the interested party does not enjoy a true or free choice or cannot refuse or

withdraw your consent without prejudice; or when you are not allowed to authorize by

separate the different personal data processing operations despite being adequate

in the specific case, or when the fulfillment of a contract or provision of service is

dependent on consent, even when consent is not necessary for such compliance.

This occurs when consent is included as a non-negotiable part of the

general conditions or when the obligation to agree to the use of

additional personal data to those strictly necessary.

Without these conditions, the provision of consent would not offer the data subject a

true control over your personal data and their destination, and this would make it illegal to

treatment activity.

The Article 29 Working Group analyzed these issues in its document

“Guidelines on consent under Regulation 2016/679”, adopted on

11/28/2017, revised and approved on 04/10/2018.

These Guidelines have been updated by the European Committee for Data Protection

on 05/04/2020 through the document "Guidelines 05/2020 on consent with

under Regulation 2016/679” (keeps the parts that are transcribed literally identical

next). In this document 5/2020 it is expressly stated that the opinions of the

Article 29 Working Party (WP29) on consent remain relevant,

as long as they are consistent with the new legal framework, stating that these guidelines do not

they replace the previous opinions, but rather expand and complete them.

From what is indicated in the aforementioned WG29 document, it is now of interest

highlight some of the criteria related to the validity of consent, specifically

on the elements “specific”, “reported” and “unequivocal”:

“3.2. Specific declaration of will

Article 6, paragraph 1, letter a), confirms that the consent of the interested party for the treatment of

your data must be given "for one or more specific purposes" and that an interested party can choose with

for each of these purposes. The requirement that consent must be "specific" has

in order to guarantee a level of control and transparency for the interested party. This requirement has not been

modified by the GDPR and remains closely linked to the consent requirement

"informed". At the same time, it must be interpreted in line with the 'decoupling' requirement for

obtain “free” consent. In short, to comply with the character of "specific" the

data controller must apply:

i) specification of the purpose as a guarantee against deviation from use,

ii) dissociation in consent requests, and

iii) a clear separation between the information related to obtaining consent for the

data processing activities and information relating to other matters.

Ad. i): In accordance with article 5, paragraph 1, letter b), of the RGPD, obtaining consent

valid is always preceded by the determination of a specific, explicit and legitimate purpose for the

planned treatment activity. The need for specific consent in combination with the

notion of purpose limitation in Article 5(1)(b) functions as

guarantee against the gradual extension or blurring of the purposes for which the treatment is carried out

of the data once an interested party has given their authorization to the initial collection of the data.

This phenomenon, also known as diversion of use, poses a risk to stakeholders already

which may lead to unforeseen use of personal data by the data controller.

treatment or third parties and the loss of control by the interested party.

If the data controller relies on Article 6(1)(a), data subjects must

always give your consent for a specific purpose for data processing. in line

with the concept of purpose limitation, with article 5, paragraph 1, letter b), and with the

recital 32, the consent may cover different operations, provided that said

operations have the same purpose. It goes without saying that specific consent can only be obtained

when the interested parties are expressly informed about the intended purposes for the use of the data

that concern them.

Without prejudice to the provisions on the compatibility of purposes, the consent must be

specific for each purpose. The interested parties will give their consent on the understanding that they have control

about your data and that these will only be treated for those specific purposes. If a person in charge treats

data based on consent and, in addition, you want to process said data for another purpose, you must

obtain consent for that other purpose, unless there is another legal basis that better reflects the

situation…

Ad. ii) Consent mechanisms should not only be separated in order to fulfill the

requirement of "free" consent, but must also comply with the consent

"specific". This means that a data controller seeking consent to

several different purposes, you must facilitate the possibility of opting for each purpose, so that users

may give specific consent for specific purposes.

Ad. iii) Finally, data controllers must provide, with each data request,

separate consent, specific information on the data that will be processed for each purpose, with the

in order that the interested parties know the repercussion of the different options that they have. of this

In this way, data subjects are allowed to give specific consent. This issue overlaps with the

requirement that controllers provide clear information, as set out above

in section 3.3".

"3.3. Manifestation of informed will…" (this section 3.3 already outlined in the Basis of

prior right).

"3.4. Unequivocal manifestation of will

The RGPD clearly establishes that consent requires a declaration of the interested party or a

clear affirmative action, which means that consent must always be given through an action

or statement. It must be evident that the interested party has given his consent to an operation

specific data processing...

A "clear affirmative action" means that the data subject must have acted deliberately to

consent to that particular treatment. Recital 32 provides additional guidance

about this point...

The use of pre-ticked acceptance boxes is not valid under the GDPR. The silence or

inactivity of the interested party, or simply continuing with a service, cannot be considered as a

active indication of having made a choice…

A controller must also bear in mind that consent cannot be

obtained through the same action by which the user agrees to a contract or accepts the terms and

general conditions of a service. The global acceptance of the general terms and conditions does not

can be considered a clear affirmative action aimed at giving consent to the use of data

personal. The GDPR does not allow data controllers to offer checked boxes

previously or voluntary exclusion mechanisms that require the intervention of the interested party to

avoid the agreement (for example, “opt-out boxes”)…”.

Data controllers should design consent mechanisms in such a way that

be clear to stakeholders. They must avoid ambiguity and ensure that action through

which consent is given is distinguished from other actions…”.

This document cites Opinion 15/2011 of WG29, on the definition of the

consent. Regarding consent as an unequivocal manifestation of will, in this

Last Opinion indicates:

“In order for consent to be granted unequivocally, the procedure for obtaining it and

granting does not have to leave any doubt about the intention of the interested party when giving his

consent. In other words, the statement by which the interested party consents must not

leave no room for misunderstanding about its intention. If there is reasonable doubt about the intent of the

person, an ambiguous situation will occur.

As described below, this requirement requires data controllers to create

rigorous procedures for people to give their consent…”.

“This example illustrates the case of the person who remains passive (for example, inaction or “silent”).

Unambiguous consent does not fit well with procedures for obtaining consent to

from the inaction or silence of people: the silence or inaction of a party is

intrinsically equivocal (the data subject's intention could be assent or simply not

perform the action).

"…individual behavior (or rather, lack of action), raises serious questions about the will

according to the person. The fact that the person does not perform a positive action does not allow

conclude that you have given your consent. Therefore, it does not meet the consent requirement

unequivocal". Furthermore, as illustrated below, it will also be very difficult for the controller to

data processing provide proof that shows that the person has consented".

Clause 8 of the "Framework Agreement" is dedicated to the "Processing and transfer of data

for commercial purposes by CAIXABANK and the companies of the CaixaBank group based

in consent". This is what CAIXABANK generically calls "purposes

commercial", including: (i) analysis, study and monitoring for the offer and design

of products and services adjusted to the client's profile; (ii) commercial offer of products and

services of CaixaBank and the Companies of the CaixaBank Group; (iii) and transfer of data to

third parties.

The consent of the interested party is the legal basis for the processing of their data.

personal for such purposes.

The aforementioned Clause 8 describes these treatments as follows:

"The detail of the uses that will be made in accordance with their authorizations is as follows:

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

services tailored to the customer profile.

By granting your consent to the purposes detailed here, you authorize us to:

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

and customer segmentation, with a triple purpose: 1) Study products or services that

can be adjusted to your profile and specific business or credit situation, all for

make commercial offers tailored to your needs and preferences, 2) Carry out the

follow-up of contracted products and services, 3) Adjust recovery measures on the

defaults and incidents arising from the contracted products and services.

b) Associate your data with those of companies with which you have some type of link, both because of your

ownership and management relationship, in order to analyze possible interdependencies

economic in the study of service offers, risk requests and contracting of

products.

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

contracted products and services.

The treatments indicated in sections (i), (ii) and (iii) may be carried out in a

automated and entail the elaboration of profiles, with the purposes already indicated. To this

effect, we inform you of your right to obtain human intervention in the treatments, to

express their point of view, to obtain an explanation about the decision made on the basis of the

automated processing, and to challenge said decision.

d) Carry out satisfaction surveys by telephone or electronically with the aim of

Evaluate the services received.

e) Design new products or services, or improve the design and usability of existing ones, as well

how to define or improve user experiences in their relationship with CaixaBank and the

Companies of the CaixaBank Group.

(ii) Details of the processing for the commercial offer of CaixaBank products and services and the

Companies of the CaixaBank Group.

By granting your consent to the purposes detailed here, you authorize us to:

Send commercial communications both on paper and by electronic or telematic means,

relating to the products and services that, at any given time: a) market CaixaBank or any of its

CaixaBank Group Companies b) market other companies in which CaixaBank has a stake and

third parties whose activities are included among banking, investment services and

insurance, shareholding, venture capital, real estate, road, sale and distribution of

goods and services, consultancy, leisure and charitable-social services.

The signatory may choose at any time the different channels or means by which they wish or not

receive the indicated commercial communications through your digital banking, through the exercise of

their rights, or by managing them in the CaixaBank branch network".

"(iii) Transfer of data to third parties

By granting your consent to the purposes detailed here, you authorize us to transfer your data to

companies with which CaixaBank and/or CaixaBank Group Companies have agreements, whose

activities are included among banking, investment and insurance services, holding

of shares, venture capital, real estate, roads, sale and distribution of goods and services,

consultancy, leisure and charitable-social services, with the aim that these companies make

commercial offers of products marketed by them.

In any case, produced a transfer of data by virtue of your authorization, the receiving company of the

communication would inform the signatory of the processing of their data and their origin.

Likewise, the personal data of the clients who submit to the

cited treatments:

"a) All those facilitated in the establishment or maintenance of commercial or business relations.

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

with the Companies of the CaixaBank Group or with third parties, such as account or card movements,

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

insurance, claims, etc.

c) All that CaixaBank or the Companies of the CaixaBank Group obtain from the provision of

services to third parties, when the service is addressed to the signatory, such as the management of

transfers or receipts.

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

entities that, in accordance with the regulations governing the stock market, must carry the

records of securities represented by means of book entries.

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

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

requested by the signatory

g) Those obtained from the navigations of the signatory through the digital banking service and other websites of

CaixaBank and the CaixaBank Group Companies or CaixaBank mobile phone application and the

Companies of the CaixaBank Group, in which it operates duly identified. This data may include

information related to geolocation.

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

established between the parties.

The data of the signatory may be complemented and enriched by data obtained from companies

providers of commercial information, by data obtained from public sources, as well as by data

statistical, socioeconomic (hereinafter, "Additional Information") always verifying that these

They comply with the requirements established in the current regulations on data protection.

Based on this information, CAIXABANK limits the customer's options to the

provision of your consent, separately, for each of the three purposes (i), (ii) and

(iii) indicated. The summary of what the client stated in relation to these

“authorizations” is moved to the heading of the “Framework Agreement”, to the section related to the

personal and economic data of the client, in the section "Authorizations for the treatment

of data". Here is an example:

“Authorizations for data processing

In the terms established in clause 8 and 9 of this Agreement, your authorizations for the

data processing are as follows:

Commercial purposes:

. Purpose of studies and profiling: You have expressed your non-acceptance and consent to

treatment of your data.

. Purpose of communication of offers of products, services and promotions: You have

expressed their non-acceptance and consent to contact for commercial purposes by

any channel or medium, including electronic media.

. Transfer of data to third parties: You have stated your non-acceptance to the transfer to third parties of your

data".

Subsequently, from the checks carried out in the inspection carried out in

date 11/28/2019 and the documentation provided by CAIXABANK with its letter of

11/20/2019, it is verified that a fourth consent has been added, regarding the treatment

of biometric data:

"4. Use of my biometric data (facial image, fingerprint, etc.) in order to verify my

identity and signature: This authorization will be complemented in each case with the registration of the data

biometrics to use at all times. In order to verify the identity/signature of your customers,

Caixabank uses biometric recognition methods such as facial recognition systems,

fingerprint reading and the like. Currently, some of our ATMs already allow

operations using these methods.

( ) Yes, I accept the use of my biometric data

( ) Nope".

This Agency considers that said consents (four) do not meet the conditions

for the expression of will of the interested party to be considered validly provided,

that makes the data processing carried out by CAIXABANK illegal based on the

consent of the interested party.

The statement made by the client to provide these consents may

considered an affirmative act, but not a manifestation of free will, specific,

informed and unequivocal to accept the processing of personal data that

concern, provided with sufficient guarantees to prove that you are aware of the fact of

that you give your consent and the extent to which you do so.

In this case, the consent cannot be considered free because with the signature of the

contract, essential aspects related to the processing of their data are imposed on the client

personal, reducing their ability to choose; How is the exchange of information

CAIXABANK carries out with the entities that make up the CaixaBank Group, which will be analyzed

later.

On the other hand, as the mechanism for the provision of the

consent, it has not been foreseen that the interested party expresses his option on all the purposes

for whom the data is processed. CAIXABANK carries out data processing that appears

grouped in one of the purposes indicated, but that pursue a purpose other than

those on which the interested party pronounces. The enumeration of the treatments that

said entity performs for each of the purposes for which the option is offered to the client

of consenting or not, in reality supposes an extension of the purposes, for which the

consent given cannot be considered specific as it has not been dissociated

consent requests sufficiently.

CAIXABANK considers that the grouping of consents included in the clause

8 is adequate and that all the treatments included in it are nuances of the same

profiled, as can be verified with the appropriate debugging.

This Agency does not share that opinion. Treatments are discussed in section (i).

for "the offer and design of products and services adjusted to the customer profile", on which the

client speaks. However, purposes such as "adjust measures

recoveries on defaults and incidents arising from products and services

contracted", "analyze possible economic interdependencies in risk requests and

contracting products", "assessing the services received" or "designing new products or

services, or improve the design and usability of existing ones, as well as define or improve the

experiences of users in their relationship with CaixaBank and the Group Companies

CaixaBank".

Section (ii) groups in a single expression of will of the interested party the sending

of commercial communications related to CAIXABANK products and services, the

companies of the CaixaBank Group and third parties.

Consent must be given for all processing activities carried out with

the same purpose or purposes and, when the treatment has several purposes, the

consent for all of them, although through a manifestation of will expressed

for each of the purposes separately or differentiated, allowing the interested party to choose

to choose all, a part or none of them. As stated in Recital 43, no

consent can be freely understood as having not been allowed to "authorize

separate the different operations of processing personal data despite being

appropriate in the particular case. Recital 32 states that "consent must

cover all processing activities carried out for the same purpose or purposes. When the

processing has multiple purposes, consent must be given for all of them".

"When data processing is carried out for various purposes, the solution to comply with

with the conditions of valid consent lies in the granularity, that is, the

separation of these purposes and obtaining consent for each purpose" (Guidelines of the

GT29).

Understand that the provision of consent for those purposes implies the

acceptance of all the treatments that are included within such purposes, when in

Actually, some of these treatments pursue different purposes, as has been said, not

meets this requirement of separation of purposes and provision of consent for each

one of them.

In relation to the incorrect grouping of consents, a separate mention

requires the indication contained in Clause 8 in relation to the first three

treatments that are listed in section (i), according to which those treatments may be

carried out in an automated manner and entail the elaboration of profiles. It is obvious that these

Automated processing requires explicit customer consent that is not

collects in legal form.

The consent given, moreover, is not considered informed. already said here

the importance of providing information to data subjects before obtaining their consent,

essential so that they can make decisions having understood what they are authorizing. Yes

the person in charge does not provide accessible information, the control of the user will be illusory and the

Consent will not constitute a valid basis for data processing.

What is stated in the Basis of Law IV, on the objections observed in the

information that CAIXABANK provides regarding the protection of personal data,

equally affect the consent that could have been given. They serve, for this purpose, the

observations or objections made in said Legal Basis on the language

employee, unclear and indeterminate information about data processing

and the lack of a clear and intelligible formulation of the purposes for which

will be used, as well as the lack of information on the specific categories of data that

will be processed for each of the specified purposes.

These deficiencies prevent the interested parties from knowing the meaning and real meaning of

the indications provided and the real scope of the consent that could be given,

making it invalid as it is not an informed consent, in relation to the

data collection operations or data processing with respect to which

appreciated those defects in the information, including the treatment of those data that

have not been provided directly by the interested party or that are not necessary for the

fulfillment of the contractual relationship that binds him to the entity.

The lack of information is evident if the process enabled by the

CAIXABANK to obtain the consent of the clients for the treatment of their

personal data, either in person at the entity's offices, through the web portal

(for new customers or through the personal area enabled on the web) or the application

mobile. These procedures are outlined in detail in the Background of this act and

in the proven facts.

It is worth mentioning the collection of consents carried out in person at
the offices of the entity, which is formalized with the signing of the "Framework Agreement". CAIXABANK has
introduced several modifications to this mechanism since the entry into force of the GDPR.
In May 2018 (as stated in CAIXABANK's response of 05/16/2018), the
respective manifestations of will of the interested party were expressed verbally in
an interview led by the employee, who fills in the options by checking the boxes
on the respective screen, which are recorded in the document
("Framework Agreement") that is printed later, when the client has already pronounced.
It is accredited that the verbal manifestations of the client expressing their options
about the treatments and purposes indicated, as well as the signing of the document, are carried out without
that he has had access to the information contained in the "Framework Agreement".
Subsequently, according to CAIXABANK, the entire branch network was provided with
digitizing tablets, making it possible for the "Framework Agreement" and the "Contract of
Consents" are signed, not on paper, but on the tablet itself. The "Framework Agreement"
subscribed by the client without having access to the document, which is equivalent to saying that he lends his
consent without CAIXABANK providing any information.
(…)
In the inspection carried out at CAIXABANK on 11/28/2019, a new
change in the process described above, consisting of arranging the delivery of a digital tablet
to the client so that he himself marks the corresponding consent options, but
does not change the above circumstances.
The system guides the manager throughout the process, warning him that he must consult the
client their preferences and physically provide them with the tablet so that the client can proceed to
mark your options. Once the preferences have been marked, the terminal itself tells you that
said preferences have been registered and invites you to return the device to the manager (once

Once the options have been marked by the customer, on the next screen the indication “Mode Tablet” and the following is expressed: “Your consents have been indicated. Thank you for your collaboration. Please return the tablet to your manager”). Subsequently, “the manager ends and consolidates the document and makes it easy for the client to sign”.

It was found that the screens “Tablet Mode. Customer” do not contain any link to the information on the protection of personal data contained in the "Framework Agreement".

In the registration process through the web, the system displays a screen that allows the client to mark the options "Yes" or "No" for each of the consents that are they request. This screen includes a symbol (i) that leads to another screen with a message on information on data protection and a link that leads to it.

However, the information offered is insufficient because it only includes the corresponding to clause 8 “Processing and transfer of data for commercial purposes by CaixaBank and companies of the CaixaBank Group based on the consent” of the Contract Framework. In this case, according to CAIXABANK, the signature screen includes a box to check "I have read and accept the contract".

The same reservation about the information offered presents the process enabled for the provision of consent in the client's private area on the "Caixabank" website

Now” and when he uses the mobile application, which redirects to the web portal.

These processes do not ensure that the interested party accesses the information with a prior to the selection of their consents and signature of the document in all cases, which occurs both in relation to the "Framework Agreement" and the "Consent Agreement".

Therefore, all the detailed treatments whose legal basis comes from

determined, as stated by the CAIXABANK entity itself, by the

consent of the interested parties.

On the issue analyzed in this section, relating to data processing

based on the consent of the interested parties, CAIXABANK, in its letter of

allegations to the proposed resolution, is limited to affirming that the consents

obtained are free, specific, unequivocal and sufficiently informed. points out

simply that the client has the absolute freedom to grant them or not, without consequences

negative associated and without conditionalities, that there is no combination of different

purposes under the same consent, and that the interested party grants his consent

through affirmative action.

However, it omits any justification for the irregularities that have been

detailed and that support the conclusion on the lack of legal basis of the treatments

that CAIXABANK performs based on consent.

Faced with the important objections mentioned in relation to the treatments of

data that pursue a purpose other than those on which the interested party provides their

consent, CAIXABANK states that in Clause 8 of the "Framework Agreement" and in the

"Consent Contract" breaks down the only three activities, three purposes, which are

carried out under the consent (the profiling of data to offer customers

products that may be of interest to you; the choice of the communication channel of the offers;

and the possibility of transferring the data to third parties). And he adds that those treatments on

that the client does not have an opportunity to comment are not carried out (he does not say which ones), or

are covered by another legal basis, or are simpler and more limited than what the AEPD

understands.

Qualifies as an "error" that does not break the principle of specificity the fact of including

within the examples some treatment operations that should have been included

in other legal bases, between the treatments that are carried out based on the execution of the

contracts or in compliance with laws. It adds that it has been corrected in the New Policy on

Privacy including those activities in their respective and correct headings (treatments

in execution of a contractual relationship or by legal obligation).

In this regard, in its fourth allegation, when referring to the information on the

profiling, also alleges this "error" and lists the processing operations

that, in his opinion, have nothing to do with consent:

“- Carry out the follow-up of the contracted products and services, which is clearly a

necessary for the execution of the contractual relationship as established in art. 6.1.b)

- Adjust recovery measures on non-payments and incidents derived from the products and

contracted services also clearly a treatment necessary for the execution of the relationship

contract as established in art. 6.1.b)

- Associate your data with those of companies with which you have some type of link, both because of your relationship

property, as well as administration, in order to analyze possible economic interdependencies in

the study of service offers, risk requests and product contracting, which is a

treatment necessary for the execution of the contractual relationship as established in art. 6.1.b), and

mandatory to comply with Law 10/2014, of June 26, on the Management, Supervision and Solvency of

Credit Institutions, Law 44/2002, on Financial System Reform Measures and others

obligations and principles of the regulations on responsible lending, and whose

detail is reported in the product requests themselves that customers subscribe to when ordering their

hiring.

- Carry out studies and automatic controls of fraud, non-payments and incidents derived from the contracted products and services, which is clearly a treatment based on the legitimate interest of CaixaBank, as established in art. 6.1.f), interest that is summarized in the interest of avoiding fraud that suppose economic or reputational losses.

- Carry out satisfaction surveys by telephone or electronically in order to assess the services received, which is a necessary treatment for the execution of the contractual relationship As established in art. 6.1.b), and linked to the authorization for the use of the specific channel.

- Design products or services, or improve the design and usability of existing ones, as well as define or improve user experiences in their relationship with CaixaBank and the Group Companies CaixaBank, which is a treatment that is not carried out with personal data, but by analyzing statistics and data aggregated after anonymization processes".

With this allegation, it is being recognized that these operations have purposes other than those expressed in Clause 8 of the "Framework Agreement" and in the "Contract of Consents" under which the consents on which the decision is pronounced are grouped. client, and also that it is not true that the treatment activities mentioned in those documents can be grouped into the only three purposes that are broken down. Yes these treatments could have a legal basis other than consent, it is clear that They are different treatments and pursue different purposes. This is evident if We consider that all the treatments referred to by CAIXABANK in its allegations, those included in the previous list, are linked in Clause 8 of the "contract Framework" to "Data processing for commercial purposes by CAIXABANK and the companies of the CaixaBank Group", and "the uses that will be made" are described as "Processing of analysis, study and monitoring for the offer and design of products and services adjusted to the Client's profile".

There are, in addition, other data processing to which CAIXABANK does not refer in their allegations and that also require the consent of the interested party so that they can

be carried out, such as the exchange of information with the companies of the Group.

These are substantive defects, which affect the basic principle of the legality of the treatment. Therefore, CAIXABANK's approach, which seeks to avoid the responsibility that this non-compliance entails by alleging a mere error not reprehensible.

On the other hand, this Agency does not share that no effect can be attributed to this important irregularity, as CAIXABANK claims, assuming that the activities of treatment of data listed could find protection in another legal basis different from the consent.

On the one hand, inaccurate information would be provided to interested parties about the legal bases in which the corresponding treatments are legitimized, which, undoubtedly affects the knowledge and expectations that stakeholders may have regarding the rights that correspond to them based on the different legal bases

involved and, ultimately, to the control they can exercise over their personal data. So by example, if a data subject does not consent to these treatments.

On the other hand, it would be necessary, as has been seen here, an exhaustive analysis of all the concurrent circumstances in relation to the treatments intended to assess the relevance of the new legal basis that CAIXABANK indicates in its allegations, so that the alleged reasons cannot be taken for good.

This is evident in relation to the treatments that now, in their allegations, CAIXABANK intends to substantiate the legitimate interest of the person in charge (“Carrying out studies

and automatic controls of fraud, non-payments and incidents derived from the products and hired services"). Accepting this approach would be the same as admitting an interest legitimate supervening, or a posteriori, in respect of which the requirements have not been respected provided for in the personal data protection regulations, in particular the obligation to weigh the rights and interests at stake, and which is not reported in the Privacy Policy Privacy.

CAIXABANK also alleges that the treatments it performs to “Design products or services, or improve the design and usability of existing ones, as well as define or improve the experiences of users in their relationship with CaixaBank and the Group Companies CaixaBank”, are not carried out with personal data, but by analyzing statistics and data added after anonymization processes. But he does not take into account that this activity entails two treatments, the one that gives rise to anonymous information (the anonymization itself), subject to data protection regulations, and the treatment that is carry out with the already anonymized data, excluded from said regulations. So, also in In this case, it is necessary to have a legal basis that covers such data processing.

It was the CAIXABANK entity itself that arranged, in the design of its treatment operations, protect the aforementioned treatments in the consent above and is therefore obliged to comply with the requirements that this entails.

About the process enabled to grant consent in person at the office, reiterates that, after giving the consents (or not), the client accesses the full text of the contract so you can read and review it, so you can not ratify your choice and "Go back". Finally, it points out that the AEPD omits the analysis of the collection process of consents in the non-face-to-face channel (online banking) that you reviewed in the same inspection, in which it was shown that the client must necessarily access the information before giving consent.

In relation to this issue, CAIXABANK does not take into account that the process for the

formalization of the "Framework Contract" or the "Consent Contract, and with it the

provision of consent in person, has followed different operations throughout

of the analyzed period. As has been stated, the provision by the client of the

consents requested by CAIXABANK, including the signing of the aforementioned documents,

carried out without the information on the protection of personal data being made available.

customer disposition. Even during the process he calls "Tablet Mode," which is

the allegations refer, the client gives consent without receiving that information

previously.

This does not happen, as was said before, in the data collection process.

consents during the registration process through the web and in the enabled mechanism

in the client's private area on the "Caixabank Now" website. In this case, the information is

offers to the customer before he checks the available options, but only the information

corresponding to Clause 8 of the "Framework Agreement", not all the information.

These conclusions about the registration process through the web and the personal area of

clients were already exposed, in the same terms, in the proposed resolution. Nope

it is understood, therefore, that CAIXABANK alleges that the AEPD has omitted the analysis of these

consent collection processes.

-

b) Other processing of personal data based on the consent of the

interested parties contemplated in the “Consent Contract”.

On the document called "Consent Contract" serve all the

observations and objections made in relation to Clause 8 of the "Framework Agreement", by the similarity of its contents and the process of collecting consents, according to been exposed.

However, it is interesting to highlight two issues in relation to the "Contract of Consents" or document of "Authorization/revocation for the treatment of data of personal character for commercial purposes by CaixaBank, S.A. and group companies CaixaBank":

1. The information offered to the interested party is less than that offered in the "Framework Agreement", since access is only given to a text similar to that of Clause 8 of said Contract.

2. Another matter from which personal data processing derives without the consent of its holders has to do with the association of CAIXABANK customer data with the of other clients with whom he has some kind of family or social relationship, "for the purpose of analyze possible economic interdependencies in the study of service offers, risk requests and product contracting". This linking of customer data with personal data of third parties, which was added in the 3rd version of this document in the authorization (ii) of the section corresponding to purpose 1 ("Analysis treatments, study and monitoring for the offer and design of products and services adjusted to the profile of client"), cannot be carried out on the basis of the pronouncement that the client, who is not the owner of the data in question (this is personal data of third parties associated with customer data).

-

c) Processing of personal data based on the consent of the users. interested parties contemplated in the "Social Networks Contract".

In relation to the treatment of data obtained from social networks, the same weigh objections about the consent given and the purposes intended with the treatment. In addition, the client consents through a single act and does so for treatments

data for various purposes:

From the personal area of online banking, the customer consents that CAIXABANK

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access and use information from social networks. The tool enabled for this requests the

client that selects the network (Facebook, Twitter and LinkedIn), offers you the information available

by the entity in a text box and requires the interested party to press the button enabled with

the text “Accept and continue”. With this single action, the client gives his consent to the

collection of the personal data mentioned in that information, to the treatments

that are detailed and for the different purposes that are indicated (this information consists

reproduced in full in Annex III):

“By clicking on the “Accept and continue” button, you expressly consent that

CaixaBank… incorporate the following personal data into files… with the

purposes of

a) contact you and send you commercial communications by electronic means

related to products and services and/or any others that currently or in the future

CaixaBank markets, and related to products and services of third parties whose activities

are included in those indicated in the following section.

b) communicate the data provided by you to Caixabank, S.A., with NIF…, address

at Av. Diagonal 621 08028 in Barcelona, and to the companies and entities in whose capital

CaixaBank directly or indirectly participates in the foundation, so that they can direct

commercial communications on paper and by electronic means about the products and

services of their respective activities, including banking,

investment and insurance services, shareholding, venture capital, real estate,

roads, sale and distribution of goods and services, consultancy services, leisure and

charitable-social, as well as the communications of your data by said entities to

Caixabank, for the purposes set forth in section a).

c) validate, by the Customer Service in social networks, the data

identification that you provide to it, in order to meet the requests that

You direct him.

d) validate your identification data when you access other applications of

CaixaBank through your Username (Twitter), your User ID

(Facebook) or your Registered User (Linkedin).

e) contact you in the event that it was detected or there were founded

suspicions in relation to a possible fraud or impersonation of your identity or activity in

social networks, or in the use of CaixaBank channels or applications.

Likewise, you expressly consent to CaixaBank's access to those contents and

information that you have decided to make public at any time (and, where appropriate, to

those contents and information whose access you have specifically allowed) in the

indicated social networks, as well as the communication of the aforementioned information, to the

companies and entities indicated in section b) above, for their treatment with the

following purposes:

(i) personalization of commercial offers.

(ii) profiling and segmentation based on the public information of your profile,

in order to recommend and offer you the products and services that best suit your needs.

their preferences and needs.

It is significant that some of the purposes are similar to those mentioned in the

Clause 8 of

"Consent Agreement"

(“Authorization/revocation”) for which CAIXABANK provides that the interested party provide their

specific consent and, instead, for the processing of personal data obtained

of social networks, the interested party consents to all treatments and for all purposes

"Framework Agreement" and the

through a single action, pressing the button enabled with the text “Accept and continue”.

Another relevant issue has to do with the communication of data to companies and

entities in whose founding capital CaixaBank participates directly or indirectly (in this

In this case, there is no mention of the CaixaBank Group of companies, nor is it detailed to which companies it refers),

which also requires a specific statement from the interested party so that CAIXABANK

can carry it out.

Likewise, the fact that the consent obtained in relation to

with the information obtained from social networks include data communications by

entities indicated in the preceding paragraph to CAIXABANK.

No comment includes CAIXABANK on the above circumstances in relation

with the "Social Networks Contract", except for the indication that it was a project that did not have

successful and unsubscribed.

-

d) Processing of personal data based on the consent of the users.

interested parties contemplated in the "Aggregation Service Contract".

The same can be said for the aggregation service. This service is provided by

CAIXABANK at the request of the interested party and is formalized by signing the contract

correspondent.

In relation to the consent for the processing of data that the interested party

provides with the contracting of this service weigh the same objections. also in this

case the client consents through a single act and does so for data processing with

various purposes.

The purpose of the relationship is to allow the contracting party the management and visualization

on positions and movements of the products and services that it maintains with other

financial entities. However, in accordance with the clauses provided in the model

contract drawn up by CAIXABANK, the signing of the document entails the provision of the

consent of the client for data processing for different purposes, some of which

which are presented as if it were the pure object of the contract, despite the fact that they go

beyond the expressed object, with which they bear no relation.

Thus, in section 2 of the Contract, in which its object is defined, it is indicated that the

mentioned service "also" has the purpose, based on the aggregated information, "the

personalization of commercial offers adjusted to the profile and situation of the contracting party by

of CaixaBank; the improvement of risk analysis and suitability for the contracting of products

and services requested by the contracting party; and the improvement of the management of non-payments and incidents

derived from the contracted products and services".

Likewise, section 11 reports on two more purposes:

a) the personalization of commercial offers adjusted to the profile and situation of the contracting party by

part of CaixaBank, in relation to its own products or those of third parties marketed by it.

b) carry out satisfaction surveys by telephone or electronically with the aim of

to assess the services received from CaixaBank".

In this case, the interested party is warned that these are additional purposes that

You must expressly consent (it is expressed as follows: "Additionally, in the event that you have

expressly consented, the data obtained may be treated with the following

purposes…"). Considering the mechanisms enabled by CAIXABANK to provide the

consent to which this clause refers, we understand that it refers to the

expressions of will obtained through the "Framework Agreement" or through the "Contract

of Consents", and the objections to the consents obtained have already been indicated

through these documents. In addition, in relation to what is expressed in the service contract

of aggregation, it should be added that neither of these two documents collects the

consent of the client for the personalization of commercial offers adjusted to the profile and

situation of the contracting party by CAIXABANK, in relation to third-party products

marketed by this entity. Therefore, CAIXABANK has not foreseen the provision of the

consent for the purpose a) above in relation to third-party products.

On the other hand, it is necessary to point out that the purposes and treatments on which

informs the aggregation service contract do not make any reference to the companies of the

CaixaBank Group. Therefore, with the signing of this contract, the

consent for the purposes indicated in the "Framework Agreement" and in the "Contract of

Consent", which includes the use by those companies of the data collected

for this service. It is therefore an illegal data communication.

Finally, it is interesting to highlight one more observation about the object of the service of

aggregation. According to the contract, the purpose of this service is the management and visualization of

information on positions and movements of products that the interested party keeps in

other entities. However, despite this description of the object and the term "management"

that is included, it is warned in the same document that the service does not allow

operations or transactions on the products of third-party entities and that the provision

of the same will be reflected in the possibility of the contracting party to visualize through the bank

digital aggregated information.

Considering this limitation of the object, the data that is collected and the use that is

intends to perform, it could be understood that the aggregation service rather seems to

it was designed for the collection of information by the responsible entity. Even more so

We consider that the contract itself provides that non-acceptance or subsequent opposition to the

The processing of your data for the detailed purposes implies that CAIXABANK “will not be able or

(where appropriate) must stop offering the aggregation service” and that, in the event that the

data is processed with the consent of the interested party, they may be processed as long as the consent is not withdrawn.

consent, even after the contractual relationship has ended.

CAIXABANK denies this observation alleging that the Agency has not understood the

nature of this service, which is provided for in the payment regulations and serves not to

disposition the entity with respect to new actors. However, that conclusion

results from analyzing the nature of this service, but from the purposes, especially

commercial or advertising, and the elaboration of profiles that were imposed as the object of the

contract.

The same payment regulation cited by CAIXABANK establishes the prohibition of

use personal data for purposes other than the provision of the service. The Royal Decree-

Law 19/2018, of November 23, on payment services and other urgent measures in matters

refers to the rules of access to information related to payment accounts and

to the use of that information. Specifically, in its article 39.1.f) it provides the following:

“Article 39. Rules for access to information on payment accounts and use of said information in case of account information services.

1. The payment service provider that provides the account information service:

f) will not use, store or access any data, for purposes other than the provision of the service of information on accounts expressly requested by the user of the payment service, in accordance with data protection regulations.

In connection with the Aggregation Service Agreement, and also with the Terms of Social Networks, CAIXABANK has indicated that signing these documents is complementary to the "Framework Agreement", that in these additional documents a new consent, which is granted in the "Framework Agreement".

This does not agree with what is expressed in those documents and in the "Contract Framework". This contract does not require the provision of any consent for the treatment of these data, but is limited to reporting on the use of the data obtained from social networks and the aggregation service that the interested party has authorized. This Authorization can only be given by accepting the Social Network Terms and the signing of the Aggregation Service Contract in the manner indicated above. Specifically, the "Framework Agreement" states the following:

“The data that will be processed for the purposes of (i) data analysis and study, and (ii) for the offer commercial products and services will be:

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

f) Those obtained from third parties as a result of data aggregation requests requested by the signatory.

Finally, it is interesting to note that the new Aggregation Service Contract does not includes carrying out data processing for the indicated purposes. Regarding commercial purposes, refers to the authorizations that the client has granted and

warns about the possibility of managing them at the branch, through digital or mobile banking.

There is no evidence, however, that the references contained in the "Contract

Framework" to the use of data obtained from this service have been adapted to changes in the

Aggregation Service Contract.

- Other processing of personal data without legal basis

On the other hand, there are other data treatments that appear in the information that

CAIXABANK provides its clients that are carried out without any basis of legitimacy:

As detailed in the previous Legal Basis, CAIXABANK uses data

personal ("movements", "receipts", "payroll", "claims" and "claims") generated in

the contracting and operation of products and services contracted by the interested party with third parties

("All those generated in the contracting and operations of products and services… with the

Companies of the CaixaBank Group or with third parties").

It follows that CAIXABANK, under the condition of data controller,

collects and uses personal data that it does not obtain directly from the interested parties. Is about

personal data from third parties that CAIXABANK uses for the purposes

expressed in the information provided to the interested parties.

There is no legal basis that legitimizes the use of these personal data.

CAIXABANK is not the entity responsible for this data obtained from third-party products,

which limits the possibility of using the information in question for their own purposes.

Also in relation to this issue it is necessary to take into account the limitations

on the use of personal data imposed by the aforementioned Royal Decree-Law 19/2018.

In its article 65 it expressly refers to the protection of personal data in the

following terms:

“Article 65. Data protection.

1. The treatment and transfer of data related to the activities to which this real refers

decree-law are subject to the provisions of Regulation (EU) 2016/679 of the Parliament

European and Council, of April 27, 2016, regarding the protection of natural persons in the

regarding the processing of personal data and the free circulation of these data and by which

repeals Directive 95/46/CE and the Spanish regulations on data protection, and the regulations

country that develops it”.

-

Treatment of personal data based on the legitimate interest of the person in charge

The analysis of this issue must initially take into account the provisions of the

article 1.2 of the RGPD, according to which "This Regulation protects the rights and

fundamental freedoms of natural persons and, in particular, their right to protection

of personal data”. For this, all the circumstances must be taken into account.

surround the collection and processing of data and the way in which they are fulfilled or reinforced

the principles, rights and obligations required by the data protection regulations of

personal character.

Article 6 of the RGPD requires that the processing of personal data, in order to be

lawful, can rely on any of the bases of legitimacy that it establishes and that the

responsible for the treatment is able to demonstrate that, in fact, it concurred in the

processing operation the legal basis invoked (article 5.2, principle of

proactive responsibility).

The legal bases of the treatment that are detailed in article 6.1 RGPD are

related to the broader principle of legality of article 5.1.a) of the RGPD, precept

which provides that personal data will be treated in a "lawful, loyal and transparent manner in

relationship with the interested party.

In relation to the legal basis of legitimate interest, invoked by CAIXABANK to

the treatments described, article 6 cited establishes:

"1. The treatment will only be lawful if at least one of the following conditions is met:

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 said interests do not prevail the interests or

fundamental rights and freedoms of the interested party that require the protection of personal data,

in particular when the interested party is a child...".

Recital 47 of the RGPD specifies the content and scope of this base

legitimizer of the treatment.

The interpretative criteria that are extracted from this Considering are, among others, (i)

that the legitimate interest of the person in charge prevails over the interests or rights and freedoms

of the owner of the data, in view of the reasonable expectations that the latter

has, based on the relationship it maintains with the data controller; (ii) will be

It is essential that a "meticulous evaluation" of the rights and interests at stake be carried out,

also in those cases in which the interested party can reasonably foresee, in

the moment and in the context of the data collection, that the treatment with

such purpose; (iii) the interests and fundamental rights of the owner of the personal data could

prevail over the legitimate interests of the person in charge when the processing of the data

is carried out in such circumstances in which the interested party "does not reasonably expect" that

further processing of your personal data is carried out.

It should be added that the interested party, in all cases, can exercise the right to opposition, which also involves a new assessment of the interests of the controller and owner of the data, except in cases of commercial prospecting, in which the exercise of the right forces to interrupt the treatments without any evaluation (article 21.3 of the RGPD).

It is interesting to highlight some aspects included in Opinion 6/2014 prepared by the Working Group of Article 29 related to the "Concept of legitimate interest of the person responsible for the processing of data under article 7 of Directive 95/46/EC", dated 04/09/2014, especially the factors that can be assessed when the mandatory weighting of the rights and interests at stake. Although Opinion 6/2014 is issued to favor a uniform interpretation of Directive 95/46 then in force, repealed by the RGPD, given the almost total identity between its article 7.f) and article 6.1.f) of the RGPD, and that the reflections offered are an exponent and application of principles that inspire also the RGPD, such as the principle of proportionality, or general principles of the Community law, such as the principles of fairness and respect for the law and the law, Many of his reflections can be extrapolated to the application of current regulations.

As indicated, so that section f) of article 6.1. GDPR may constitute the legitimizing basis of the processing of personal data that is carried out, mandatory, and prior to treatment, a consideration must be made, an "evaluation meticulous", of the rights and interests at stake: the legitimate interest of the person responsible for the treatment, on the one hand, and on the other, both the interests and the rights and freedoms essential to those affected. Consideration that is essential, because only when, as As a result, the legitimate interest of the data controller prevails over the rights or interests of the owners of the data may operate as a legal basis for the treatment of said interest.

Regarding the weighting test, the repeated Opinion states the following:

"The legitimate interest of the data controller, when it is minor and not very pressing, in general,

it only overrides the interests and rights of data subjects in cases where the impact on these

rights and interests even more trivial. On the other hand, an important and compelling legitimate interest

may, in some cases and subject to guarantees and measures, justify even a significant intrusion into

privacy or any other important repercussion on the interests or rights of the interested parties.

Here it is important to highlight the special role that guarantees can play in reducing a

undue impact on data subjects and thus to change the balance of rights and interests

to the extent that the legitimate interest of the data controller prevails. By

Of course, the use of guarantees alone is not sufficient to justify any type of

treatment in any context. In addition, the guarantees in question must be adequate and

sufficient, and must unquestionably and significantly reduce the impact on stakeholders".

The aforementioned Opinion refers to the multiple factors that can operate

in weighing the interests at stake and groups them into these categories:

(a) the evaluation of the legitimate interest of the data controller, the nature and source

of legitimate interest and if the data processing is necessary for the exercise of a right

fundamental, is otherwise in the public interest, or benefits from recognition of

affected community;

(b) the impact or repercussion on the interested parties and their reasonable expectations about what

will happen to your data ("what a person considers reasonably acceptable under

of the circumstances"), as well as the nature of the data and the way in which they are

processed; emphasizing that the claim is not that the data processing carried out by the

responsible does not have any negative impact on the interested parties but prevents the

impact is “disproportionate”;

(c) the provisional balance and

(d) the additional guarantees that could limit an undue impact on the interested party, such

such as data minimization, privacy protection technologies, increased

of transparency, the general and unconditional right of voluntary exclusion and the

data portability.

In the first place, the Opinion underlines that the implication that the person in charge of the

treatment may have in the data processing carried out is that of "interest", which is already

referred to in the previous Legal Basis to point out that it is related to

purpose, but it is a broader concept (“purpose is the specific reason why

process the data: the purpose or intention of the data processing. One interest, for another

On the other hand, it refers to a greater involvement that the data controller may have in the

treatment, or to the benefit that the person in charge of the treatment obtains from the treatment”).

It is also broader than that of fundamental rights and freedoms, hence with respect to

those affected are weighed not only their fundamental rights and freedoms, but also their

"interests".

According to WG29, “an interest must be clearly articulated enough to

allow the balancing test to be carried out against the interests and

fundamental rights of the interested party. Furthermore, the interest at stake must also be

pursued by the data controller. This requires a real and current interest, which is

corresponds to present activities or benefits that are expected in the very future.

next. In other words, interests that are too vague or speculative are not

will be enough."

In addition, the "interest" of the data controller, as established in article 6.1.f)

of the RGPD and before article 7.f) of the Directive, it must be “legitimate”, which means, says the

Opinion, which must be "lawful" (respectful of applicable national and EU legislation).

However, WG29 adds that "The legitimacy of the interest of the data controller it is only a starting point, one of the elements to be analyzed under the article 7, letter f). Whether Article 7(f) can be used as a legal basis or not will depend of the result of the following weighing test"; "If the interest pursued by the data controller is not compelling, it is more likely that the interests and rights of the interested party prevail over the legitimate interest —but less important— of the responsible for the treatment. Similarly, this does not mean that less interest compelling of the person in charge of the treatment cannot sometimes prevail over the interests and rights of the interested parties: this normally happens when the impact of the treatment on stakeholders is also less important".

And it shows the following example:

"To serve as an example: data controllers may have a legitimate interest in knowing the preferences of their customers in a way that allows them to better personalize their offers and ultimately term, offer products and services that best meet the needs and desires of their customers. In light of this, Article 7(f) may constitute an appropriate legal basis in some types of market activities, online and offline, as long as the adequate guarantees (including, among others, a viable mechanism that allows to oppose the treatment under article 14, letter b), as will be explained in section III.3.6 The right to object and beyond).

However, this does not mean that data controllers can refer to Article 7, letter f), as a legal basis to improperly monitor online and offline activities

of your customers, combine huge amounts of data about them, coming from different

sources, which were initially collected in other contexts and for different purposes, and create -and, therefore,

example, with the intermediation of data brokers, also trade with them - complex profiles

of the personalities and preferences of the clients without their knowledge, without a viable mechanism of

opposition, not to mention the absence of informed consent. It is likely that said

profiling activity represents a significant intrusion into customer privacy and,

when this happens, the interests and rights of the interested party will prevail over the interest of the

data controller".

In short, the concurrence of said interest in the data controller does not

necessarily means that article 6.1 f) RGPD can be used as a basis

legal treatment. Whether or not it can be used as a legal basis

will depend on the result of the weighing test.

In addition, the treatment must be necessary for the satisfaction of the legitimate interest

pursued by the person responsible, so that less invasive means are always preferred

to serve the same purpose. Necessity implies here that the treatment is essential

for the satisfaction of said interest, so that, if said objective can be achieved

reasonably in another way that produces less impact or is less intrusive, the interest

legitimate cannot be invoked.

The term "necessity" used in article 6.1 f) of the RGPD has, in the opinion of the CJEU, a

own and independent meaning in Community law. It is a "concept

Autonomous Community Law" (STJUE of 12/16/2008, case C-524/2006, section

52). On the other hand, the European Court of Human Rights (ECHR) has also offered

guidelines for interpreting the concept of necessity. In section 97 of his Judgment of

03/25/1983 states that the "necessary adjective is not synonymous with "indispensable" nor does it have the

flexibility of the expressions "admissible, "ordinary", "useful", "reasonable" or "desirable".

About the impact or repercussion that data processing has on the interests or

fundamental rights and freedoms of the interested parties, indicates that the more “negative” or

“uncertain” the impact of the treatment may be, it is more unlikely that the treatment itself

set can be considered legitimate.

“The Working Group makes it clear that it is crucial to understand that relevant 'impact' is a

a much broader concept than damage or harm to one or more interested parties in particular. The term

“impact” as used in this Opinion covers any possible consequences (potential or actual)

of data processing. For the sake of clarity, we also stress that the concept is not

related to the notion of violation of personal data and is much broader than the

repercussions that may arise from said violation. On the contrary, the notion of impact, as

used here, encompasses the various ways in which an individual may be affected, positively or

negatively, for the treatment of your personal data”.

“In general, the more negative and uncertain the impact of treatment may be, the more unlikely it is

that the treatment is considered, as a whole, legitimate. The availability of alternative methods for

achieve the objectives pursued by the data controller, with less negative impact

on the data subject, should certainly be a relevant consideration in this context.”

As sources of potential repercussions for the interested parties, he cites the probability

that the risk may materialize and the seriousness of the consequences, noting that

this concept of "gravity can take into account the number of individuals potentially

affected".

This includes the assessment of the nature of the personal data that has been

object of treatment), if the data have been made available to the public by the interested party or

by a third party, a fact -says the Opinion- that can be an evaluation factor especially

whether the publication was carried out with a reasonable expectation of reuse of the data

for certain purposes:

"…does not mean that data that appears in and of itself innocuous can be treated

freely… even such data, depending on the way it is processed, may have an impact

meaningful about people.

The way in which the person in charge treats the data; whether they have been disclosed to the public or

have been made available to a large number of people or if large amounts of data are

process or combine with other data ("for example, in the case of profiling, with

commercial, law enforcement or other purposes"). On this question it is said:

"Apparently innocuous data, when processed on a large scale and combined with other data,

can lead to interference with more sensitive data, as demonstrated in scenario 3 above,

exemplifying the relationship between pizza consumption patterns and insurance premiums for

healthcare.

In addition to potentially giving rise to the processing of more sensitive data, such analysis may

also lead to strange, unexpected and sometimes inaccurate predictions, for example, regarding the

behavior or personality of the affected persons. Depending on the nature and

impact of these predictions, this can be highly intrusive in the intimacy of the person".

All this, without forgetting the reasonable expectations of the interested parties:

"…it is important to consider whether the position of the data controller, the nature of the relationship or

of the service provided, or the applicable legal or contractual obligations (or other promises made

at the time of data collection) could give rise to reasonable expectations of a

stricter confidentiality and stricter limitations on further use. Usually,
the more specific and restrictive the context of data collection, the more limitations it is
are likely to be used. In this case, again, it is necessary to take into account the factual context and not
be based simply on the small print of the text".

The Opinion also considers it pertinent when evaluating the impact of the treatment to analyze the
position of the person in charge of the treatment and of the interested party; your position can be more or less
dominant with respect to the interested party depending on whether the data controller is a
person, a small organization or a large company, even a multinational company:

"A multinational company may, for example, have more resources and bargaining power than the
individual data subject and may therefore be in a better position to impose on the data subject
what you think is in your "legitimate interest". This can occur all the more reason if the
company has a dominant position in the market.

When considering the interests and rights at stake, the WG29 understands that the
compliance with the general obligations imposed by the regulations, including the principles
of proportionality and transparency, help to ensure that the requirements are met
of legitimate interest. Although it clarifies that this does not mean that compliance with those
horizontal requirements, by itself, is always sufficient.

If, finally, after the evaluation, it is not clear how to reach the balance, the
adopting additional safeguards can help reduce the undue impact and ensure
that the processing may be based on legitimate interest. As additional measures,
contemplates, for example, the facilitation of voluntary and unconditional exclusion mechanisms,
or increased transparency:

"The concept of responsibility is closely linked to the concept of transparency. With the purpose of
allow data subjects to exercise their rights and allow for broader public scrutiny by
part of data subjects, the Working Group recommends that data controllers

explain to stakeholders in a clear and easy way the reasons why they believe their interests prevail over the interests or fundamental rights and freedoms of the data subjects, and also explain to them the guarantees they have adopted to protect their personal data, including, where appropriate, the right to opt-out of treatment".

"As explained on page 46 of Opinion 3/2013 of the Working Group on the limitation of the purpose (cited in footnote 9 above), in the case of profiling and taking automated decisions, interested parties or consumers must be given access to their profiles to ensure transparency, as well as the logic of the decision-making process (algorithm) that gave lead to the development of these profiles. In other words: organizations must disclose their criteria for decision making. This is a fundamental guarantee and it is especially important in the world of big data. Whether or not an organization offers this Transparency is a very pertinent factor that should also be considered in the proof of weighing".

When referring to the right of opposition and the mechanism of voluntary exclusion or right of unconditional opposition, the GT29 reflects on advertising based on profiles of the client, which requires a follow-up of the activities and personal data of the stakeholders, which are analyzed with sophisticated automatic methods. Conclude the following:

"In this sense, it is useful to recall the Opinion of the Working Group on the limitation of the purpose, where it was specifically stated that when an organization wants to analyze or predict specifically the personal preferences, behavior and attitudes of customers

individuals that will subsequently motivate the "decisions or measures" adopted in relation to

such clients... Free, specific, informed and informed consent should almost always be required.

unequivocal sign of "opt-in", otherwise the re-use of the data cannot be

be considered compatible. And what is more important, such consent must be required, for

example, for tracking and profiling for prospecting, advertising

behavioral, data marketing, location-based advertising, or digital research

monitoring-based market.

The information included in the "Framework Agreement" on

these data processing based on the legitimate interest of CAIXABANK:

“7.3.5 Processing based on legitimate interest

Unless you have told us, or tell us in the future, otherwise, we will send you updates and

information about products or services similar to those you have already contracted.

We will also process your information (account movements, card movements, loans, etc.)

to personalize your shopping experience on our channels based on past usage, to

offer you products and services that fit your profile, to apply benefits and promotions that

we have in force and to which you are entitled, and to assess whether we can assign you credit limits

pre-granted that you can use when you deem it most appropriate.

In these treatments we will only use information provided by you, or generated from the

own products contracted during the last year.

If you do not want these treatments to be carried out, you can oppose them

communicating it to us in any of our offices, in the Apartado de Correos nº 209 of Valencia

(46080), at the electronic address www.CaixaBank.com/ejerciciodepoderes, or through the options

enabled for this purpose in your digital banking and in our mobile applications”.

For any other commercial use, your consent will be requested, as established in the clause

Next.

According to CAIXABANK, legitimate interest is the legal basis for the processing that

carried out with the "commercial purposes" indicated in section 7.3.5 of the "Framework Agreement"

(wrongly included in the subsection dedicated to "Data processing of

personal character for regulatory purposes") and section 03 of the "Privacy Policy"

(with content similar to the above): sending information and updates about

products or services similar to those already contracted by the client; customize the

customer's commercial experience in the entity's channels based on previous uses, to

offer you products and services that fit your profile, to apply benefits and

promotions that we have in force and to which you are entitled, and to assess whether we can

Assign you pre-approved credit limits that you can use when you think it's best

prompt.

However, as stated in the previous Legal Basis, it has

It has been proven that CAIXABANK carries out other processing of personal data based on

to the legitimate interest that are not known by the client, who is not informed in any case, and

that, due to the breadth of personal data used and the different purposes for which

are treated, affect multiple aspects of the client's personal life, so such

treatments are considered illicit. Among them the following were mentioned:

(…)

In relation to the processing of data for commercial purposes based on interest

legitimate referred to in the "Framework Agreement" and in the "Privacy Policy",

during the testing phase, (...), CAIXABANK has stated that they are not carrying out

perform the following treatments:

. Sending information about products or services similar to those you have already contracted or

information that we believe may be of interest to you, or that we believe may have a

reasonable expectation of receiving.

. Study of the information we have about you (account movements, card movements,

loans, etc.) to personalize your experience with the Entity, for example by showing you first

at ATMs and on websites for their most common operations, or by offering products and services that are

adjust to your profile and apply the benefits and promotions in force at all times.

However, in his pleadings brief, (...), according to which the data of those

customers who have not consented to the processing of their data for commercial purposes, or have

revoked the consent given previously for it, nor are they treated on the basis

to legitimate interest. It adds that it only processes personal data in

relation to those who were asked and did not answer, that is, who have not signed the

“Framework Agreement” nor the “Consent Agreement”. From what follows that it is

carrying out these personal data treatments.

(…)

In relation to these treatments with "commercial purposes" based on the interest

legitimate, it was also indicated when dealing with the duty of information, which are similar to

treatments that CAIXABANK protects in the consent of the client and the consequences that

are derived from this circumstance in relation to the validity of these treatments.

Specifically, the realization of personalized offers, the application of benefits and

promotions or the assignment of pre-granted credits, are data processing similar to

those outlined when citing other purposes based on consent (“Study products or

services that can be adjusted to your profile and specific commercial or credit situation, all

this to make commercial offers tailored to your needs and preferences”),

motivating that the description of the purposes and enumeration of data processing

contained in the information offered causes confusion to the interested parties. of this

In this way, data processing based on legitimate interest similar to

others carried out on the basis of the client's consent, which, moreover, is not

lends in a valid way, as explained above. It could lead to a situation where

which data processing is carried out based on the legitimate interest that would have been

denied by the affected.

On the other hand, taking into account that CAIXABANK records personal data “in

Commercial Relations, or Commercial Relations of CAIXABANK and the companies of the

CaixaBank Group with third parties”, it is not possible to understand if the sending of “information and

updates about products or services similar to those you have already contracted" is

refers to own products, Group companies or third parties. They serve in this regard

same observations already expressed above about the use of data collected from

products of the Group companies or third parties.

It was also said that the information provided does not specify any legitimate interest of

CAIXABANK, which limits itself to indicating the data processing it carries out with this database

legal. Therefore, the circumstances expressed in the Legal Basis are reiterated.

on the lack of justification of the legitimate interest in a sufficient way to allow the proof of

weighing between the interest of the person in charge and the rights of the interested party to determine

those that prevail, necessary to determine the legality of the treatments carried out

Here again what has already been indicated regarding the insufficient information provided on the

categories of data that will be used and on the determination of the purposes, or on the

types of profiles that are going to be carried out and the specific uses and applications that will be given to

those profiles; and, especially, the lack of information on the specific interest of the

responsible, which is not expressed, for the limitations and difficulties, if not impediment, that

entails when making a true assessment of the concurrence of an interest

legitimate prevailing, real and not speculative.

And also what has already been indicated about the language used; lack of definition of purposes

for which the personal data will be used (“getting to know the customer better” and “improving the

products and services” or “elaborate the business model”, etc.) and the exhaustive analysis of the

information related to clients that entails such purposes; or about the types of profiles

that are going to be carried out and the specific uses and applications that will be given to those profiles.

Carrying out the weighting judgment in this case requires also assessing the amplitude

of the types of data that are collected by CAIXABANK, and make said assessment

together with the aspects highlighted in the previous paragraphs, especially with the

lack of definition of the purposes for which the personal data is processed.

This has the consequence that the treatments carried out are not

predictable for an average citizen.

This being the case, it is impossible for the interested party, or this control authority, to

Assess whether the processing operations carried out are necessary, or whether, on the contrary,

the same result could be obtained by less invasive means; cannot be completed either

even less, that the interest invoked is prevailing.

This legal basis requires the existence of real interests, not speculative and that,

Also, they are legitimate. And not only does the existence of that legitimate interest mean that they can

carry out those treatment operations. It is also necessary that these treatments

are necessary to satisfy that interest and consider the repercussion for the interested party. In

In this case, a combination of data whose scope has not been defined is carried out and

perform profiling operations to offer products and services that conform to said

profile, to apply benefits and promotions that CAIXABANK has in force and to which

the customer is entitled, and to assess whether it is possible to assign credit limits

pre-granted that you can use when you see fit. Therefore, the intrusion

in the privacy of the interested party may be high and the effects may have repercussions

negatively.

Considering the limitations exposed, suitability is not accredited (if the measure

allows to achieve the proposed objective); necessity (that there is no other measure

moderate); proportionality in the strict sense (more benefits or advantages than harm),

the data processing indicated above.

In addition to the above, the following circumstances are taken into account:

. The lack of transparency about the logic of the treatment consisting in the elaboration of

profiles, which can lead to product discrimination and have an impact

financial potential that may have the character of excessive.

. The high number of those affected, as well as the large amount of data that is processed and

combined with other data. This combination of data, due to the lack of definition of the data that is

will use, does not respect the aforementioned proportionality nor does it allow the weighting judgment

necessary to assess the concurrence of a legitimate interest that justifies the treatment of

the data.

. The dominant position of the person in charge vis-à-vis the interested party, due to his condition of great

company and one of the market leaders in its sector.

Special importance must also be attached to the absence of measures or

additional guarantees that, although they are not required by the applicable regulations, are

consider it a good practice that favors the appreciation of the legitimate interest of the

responsible when in the weighting judgment it is not clear how to reach the balance,

to the extent that they reduce the impact of the treatment on the privacy of the interested party.

Among them, the increase in transparency and the enabling of mechanisms

opt-out.

Regarding transparency, CAIXABANK does not make available to interested parties the

Legitimate interest weighting report or impact assessments.

Nor does CAIXABANK offer voluntary exclusion mechanisms. It is limited to reporting

on the possibility of exercising the right of opposition, which is nothing more than a requirement

normative. This right requires a new weighting, in accordance with the provisions of the

article 21 of the RGPD (“the person in charge of the treatment will stop treating the personal data,

unless it proves compelling legitimate reasons for the treatment that prevail over

the interests, rights and freedoms of the interested party”) and has nothing to do with the

voluntary or unconditional exclusion mechanisms that are recommended.

In short, contrary to what CAIXABANK stated in its allegations,

In accordance with the foregoing, it is hereby accredited that this entity carries out data processing

of its clients based on legitimate interest, including treatment with

commercial purposes.

On the other hand, for the reasons stated, it has not been proven that the interest

legitimate claim that CAIXABANK has prevails over the interests and rights and

fundamental freedoms of customers; and the guarantees offered are not sufficient to

overcome the imbalance that occurs with these data processing operations

personal.

Consequently, it must be concluded that the legitimate interest of CAIXABANK does not prevail

as a legitimate basis for processing.

CAIXABANK alleges that the AEPD concludes that it is not possible to determine suitability,

necessity and proportionality of these treatments, and that the intrusion into the privacy of the

interested party may be high, without providing any evidence in this regard. However, it is to CAIXABANK, who is responsible for proving the concurrence of the legitimate interest for the data processing operations that it intends to base on this legal basis, to who corresponds to specify the interest pursued and make the weighting judgment that justify.

Also in relation to this issue, he refers to the changes introduced in the New Privacy Policy, implying with these alleged corrections that no there are responsibilities that must be demanded for the facts analyzed, which must be rejected absolutely inappropriate. It alleges, specifically, that it has proceeded to eliminate the treatment based on legitimate interest for commercial purposes, but omits any reference to the rest of the circumstances that determine the illegality of the analyzed treatments in this section and that are not made exclusively for commercial purposes.

Finally, it should be noted that the conclusion obtained from this review does not contradict what expressed in the Report of the Legal Office of the AEPD 195/2017, to which it refers CAIXABANK, both in the aforementioned impact assessment, which contains the report on weighing of legitimate interest, as in its statement of arguments.

The premises assessed in said report do not conform to the present assumption, in the that detailed personal data processing has a much broader purpose than those analyzed in said report in regard to the purposes of the treatment as well as the information or personal data used.

- Other processing of personal data without a legal basis. data communication to

CaixaBank Group companies.

On the other hand, it is also appropriate to analyze the transfer of data to companies of the Group CaixaBank that is included in the "Framework Agreement", about which the interested party is not consulted. It is reiterated here that said document is presented as mandatory subscription for the client, expressly establishing that the signing of the document implies that the client "knows, understand and accept its content". It is also established that the terms and conditions are of general application to all "commercial relations" of the interested party "with CaixaBank and the companies of the CaixaBank Group, and therefore, the signing and validity of this Contract, respecting the corresponding rights of choice that for the Signatory grants the clause, it is necessary for the contracting and maintenance of contracts of products or services".

In the same section related to the object of the contract, it indicates that it "informs and regulates" about "the authorizations for the use of data of the signatory to carry out activity commercial property of CaixaBank and the companies of the CaixaBank Group".

Allusions to CaixaBank Group companies occur throughout the entire "Framework Contract" and place it, practically, at the same level of intervention of CAIXABANK:

"7.1 Processing of personal data for the purpose of managing relationships Commercial.

The personal data of the Signatory, both those that the same contributes, and those that derive of the Commercial Relations, or Commercial Relations of CaixaBank and the companies of the Group CaixaBank with third parties and those made from them, will be included in files owned by CaixaBank and the companies of the CaixaBank Group holding Commercial Relations…".

"8. treatment and transfer of data for commercial purposes by CAIXABANK and the companies of the

CaixaBank Group based on consent

This document will collect on its first page, under the heading of authorizations for the

data processing, the authorizations that you grant us or revoke us in relation to:

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

of the CaixaBank Group

(ii) Processing for the commercial offer of products and services by CaixaBank and the companies of the

CaixaBank Group

(iii) The transfer of data to third parties

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

(i) data analysis and study treatments, and (ii) for the commercial offer of products and

services, if granted, will include CaixaBank, and the companies of the CaixaBank group

detailed at www.CaixaBank.es/empresasgrupo (the “CaixaBank Group companies”) who

may share and use them for the indicated purposes.

The authorizations you grant will remain in effect until revoked or, in the absence of

this, up to 6 months after you cancel all your products or services with the

Entity.

The detail of the uses of the data that will be carried out in accordance with your authorizations is as follows... (already

detailed above).

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

commercial products and services will be… (already detailed above)”

“11.3 Data Conservation Period…

In accordance with the regulations, the data will be kept for the sole purpose of complying with those

legal obligations imposed on CaixaBank and/or Group Companies…”.

The “Privacy Policy” also refers to the “exchange of commercial information

between the companies of the CaixaBank Group”.

The concept of “Business Group” is defined in point 19 of article 4 of the RGPD:

<<“Business group”: group constituted by a company that exercises control and its companies

controlled>>.

Regarding the scope to be attributed to this concept from the point of view of

RGPD, it is necessary to consider what is stated in Considerations 37 and 48 of said

Regulation:

“(37) A business group must be constituted by a company that exercises control and

controlled companies, and it must be the company that exercises control that can exercise

Dominant influence over other companies, for reasons of, for example, ownership, interest

financial, regulations by which it is governed, or power to enforce data protection regulations

personal. A company that controls the processing of personal data in companies that

are affiliated should be considered, together with such companies, "business group".

“(48) Those responsible who are part of a business group or entities affiliated with a

central body may have a legitimate interest in transmitting personal data within the group

business for internal administrative purposes, including the processing of personal customer data

or employees. The general principles applicable to the transmission of personal data, within a

business group, to a company located in a third country are not affected”.

The CaixaBank Group, in principle, can be understood within this concept, from

the point of view of the protection of personal data, with the entity CAIXABANK as

controlling company. But the exchange of information carried out

CAIXABANK in favor of the CaixaBank Group companies has no place in the shares

that may be based on the legitimate interest referred to in Recital 48, referring to

the transmission of personal data within the business group “for administrative purposes

internal”. Nothing to do with the data transfers referred to in the "Framework Agreement" and the

purposes for which they are intended.

With this, it is not excluded that other data communications could be admitted

personal, with other purposes, which could be justified by the concept of group

business, including based on legitimate interest.

To all this, we must add the defects appreciated in the information offered that is

have pointed out in this act. CAIXABANK does not even report on the legal basis that justifies

this global exchange of information with the companies of the CaixaBank Group.

Neither does it include among the consents that are requested from the clients any that

refers to this transfer of personal data of CAIXABANK customers to the companies of the

CaixaBank Group, which cannot be considered covered by the three consents

collected. In addition to the objections noted about the validity of the consents

provided by customers, this transfer of data constitutes a specific purpose in itself

same considered, which requires a manifestation of the client's will for which he

Consent that this communication of personal data can be carried out. CAIXABANK does not

obtains from its clients a specific consent for this transfer of data.

This lack of design or authorization of a specific mechanism to collect the

consent of its clients in order to transfer data to companies of the Group is not

corrected with the signing by the client of the repeated "Framework Agreement", which occurs without receiving the

accurate information and does not imply a pronouncement of the client on the use of their

personal data by the companies of the CaixaBank Group. This use entails

prior transfer of the data by CAIXABANK to the companies of the Group without the

interested party has manifested itself in this regard, that is, without the consent of the interested party.

Acceptance through a single action, such as signing the contract, becomes

invalid the consent given by the interested party regarding the use of the data

for purposes other than the execution of the contract or business relationship maintained by the

interested party and the responsible entity or, what is the same, with respect to all those

treatments that require differentiated and granular consent. In relation to the

communication of data to the companies of the CaixaBank Group, this explicit consent and

separately would require making it possible to select the specific company or companies to which

refers to the consent for the assignment that could be provided.

The requirement that “consent must be given by means of an

clear affirmative act that reflects a manifestation of free will, specific, informed, and

unequivocal consent of the interested party to accept the processing of personal data that

concern", understanding that "inaction should not constitute consent"

(Recital 32). Consent must also be given for all activities of

treatment carried out with the same or the same purposes and, when the treatment has several

purposes, consent must be given for all of them through a manifestation of will

expressed for each of the purposes separately or differentiated, allowing the

interested choose to choose all, a part or none of them.

Consent cannot be freely understood as it has not been allowed.

“separately authorize the different personal data processing operations despite

be adequate in the specific case” (Considering 43).

The Article 29 Working Group, in its document “Guidelines on the

consent under Regulation 2016/679”, which has been cited on several occasions,

It refers to the dissociation of the purposes of the treatment and the freedom that the users should have.

data subjects to choose which purposes they accept, rather than having to consent to a

set of ends. It adds that “When the processing of the data is carried out for

diverse, the solution to fulfill the condition of valid consent will be in the

granularity, that is, in the dissociation of said purposes and the obtaining of consent

for each of them”, and cites the following example:

“[Example 7]

In the same consent request a retailer asks its customers for consent to use

your data to send you advertising by email and to share your data with other

companies of its group. This consent is not granular since it is not possible to consent by

separately for these two different purposes and, therefore, the consent will not be valid. In this case,

specific consent should be obtained to send contact details to partners

commercial. Such specific consent shall be deemed valid for each partner (see also the

section 3.3.1) whose identity has been provided to the interested party at the time of obtaining their

consent and to the extent it is sent for the same purpose (in this example, a business purpose).”

Therefore, all transfers of data made by CAIXABANK become illegal.

to companies of the CaixaBank Group.

In the same way, all the treatments carried out by the user are considered irregular or illicit.

out CAIXABANK of personal data that are provided by the entities

belonging to the CaixaBank Group, relating to clients of the latter.

Apart from this exchange of information, in Clause 8 of the "Framework Agreement" it is

indicate that the client grants his authorization "in relation to: (i) The analysis treatments and

study of data for commercial purposes by CaixaBank and companies of the CaixaBank Group; (iii)

Processing for the commercial offer of products and services by CaixaBank and the

companies of the CaixaBank Group". With this, CAIXABANK intends that the interested parties

give CAIXABANK its consent so that other Group companies

carry out personal data processing, which cannot be accepted.

CAIXABANK has stated in its allegations that the CaixaBank Group operates under

the same brand concept, with that entity as the axis.

He points out that this circumstance is transferred to the various facets of the treatment of

data, including the management of consents for processing for purposes

commercial, which will be carried out jointly in the context of the activities

of the Group for the same purpose with the same means, in relation to data of which the

Group entities are jointly responsible. And adds that each entity has its database

own (only accesses the data necessary for the provision of its services), but that

they all have "a kind of shared responsibility", they are jointly responsible for the

treatment, so there is no specific purpose in the transfer that justifies the provision of

a separate consent.

On the other hand, CAIXABANK alleges that this "integration of all bases" is a

regulatory requirement for proper risk management and necessary for compliance with

legal obligations, which must be supported by the coordinated management of information. But,

Even in this risk management, the risk of the business group that

should be quantified for regulatory purposes, of individual risk, which should only be

valued by the entity with which the interested party maintains a contractual relationship. In

In any case, nothing is said to the client about this co-responsibility (in the "Framework Agreement",

When reporting on regulatory purposes, only reference is made to the responsibilities and

obligations of CAIXABANK).

Finally, CAIXABANK warns that this issue was the subject of an evaluation of

impact, which does not contribute.

CAIXABANK, however, has not justified that we are faced with a supposed

of co-responsibility, beyond the exchange of information between companies of the Group

CaixaBank that are necessary for regulatory purposes or to comply with a

legal obligation, which are not questioned in these actions.

In this case, the attribution of responsibilities between the different

Group companies required by the GDPR, nor the functions and obligations of these companies

in its relationship with the interested parties; and there is no evidence that the

corresponding agreement that regulates these circumstances in a transparent manner, which,

In addition, it must be made available to those interested. The obligation to formalize that

agreement in which the respective responsibilities are determined, as well as that of putting it to

disposal of the interested parties in its essential aspects, is established in article 26 of the

GDPR:

“Article 26 Co-responsible for the treatment

1. When two or more managers jointly determine the objectives and means of the

treatment will be considered co-responsible for the treatment. The co-responsible will determine

in a transparent and mutually agreed manner their respective responsibilities in complying with the

obligations imposed by this Regulation, in particular with regard to the exercise of the

rights of the interested party and their respective obligations to supply information to which

referred to in articles 13 and 14, except and to the extent that their respective responsibilities are governed

by the law of the Union or of the Member States that applies to them. Said agreement may

designate a point of contact for those interested.

2. The agreement indicated in section 1 will duly reflect the respective functions and relationships of

the co-responsible in relation to the interested parties. The interested parties will be made available

essential aspects of the agreement.

3. Regardless of the terms of the agreement referred to in section 1, the interested parties

may exercise the rights recognized by this Regulation against, and against, each

one of those responsible."

On the contrary, considering the data used by the CaixaBank Group and the uses

to which they are intended, already detailed in the Fundamentals that analyze the information offered

to customers, it follows that the exchange of all information between all

companies that comprise it respond more to "commercial" purposes, unrelated to the relationship

contractual, such as the realization of commercial impacts and the design of new products

or services, for which all the data related to the client available in all

the companies of the Group, those provided by the interested party and those that "are generated in the

contracting and operations of products and services", with CaixaBank and with the Companies of the

CaixaBank Group, including the profiles made from such data. CAIXABANK

He even stated that he had arranged that the consents of the clients for the

processing of your personal data for "commercial purposes" would be collected at the level of

"group", jointly for all the companies of the "group".

This exchange, as has been said, takes place between all the companies of the Group,

that is, each of the companies that make up said Group shares personal data

registered in their information systems with all the others. The data was said to be

would manage "from a common repository of information of the companies of the Group

CaixaBank”.

Thus, said exchange does not take place only between CAIXABANK and the rest or between them and CAIXABANK only. Although the purpose of this procedure is to analyze the offenses attributed to CAIXABANK and does not reach the rest of the Group companies, it is of interest make clear that global exchange to record the irregular action that is is producing.

If to that we add the detail of the companies that make up the repeated Group CaixaBank and the specific commercial activity that each of them carries out, the irregularity is even more manifest.

Obviously, there cannot be co-responsibility of all the companies of the Group CaixaBank in relation to the processing of data that the contract entails, of whatever type, formalize a client with one of them. If more than one company is involved in the contract, the rest of the companies, which do not participate in any way in that contract, cannot be considered co-responsible.

It is enough to examine the entities that make up the CaixaBank Group and the object of their businesses, to conclude that global co-responsibility cannot occur, which would mean admit that they all act as responsible in the treatment of customer data of a of these companies, even if they do not participate in the specific contractual relationship formalized by the client.

The Privacy Policy contains the following detail:

“Your bank CAIXABANK, S.A.

The issuer of your credit and debit cards CAIXABANK PAYMENTS, E.F.C., E.P., S.A.U.

The issuer of your prepaid cards CAIXABANK ELECTRONIC MONEY, EDE, S.L.

Your insurer VIDACAIXA, S.A.U. INSURANCE AND REINSURANCE

The marketer of your funds CAIXABANK ASSET MANAGEMENT, S.G.I.I.C., S.A.U.

Your social bank, an expert in microcredits NUEVO MICRO BANK, S.A.U.

Your consumer finance company CAIXABANK CONSUMER FINANCE, E.F.C., S.A.U.

Your renting company CAIXABANK EQUIPMENT FINANCE, S.A.U.

Your e-commerce company PROMOCAIXA, S.A.

The company that manages the payments in your stores COMERCIA GLOBAL PAYMENTS, E.P., S.L.".

The intervention of more than one Group company in the relationship that formalizes the

Nor does the client determine, without further ado, the co-responsibility of both. It will be necessary to analyze

each of the cases to conclude what is appropriate in this regard.

It so happens that some of these activities and the relationships that

link each company with the client is expressly regulated in a standard,

that provides the nature of their participation from the point of view of the protection of

personal data, so it cannot be left to the will of these companies to have a

different frame.

A clear example can be found in the regulations governing mediation in

private insurance, for cases in which the financial entity or commercial companies

controlled or owned by it enters into an insurance agency contract with a

insurance company and carry out the activity of insurance mediation as an insurance agent

using the distribution networks of the credit institution, assuming the character of

Banking-Insurance Operator.

In these cases, article 62 of Law 26/2006, of July 17, on mediation of

private insurance and reinsurance, states that, for the purposes of the LOPD, "a. The agents of

exclusive insurance and exclusive bancassurance operators will have the condition of

in charge of the treatment of the insurance company with which they had concluded the

corresponding agency contract, under the terms provided in this Law.

This rule has been repealed by Royal Decree-Law 3/2020, of February 4, of

urgent measures by which various measures are incorporated into the Spanish legal system

directives of the European Union in the field of public procurement in certain

sectors; private insurance; pension plans and funds; of the tax field and

tax disputes. This Royal Decree-law does not modify the previous scheme:

“Article 203. Status of controller or processor.

1. For the purposes provided in Organic Law 3/2018, of December 5, as well as in the Regulation

(EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection

of natural persons with regard to the processing of personal data and the free movement of

these dates:

a) Insurance agents and bancassurance operators will have the status of managers of the

treatment of the insurance company with which they had entered into the corresponding insurance contract.

agency, under the terms provided in title I”.

“Article 204. Other data protection regulations.

2. Insurance agents and bancassurance operators may only process the data of the

interested in the terms and with the scope that emerges from the insurance agency contract and

always in the name and on behalf of the insurance company with which they have entered into the contract.

Bancassurance operators may not process the data related to their mediation activity

for purposes of its corporate purpose without the unequivocal and specific consent of the

affected”.

In any case, the exchange of information designed by CAIXABANK and the

companies of the CaixaBank Group does not conform to the concept of "co-responsibility", which is

establishes for specific treatments, “when two or more responsible determine

jointly the objectives and the means of the treatment”; and that requires a decision-making power of

all responsible that is not given in this case.

In accordance with the foregoing, the allegations regarding the proposal for

resolution made by CAIXABANK, in which it states that there is no improper assignment

of personal data, but a system of transparent co-responsibility is established

for the interested parties, which derives from a direct collection of the data by the companies in the

scope of co-responsibility and joint participation in the determination of goals and

media.

There is no co-responsibility regime, nor can it be said that it was transparent for

the clients. In fact, at no time before has CAIXABANK made use of the agreement to

co-responsibility, so never before could it make available to interested parties the

essential aspects of an agreement that did not exist. Not even in the previous phases has

alleged this co-responsibility, referring to this matter in his allegations to the agreement of

beginning of the procedure pointing out that all the companies of the Group hold “a kind of

shared responsibility”, as already indicated. And neither is the Activity Log

of Processing includes operations in which CAIXABANK intervenes as co-responsible party.

It was on the occasion of the processing of allegations to the resolution proposal when

CAIXABANK has raised this allegation and has provided a "Co-responsibility Contract",

that appears in the “sixth allegation” of the brief of allegations to the proposed resolution

among the new measures implemented, which appears unsigned by the entities that

supposedly intervene in its formalization. In his allegations about graduating from the

sanction refers to data transfers made within the framework of "the

co-responsibility de facto, and, at present, formal". However, this agreement does not remedy the irregular situation maintained during the period of time prior to the opening of the process.

On the other hand, CAIXABANK has not provided the essential information to have sufficient elements to assess whether the conditions are met, from the point of factual view and not only formal, for that co-responsibility in each of the treatments to those referred to in the agreement provided, considered case by case; nor to conclude if all the entities have complied with regulatory provisions, especially those relating to the duty of transparency and the existence of a legal basis for the treatment.

If it can be said, as stated above, that CAIXABANK has not complied with those provisions in relation to the exchange of information regarding their customers with the companies that make up the Group, nor would they be fulfilled in relation to these alleged joint treatments, about which it has not informed clients properly and for which there is no legal basis.

(…)

Finally, it is considered appropriate to cite Guidelines 07/2020, on the concepts of Data controller and data processor in the GDPR, adopted by the CEPD on September 2, 2020, in which the assumption of co-responsibility is rejected use for advertising purposes of a database shared by a group of Business:

"Joint control may also be excluded in the event that several entities use a database. shared data or a common infrastructure, if each entity independently determines its own purposes.

Example: marketing operations in a group of companies using a database shared.

A group of companies uses the same database for the management of clients and potential clients.

This database is hosted on the servers of the parent company, which is therefore a

in charge of the treatment of the companies with respect to the storage of the data. Each

group entity enters the data of its own customers and potential customers and processes them

solely for their own purposes. In addition, each entity decides independently on access,

retention periods, correction or deletion of your customers and customer data

potentials. They cannot access or use the data of others. The mere fact that you are

companies use a database of shared groups does not imply as such a joint control.

In these circumstances, each company is therefore a controller.

Consequently, in accordance with the above findings, the facts

exposed in this Legal Basis suppose a violation of article 6 of the

RGPD, in relation to article 7 of the same legal text and article 6 of the LOPDGDD, which gives

give rise to the application of the corrective powers that article 58 of the RGPD grants to the

Spanish Data Protection Agency.

viii

Article 22 of the RGPD admits “automated individual decisions, including the

profiling” if such a decision is necessary for the execution of the contract, it is

authorized by the law of the Union or of the Member States or is based on the

consent of the interested party, which entails compliance with the obligation to inform

about it. Said article establishes the following:

“Article 22. Automated individual decisions, including profiling

1. Every interested party shall have the right not to be the subject of a decision based solely on the

automated processing, including profiling, that produces legal effects on him or her

significantly affected in a similar way.

2. Paragraph 1 shall not apply if the decision:

a) is necessary for the conclusion or execution of a contract between the interested party and a person in charge

of the treatment;

b) is authorized by the law of the Union or of the Member States that applies to the

responsible for the treatment and that also establishes adequate measures to safeguard the

rights and freedoms and the legitimate interests of the interested party, or

c) is based on the explicit consent of the interested party.

3. In the cases referred to in section 2, letters a) and c), the data controller shall adopt the

appropriate measures to safeguard the rights and freedoms and the legitimate interests of the

interested party, at least the right to obtain human intervention on the part of the person in charge, to

express their point of view and challenge the decision.

4. The decisions referred to in section 2 shall not be based on the special categories of data

personal data referred to in article 9, paragraph 1, unless article 9, paragraph 2, applies,

letter a) or g), and adequate measures have been taken to safeguard the rights and freedoms and

legitimate interests of the interested party.

It also takes into account what is expressed in recitals 71 and 72 of the RGPD.

“(71) The interested party must have the right not to be the subject of a decision, which may include a measure,

that evaluates personal aspects related to him, and that is based solely on the treatment

automated and produces legal effects on him or significantly affects him in a similar way, such as the

automatic denial of an online credit application or online contracting services in which

without any human intervention. This type of processing includes profiling

consisting of any form of treatment of personal data that evaluates personal aspects

relating to a natural person, in particular to analyze or predict aspects related to the
job performance, financial status, health, personal preferences or interests,
reliability or the behavior, situation or movements of the data subject, insofar as
produce legal effects on him or significantly affect him in a similar way. However, they must
allow decisions based on such processing, including profiling… in cases where
which the interested party has given their explicit consent. In any case, said treatment must
be subject to appropriate safeguards, including information specific to the
interested and the right to obtain human intervention, to express their point of view, to receive a
explanation of the decision made after such evaluation and to challenge the decision. Such a measure does not
must affect a minor.

In order to guarantee a fair and transparent treatment with respect to the interested party, taking into account the
specific circumstances and context in which personal data is processed, the data controller
treatment must use appropriate mathematical or statistical procedures for the elaboration of
profiles, apply appropriate technical and organizational measures to ensure, in particular, that
correct the factors that introduce inaccuracies in the personal data and minimize the
risk of error, secure personal data in a way that takes into account possible risks
for the interests and rights of the interested party and prevent, among other things, discriminatory effects
in natural persons for reasons of race or ethnic origin, political opinions, religion or beliefs,
union affiliation, genetic condition or state of health or sexual orientation, or that give rise to
measures that produce such an effect. Automated decisions and profiling on the
basis of particular categories of personal data should only be permitted under conditions
specific.

(72) Profiling is subject to the rules of this Regulation that govern the

processing of personal data, such as the legal grounds for processing or the principles of

Data Protection…".

In the aforementioned regulations, decisions based solely on treatment are prohibited.

automated, including profiling, that produce legal effects in the

concerned or similarly significantly affect him, unless such decisions are

based on their explicit consent.

An important aspect regarding automated individual decisions has to

to do with the use of personal data for the preparation of customer profiles,

understood as any form of personal data processing that evaluates aspects

personal information relating to a natural person.

According to art. 13.1.f) of the RGPD, section 2, the person in charge is obliged to inform

on the "existence of automated decisions, including profiling, to which

refers to article 22, sections 1 and 4, and, at least in such cases, significant information

on the logic applied, as well as the importance and the foreseen consequences of said

treatment for the interested party".

The information that CAIXABANK offers its clients in the different documents that

are object of analysis expressly refers to the elaboration of profiles in numerous

occasions and in others, purposes or treatments are detailed that entail the realization of

profiling operations.

The "Privacy Policy" accessible through the CAIXABANK website, when referring to

the uses based on the consent of the interested party, informs:

"04 WE CANNOT HIDE IT FROM YOU: WE WANT TO KNOW YOU BETTER!

(…)

Uses based on your consent

Only if you authorize us when we ask you, we would like to process all the data that

we have about you to get to know you better, that is, to study your needs to know what new

products and services are adjusted to your preferences and analyze the information that allows us to have

determined in advance what your creditworthiness is.

We would also send you product offers from all Group companies and third parties that

Let's think they might interest you."

In Clause 8 of the "Framework Agreement", so often repeated, CAIXABANK refers to the

“Processing and transfer of data for commercial purposes by CaixaBank and the companies of the

CaixaBank group based on consent”, which are grouped as follows:

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

services tailored to the customer profile.

(ii) Details of the processing for the commercial offer of CaixaBank products and services and the

Companies of the CaixaBank Group.

(iii) Transfer of data to third parties

These subsections correspond to three consents that are collected from the

concerned and which are outlined on the first page of the document, under the heading

“Authorizations for treatment”.

The description of the first group of treatments (i) in other documents or communication channels

collection of consents is expressed as follows:

. Purpose of studies and profiling.

. Carry out studies and monitoring of operations; manage the alerts of the products you have

hired; study products and services adjusted to their CaixaBank Group profile.

. Authorization for profiles and segments.

This first group of treatments, "Detail of the treatments of analysis, study and

follow-up for the offer and design of products and services adjusted to the customer profile",

outlines five purposes:

"By granting your consent to the purposes detailed here, you authorize us to:

a) Proactively carry out risk analysis and apply statistical and technical data to your data.

customer segmentation, with a triple purpose: 1) Study products or services that may be

adjusted to your profile and specific business or credit situation, all to make offers

adjusted to your needs and preferences, 2) Track the products and

contracted services,3) Adjust recovery measures on defaults and incidents arising from

the contracted products and services.

b) Associate your data with those of companies with which you have some type of link, both because of your

ownership and management relationship, in order to analyze possible interdependencies

economics in the study of service offers, risk requests and product contracting.

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

contracted products and services...".

And in relation to these purposes, the following is indicated:

"The treatments indicated in sections (i), (ii) and (iii) may be carried out in an

automated and entail the elaboration of profiles, with the purposes already indicated. To this effect,

We inform you of your right to obtain human intervention in the treatments, to express your point

of view, to obtain an explanation about the decision made on the basis of automated processing,

and to challenge said decision.

CAIXABANK warns the client that the indicated treatments may be carried out
in an automated way and lead to profiling. To this effect, CAIXABANK
informs about "their right to obtain human intervention in the treatments, to express
their point of view, to obtain an explanation about the decision made on the basis of the
automated processing, and to challenge said decision".
With this, CAIXABANK warns about profiling operations that correspond
with the automated individual decisions regulated in article 22 of the RGPD, which
These profiles will serve to make automated decisions with legal effects for the
concerned or that will significantly affect you in a similar way. In this case, according to
indicated, the interested party has the right to be informed by virtue of what is established in the
article 13.2.f) of the RGPD, including in that information all the issues that that letter
mentions, as is the applied logic, the importance and the foreseen consequences of said
treatment for the interested party, as well as on the possibility of opposing the adoption of
these automated individual decisions, and the right to have all the
guarantees provided (in addition to specific information to the interested party, the right to obtain
human intervention, to express their point of view, to receive an explanation of the decision
taken after such assessment and to challenge the decision).
The legal basis of these actions is based, according to the information that
facilitates the interested parties-clients, with their consent.
This information, and the evidence on the irregularity of the consents
provided by CAIXABANK customers for the processing of their personal data,
determined the imputation to said entity in the agreement to open the procedure of a
alleged infringement due to the violation of article 22 of the RGPD.
However, the investigation of the procedure has not revealed that
CAIXABANK carries out data processing as regulated in this article 22 of the
RGPD, that is, that it adopts decisions based solely on automated processing and

that produce legal effects on the interested party or significantly affect them in a

Similary.

Some data processing involves the use of profiles that could

result in discriminatory effects for the interested parties (such as, for example, credits

pre-granted, prices adjusted to the client's profile, benefits and promotions). But I do not know

is aware that these treatments respond to the concept of "individual decision

automated" and that effectively produce legal effects or significantly affect the

interested.

If so, CAIXABANK must consider what is established in the aforementioned article 22 of the

RGPD and comply with the expressed demands and the requirements that allow

consider that the consent has been given in a valid way, if this were the basis

legal.

Consequently, it is deemed appropriate, due to lack of evidence, to declare the

non-existence of infraction in relation to the imputation for an alleged non-compliance with the

established in article 22 of the RGPD.

IX

In the event that there is an infringement of the provisions of the RGPD, between the

corrective powers available to the Spanish Data Protection Agency, such as

control authority, article 58.2 of said Regulation contemplates the following:

"2 Each control authority will have all the following corrective powers indicated below:

continuation:

(…)

d) order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified term;

(…)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

X

In the present case, the breach of the principle of transparency established in articles 12, 13 and 14 of the RGPD, as well as the principle of legality of the treatment regulated in article 6 of the same Regulation, with the scope expressed in the previous Foundations of Law, which supposes the commission of individual infractions typified in article 83.5 of the RGPD, which under the heading "General conditions for the imposition of administrative fines" provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, a amount equivalent to a maximum of 4% of the total annual global turnover for the year previous financial statement, opting for the highest amount:

a) the basic principles for processing, including the conditions for consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22; (…)".

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this law

organic”.

For the purposes of the limitation period, articles 72 and 74 of the LOPDGDD indicate:

“Article 72. Infractions considered very serious.

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, they are considered very

serious and will prescribe after three years the infractions that suppose a substantial violation of the

articles mentioned therein and, in particular, the following:

(…)

b) The processing of personal data without the concurrence of any of the conditions of legality of the

treatment established in article 6 of Regulation (EU) 2016/679.

c) Failure to comply with the requirements of article 7 of Regulation (EU) 2016/679 for the

validity of consent.

(…)

k) The impediment or the hindrance or the repeated non-attention of the exercise of the rights

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

“Article 74. Infractions considered minor.

They are considered minor and the remaining infractions of a merely formal nature will prescribe after a year.

the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in

particularly the following:

a) Failure to comply with the principle of transparency of information or the right to information of the

affected by not providing all the information required by articles 13 and 14 of the Regulation (EU)

2016/679”.

In order to determine the administrative fine to be imposed, the provisions

of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with the

this article for the infractions of this Regulation indicated in sections 4, 9 and 6 are

in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each individual case, to

additional title or replacement of the measures referred to in article 58, paragraph 2, letters a) to h) and

i). When deciding the imposition of an administrative fine and its amount in each individual case, the

due account:

a) the nature, seriousness and duration of the infringement, taking into account the nature, scope or

purpose of the processing operation in question as well as the number of data subjects affected

and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the person in charge or in charge of the treatment to mitigate the damages and

damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the

technical or organizational measures they have applied under Articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and

mitigate the potential adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the

The person responsible or the person in charge notified the infringement and, if so, to what extent;

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

against the person in charge or the person in charge in question in relation to the same matter, the fulfillment

of said measures;

j) adherence to codes of conduct under Article 40 or certification mechanisms

approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as

financial benefits obtained or losses avoided, directly or indirectly, through the

infringement."

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679 are

will be applied taking into account the graduation criteria established in section 2 of the aforementioned

Article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, they may also

be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the processing of personal data.

c) The profits obtained as a result of committing the offence.

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 infraction, which does not

can be attributed to the absorbing entity.

f) Affectation of the rights of minors.

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

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

alternative resolution of conflicts, in those cases in which there are controversies between

those and any interested.

In this case, considering the seriousness of the infractions found, the

imposition of a fine, in addition to the adoption of measures.

Subsidiarily and for reasons of proportionality, CAIXABANK has requested that

other corrective powers are imposed that allow the implementation of certain changes

that it has in process to debug the errors in the informative clauses and improve them,

such as the warning, and points out that this measure has been applied in some cases to

legal persons and not only natural persons (he cites as an example the procedures

PS/00072/2019; or PS/00096/2019). Additionally, in the event that the

earlier petition, requests that a minimum degree of sanction be imposed.

The request made by CAIXABANK for the imposition of other

corrective powers, specifically, the warning, which is intended for people

and when the sanction constitutes a disproportionate burden (considering 148 of the

GDPR). In this case, unlike the precedents invoked by CAIXABANK, there is no

None of the assumptions that would support the application of the measure of

warning, for which, obviously, other factors must also be considered, such as

the offense committed and its seriousness. In the present case, the irregularities committed are

much more serious and have a greater impact than that expressed by CAIXABANK, who

intends to reduce the assumption analyzed to a few simple defects of the information offered

that they do not deserve any reproach that is not their rectification.

For the same reasons, and considering the graduation criteria for sanctions

indicated below, the request for the imposition of a sanction is also rejected.

tion to its minimum degree.

In accordance with the precepts transcribed, in order to set the amount of the penalties

fine to be imposed in this case on the defendant, as responsible for infractions

typified in article 83.5.a) and b) of the RGPD, it is appropriate to graduate the fine that would correspond

impose for each of the infractions imputed as follows:

1. Infraction due to non-compliance with the provisions of articles 13 and 14 of the RGPD, typified

in article 83.5.b) and qualified as minor for prescription purposes in article 74.a) of the

LOPDGDD:

It is estimated that the following factors concur as aggravating factors that reveal

greater unlawfulness and/or culpability in the conduct of the CAIXABANK entity:

a) The nature, seriousness and duration of the infraction: the verified facts

question all the actions carried out by CAIXABANK, as a whole, because the

infractions result from the personal data management procedures designed by that

entity for the adaptation of these processes to the RGPD, which are considered irregular

from the moment of the collection of personal data, questioning all

the activity carried out by the responsible entity since the entry into force of the RGPD. I know

bears in mind, however, that this is not a case of total absence of

information, but the disputed facts result from not providing the interested parties

Sufficient and appropriate information in relation to the various treatments carried out.

In this regard, CAIXABANK alleges that the issues analyzed in the proceeding

are not particularly serious, considering that all the information is provided, although

the AEPD understands that it can be improved; that the infraction is classified as minor; and it has not been

caused damage to the only two claimants, given that the treatments carried out are the

necessary for the development of the activity.

Contrary to what was stated by said entity, it is understood that the deficiencies

appreciated are especially serious, since they affect substantive aspects of the
principle of transparency and to all the treatment operations carried out, which are not
limited to the treatments necessary for the development of the activity, as indicated
CAIXABANK. None of the precedents cited in the pleadings can be assimilated into
in any way to the present case.

b) The intentionality or negligence appreciated in the commission of the infraction: the actions
have proven negligent conduct in relation to the violation of the regulations of
personal data protection. The violations found, given their evidence, should be
having been warned by an entity of the characteristics of CAIXABANK and avoided by
design your personal data management processes.

CAIXABANK understands that the establishment of clear procedures in relation to
information and the provision of consent means that this graduation criterion of
the sanction must be considered as a mitigating, without considering that the infractions are
they consider to have been committed precisely to the contrary. Furthermore, violations are not
only for non-compliance with the requirements for obtaining consent or the
operations carried out with this legal basis.

c) The continuing nature of the offence, in the sense interpreted by the National High Court,
as a permanent offense.

d) The high link between the offender's activity and the performance of data processing
personal: all the operations that constitute the business activity carried out by
CAIXABANK entail personal data processing operations.

e) The status of a large company of the responsible entity and its volume of business: it is a
leading company in the financial sector with a strong national presence. According to
information on the “caixabank.es” website, as of 12/26/2019, CAIXABANK declares itself the leader
in retail banking, with a 29.3% penetration share of individuals in Spain. A
09/30/2019, the Income Statement reflects an "Operating margin" of 2,035 million

euros. According to the information that appears in the Central Mercantile Registry, the "Subscribed Capital"

amounts to 5,981,438,031.00 euros.

f) High volume of data and processing that constitutes the object of the file: the

Infractions affect all data processing carried out by CAIXABANK that is not

are necessary for the execution of the contract, in which all the information

relating to customers.

g) High number of interested parties: the detected defects affect all the clients

natural persons of the entity. According to the information available on the “caixabank.es” website at

On 12/26/2019, the entity had 15.7 million customers.

h) The imputed entity does not have adequate procedures in place for action in the

collection and processing of personal data, so that the infringement is not

consequence of an anomaly in the operation of said procedures, but a

defect of the personal data management system designed by the person in charge. if you have

taking into account that the non-compliances found are structural and do not result from a

timely breach.

According to CAIXABANK, a defect in information cannot be understood as a defect

of the system. However, it is evident that the present assumption does not refer,

Simply, to a lack of information.

Considering the exposed factors, the valuation reached by the fine for the

imputed infraction is 2,000,000 euros.

2. Infraction due to non-compliance with the provisions of article 6 of the RGPD, in relation to

article 7 of the same legal text and article 6 of the LOPDGDD, typified in article 83.5.a) and classified as very serious for prescription purposes in article 72.1.b) and c) of the LOPDGDD:

It is estimated that they concur as aggravating factors, in addition to the factors exposed in relation to the previous infraction, indicated with the letters b), c), d), e), g) and h), the following factors that reveal greater unlawfulness and/or culpability in the conduct of the CAIXABANK entity:

a) The nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operations in question: infringements result from the personal data management procedures designed by CAIXABANK for the adaptation of these processes to the RGPD, which are considered irregular from the collection of personal data and the provision of the consents requested from the customers at the same time. The seriousness of the infractions increases according to the scope or purpose of the processing operations in question, which include the profiling using excessive information.

b) The degree of responsibility of the controller, taking into account the technical measures and organizational measures applied under articles 25 and 32; considering that the facts verified show that CAIXABANK has not taken care that in the treatment of data is used exclusively the data necessary for the intended purpose.

Faced with this, the adoption of measures in recent years cannot be opposed aimed at promoting privacy by design. What is relevant is that such measures are appropriate and, in relation to the foregoing, those adopted by CAIXABANK are not.

c) The profits obtained as a result of committing the offence: the information
relating to customers is used to design new products or services or improve existing ones.
existing and for their dissemination. To appreciate this benefit it is not necessary that
the responsible entity has monetized the personal data, making sales of data with
commercial purposes, as CAIXABANK alleges.

d) The nature of the damages caused to the interested parties or to third parties:
the high degree of interference in the privacy of CAIXABANK customers is taken into account
and that all information is disclosed to third parties (CaixaBank Group companies).
The transfers have taken place and have been accredited. CAIXABANK itself has
recognized the exchange of information with the companies of the Group.

e) High volume of data and processing that constitutes the object of the file; between the
which significantly highlight the transfer of personal data to third parties. Alleges the
responsible entity that has not initiated the data transfers, without considering those made to
CaixaBank Group entities.

f) The categories of personal data affected by the infringement, which includes
customer profiles, inferred using all available customer information, including
collected for compliance with legal obligations. This conclusion is in no way affected by the
fact that the treatments do not use special category data, manifested by
CAIXABANK.

Considering the exposed factors, the valuation reached by the fine for the
imputed infringement is 4,000,000 euros.

The allegations at the opening of the procedure made by the entity
CAIXABANK do not contain any observation on the circumstances indicated with the
letters c), d), e), f) and g) of point 1.

Instead, it requested that the measures taken

to regularize the situation revealed in the claim outlined in Fact

Tested Fourth, implementing the measures recommended by the organization of

consumers and users who filed the claim; along with the purpose of

draw up a new "Framework Agreement"; as well as the degree of cooperation shown to put

remedy the irregular situation and mitigate possible adverse effects.

These actions are not considered to be of sufficient relevance to be considered in this

procedure for the purposes intended by CAIXABANK. With the measures taken in

relation to the aforementioned claim, related only to the face-to-face process of

obtaining the consent of the client, a true regularization has not occurred, nor has

mitigated the adverse effects of the infractions committed. On the other hand, the preparation of

a new "Framework Agreement" is nothing but the necessary consequence of the irregularity of the

document used by CAIXABANK and analyzed in this proceeding. So,

the request to consider such actions as a mitigating circumstance is dismissed.

In its allegations to the proposed resolution, CAIXABANK states reproduced

its allegations to the initial agreement, without formulating, even in this case, any

consideration of the graduation criteria indicated with letters c), d), e), f) and g) of the

point 1.

In these allegations, he once again requests that they be taken into account as mitigating factors.

the measures taken by CAIXABANK, as well as the degree of cooperation shown, within and

outside the framework of the procedure, to remedy the infraction and mitigate the possible

adverse effects of the violation.

Finally, CAIXABANK warns about the unprecedented disproportion of the sanction
imposed, considering that it is a case of minor infraction and not of absence of
information, and that data transfers do not take place outside the framework of co-responsibility
de facto and, at present, formal identity that exists in the CaixaBank Group (without the free vote
will of the subjects has been diminished in any case). It adds that the proposed sanction
ta is 8 times higher than the highest fine imposed under the GDPR (if we do not take into account
"the other" exemplary sanction of the financial sector, recently known), and 3 times higher than
maximum established under the previous regime for the most serious infractions, ignoring the application
cation of the mitigating factors that CAIXABANK details in its allegations.

In the opinion of this Agency, the cooperative attitude of CAIXABANK cannot be accepted,
who has systematically denied the facts, despite their evidence.

On the other hand, none of the circumstances expressed by said entity to found
mentioning the disproportion of the sanction concurs in this case, in which it is also committed
a very serious infringement, to which CAIXABANK does not usually refer in any of its allegations.
tions, trying to reduce the assumption analyzed, as has already been said, to mere errors in the
information provided to customers. Precisely, one of the determining facts, not
the only one, of the very serious infringement, has to do with the transfer of customer data, of
all the data and all the clients, that CAIXABANK makes to the companies of the Caixa-
Bank, on which the interested party has no opportunity to comment, being committed
your free choice.

In any case, the proportionality of the sanction results from the application of the criteria
of graduation established in the corresponding regime of infractions and sanctions, which
is applicable to the facts verified, that is, the current regime. Thus, it does not proceed
qualify the sanction imposed as disproportionate by resorting to the system of infractions and
sanctions that regulated the Organic Law 15/1999 (LOPD), to affirm that the im-
set is so many times higher than those provided for in that Organic Law, but rather than the norm that

establishes the measures that should be imposed in this case, that is, the RGPD.

This Regulation, in its article 83.3, establishes that breaches of the

articles 13, 14, and 6 of the same RGPD will be sanctioned with administrative fines of

20,000,000 euros (twenty million euros) maximum or, in the case of a company,

of an amount equivalent to a maximum of 4% of the total annual global turnover of the

previous financial year, opting for the highest amount. Considering this regulation

and the graduation criteria previously assessed, the fine imposed on CAIXABANK is not

disproportionate It is useless to argue that the LOPD provided for penalties for amounts

lower.

The truth is that, in this aspect, as in many others, the RGPD has meant a

paradigm shift in the protection of personal data, establishing measures with a

clear dissuasive character. It is enough to examine the sanctions that, in this matter, have

recently imposed on other European countries, which are public, to understand the scope

of the change that the application of the RGPD entails. Below are the links to

some of these resolutions, as examples:

. https://edpb.europa.eu/news/national-news/2019/cnils-restricted-committee-imposes-financial-penalty-

50-million-euros_en;

. https://edpb.europa.eu/news/national-news/2020/aggressive-telemarketing-practices-vodafone-fined-

over-12-million-euro_en;

. https://edpb.europa.eu/news/national-news/2020/belgian-dpa-imposes-eu600000-fine-google-belgium-

not-respecting-right-be_es.

On the other hand, CAIXABANK also understands that it is appropriate to classify the fact of having proceeded to further clarify the information offered to its clients and the procedure by which consent is requested, to such an extent that it would result from the all unnecessary the imposition of the corrective measures proposed by the AEPD.

The aforementioned entity has stated in its pleadings that it has ordered a new structure of the documents through which it informs customers on the matter that we are dealing with, preparing a new Privacy Policy, as a basic document, and modifying the "Framework Agreement" so that it offers only basic information and refer to the Privacy Policy, as a second layer. As indicated, it is intended a total uniformity and deeper detail of the information. And has provided a copy of both documents, together with the “Co-Responsibility Agreement”, which was referred to in the Grounds of Law VII when dealing with data communications to Group companies CaixaBank, screen print related to the consent collection processes.

CAIXABANK also indicates that it has issued a mass communication to customers reporting the changes.

This Agency considers that the aforementioned actions, in view of the evidence obtained in this case, are a requirement of the principle of proactive responsibility and the diligence regarding compliance with the data protection regulations that must be expected from an entity such as CAIXABANK and that the RGPD itself expressly imposes, including the obligation to review and update the organizational measures that guarantee the adequacy of your data processing with the RGPD.

And this Agency also considers that there is no real regularization of the situation generated by the breaches verified, nor have their effects been mitigated.

On the one hand, the approach made by CAIXABANK in its allegation cannot be accepted, according to which the only action that is criticized is the drafting of informative texts, through which it informs its clients about the processing of their personal data.

And, on the other hand, in relation to the consents given and the treatments

of data that it carries out, CAIXABANK limits itself to pointing out that the mentions of the cessation of

treatments are disproportionate. In his pleadings, he makes no reference to the

regularization in your records of the annotations corresponding to the consents

collected to date, nor to the suspension of personal data processing

qualified as unlawful in these actions or the deletion of personal data

collected from third parties or inferred by the entity itself.

Once again, as has been said so many times before, CAIXABANK intends to reduce

questions arising from information defects, from which it can only be derived, to

their judgment, the demand to correct them. However, contrary to what was intended by

CAIXABANK, the breach of the provisions of article 6 of the

GDPR, along with the severity and impact of the defects found in the information

offered to those interested.

Thus, the supposed correction of the information contained in the documents provided

by CAIXABANK, even assuming that this correction was complete, does not constitute a

true regularization of the irregular situation verified in this procedure

sanctioning Therefore, the request to consider such actions as a

extenuating circumstance.

On the other hand, CAIXABANK does not provide any report or evaluation, nor does it explain how it has

adapted the documents that determine the configuration of this new Privacy Policy

Privacy and would enable its analysis by this control authority (eg, the registration of

treatment activities, impact assessment reports or weighting of interest

legitimate).

CAIXABANK has enjoyed numerous opportunities to contribute this

documentation during the processing of the procedure. In each and every one of the

communications that have been sent to it has been warned about the principle of access

permanent regulated in article 53 “Rights of the interested party in the procedure

administrative” of Law 39/2015, of October 1, of the Common Administrative Procedure

of the Public Administrations, which recognizes those interested in the procedure the

right to know, at any time, the status of the processing and to formulate

allegations, use the means of defense admitted by the Legal System, and to

provide documents at any stage of the procedure prior to the hearing process.

Consequently, it is not possible to consider the irregular situation regularized.

eleventh

In accordance with the provisions of article 58.2.d) of the RGPD, each authority of

control may “order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period…”.

In this case, considering the circumstances expressed in relation to the

observed breaches, it is appropriate to require CAIXABANK so that, within the period

indicates in the operative part, adapt to the personal data protection regulations the

treatment operations that it carries out, the information offered to its clients and the

procedure by which they give their consent for the collection and

treatment of your personal data.

In those cases in which the interested party has not been duly informed about

the circumstances regulated in articles 13 and 14 of the RGPD or the interested party had not

given its valid consent, CAIXABANK will not be able to carry out the collection and

treatment of personal data. The same applies in relation to the treatments of

data based on the legitimate interest of the person in charge and with all those declared illegal

in this act, including the communications of personal data to the companies of the

CaixaBank Group.

All this with the scope and in the sense expressed in the Foundations of Law

of this act.

Likewise, it is appropriate to require CAIXABANK to notify the entities of the

CaixaBank Group to which it has communicated personal data of customers so that they

delete such data and stop using them. It is also appropriate to require

CAIXABANK to stop processing the personal data provided to it

by entities belonging to the CaixaBank Group, relating to clients of the latter.

It is warned that not meeting the requirements of this organization may be

considered as a serious administrative infraction by “not cooperating with the Authority of

control” before the requests made, being able to be valued such conduct at the time of

the opening of an administrative sanctioning procedure with a pecuniary fine.

In relation to these measures, with which it is intended to repair the irregular situation

generated by CAIXABANK in the treatment of the data of its clients and of the clients of

entities of the CaixaBank Group, as well as the correctness of the information offered in

matter of protection of personal data, said entity has stated that they would suppose a

irreparable impact, but without describing what this impact consists of and without justifying why it is

irreparable.

In any case, it is not possible to allege particular circumstances to justify the non-application

of the rule.

It also warns about the current global health situation, which restricts visits to

offices by clients. This Agency understands that with this it intends to reflect the

difficulties that this crisis supposes to regularize the situation of the clients. Nevertheless,

The term granted in the operative part is considered sufficient to carry out the

relevant regulation.

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

sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity CAIXABANK, S.A., with NIF A08663619, for an infringement

of articles 13 and 14 of the RGPD, typified in article 83.5.b) and classified as mild to

effects of prescription in article 74.a) of the LOPDGDD, a fine amounting to

2,000,000 euros (two million euros).

SECOND: IMPOSE the entity CAIXABANK, S.A., for an infraction of article 6 of the

RGPD, typified in article 83.5.a) and classified as very serious for prescription purposes

in article 72.1.b) of the LOPDGDD, a fine amounting to 4,000,000 euros (four

millions of euros).

THIRD: DECLARE the non-existence of infraction in relation to the imputation to the

entity CAIXABANK, S.A. of a possible violation of the provisions of article 22 of the

GDPR.

FOURTH: TO REQUEST the entity CAIXABANK, S.A., so that, within a period of six months,

adapt to the personal data protection regulations the treatment operations of

personal data that it carries out, the information offered to its clients and the procedure

through which they must give their consent for the collection and treatment

of your personal data, with the scope expressed in the Basis of Law XI. In the

period indicated, CAIXABANK, S.A. must justify before this Spanish Protection Agency

of Data the attention of the present requirement.

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

SIXTH: Warn the sanctioned party that he must make the imposed sanction effective once the

This resolution is executive, in accordance with the provisions of art. 98.1.b) of the law

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

Public (hereinafter LPACAP), within the voluntary payment period 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 entering,

indicating the NIF of the sanctioned party and the procedure number that appears in the

heading of this document, in restricted account number ES00 0000 0000 0000 0000

0000, opened in the name of the Spanish Agency for Data Protection in the bank

CAIXABANK, S.A.. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the

days 1 and 15 of each month, both inclusive, the term to make the voluntary payment will be until

on the 20th day of the following month or immediately after, and if it is between the 16th and

last of each month, both inclusive, the payment term will be until the 5th of the second month

next or immediately following business.

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

It 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 Agency Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13 July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the The interested party must formally communicate this fact in writing addressed to the Agency Spanish Data Protection, presenting it through the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through one of the remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also 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 suspension precautionary

Sea Spain Marti

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ANNEX I

Version 4 of the "Framework Agreement", dated by CAIXABANK on 11/12/2018:

(…)

Modifications to the previous text or new informative clauses introduced by Version 5

of the "Framework Agreement", dated by CAIXABANK on 12/20/2018.

(…)

Modifications to the previous text or new informative clauses introduced by the

document provided by CAIXABANK with its response to the Inspection Services and date

11/20/2019, which has been referred to in this act as "Version 7 of the Framework Agreement" or

“Client Framework Agreement dated 11/06/2019.

(…)

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Document provided by CAIXABANK on 07/10/2018, called by the same "Agreement of

Consent”, which is outlined in Fact Two of this Agreement:

ANNEX II

(…)

Modifications to the previous text introduced by the document that is included in the Minutes

corresponding to the inspection carried out at the CAIXABANK premises on the date

11/28/2019 (Attached documents 4 and 5):

(…)

Information offered for access to information of the interested party in SOCIAL NETWORKS

ANNEX III

(…)

ANNEX IV

AGGREGATION SERVICE

(…)

ANNEX V

Privacy Policy available on the website of the CaixaBank entity.

01 WHO ARE WE?

CaixaBank, as you know, is the largest bank in Spain by number of customers, and markets,

in addition to its products and services, those of a large group of investee companies, with activities

in the sectors of payment services, investment, insurance, shareholding, venture capital,

real estate, roads, sale and distribution of goods and services, consulting services, leisure and

charitable-social.

You will find the list of these companies at www.CaixaBank.es/empresasgrupo and their data, in the

Annex at the end of this communication (hereinafter we will call them companies of the CaixaBank Group).

02 WHAT DO WE NEED TO USE YOUR DATA FOR?

Uses with contractual purpose

The first and main reason why we need to process your data is for the provision of services.

services that you have contracted with us and for our own management. This treatment is

essential. If we didn't, we wouldn't be able to manage your accounts, cards, insurance, etc.

Uses for legal or regulatory purposes

At CaixaBank, and at the CaixaBank Group companies, we are obliged by different regulations to

treat your data to comply with the obligations that they have. They are rules that

establish, for example, regulatory reporting obligations, money laundering prevention measures,

capital and financing of terrorism or tax controls and reports. In these cases, the

The treatment of the data is limited to what is necessary to comply with those obligations or

legally required responsibilities.

Uses for the purpose of preventing fraud

We also need to process your data for the prevention of fraud, as well as to guarantee the

security, both of your information and of our networks and information systems.

As you may have seen, these three types of treatments are essential to maintain your

relationship with us. Without them we could not provide our services

03 AND WILL MY DATA NOT BE USED FOR OTHER PURPOSES?

The previous uses are those necessary to be able to provide you with our services but, with your confidence,

we would like to offer you much more.

Uses for commercial purposes based on legitimate interest

Unless you have told us, or tell us otherwise, we will send you updates and information

about products or services similar to those you already have contracted.

We will also use your information (account movements, card movements, loans,

etc.) to personalize your experience with us, for example by showing you first in the

ATMs and websites your most common operations; to offer you the products and services that fit

your profile and thus not bother you with what does not interest you; to apply the benefits and promotions that

we have in force and to which you are entitled, because we do not want you to miss any of the

advantages of being our client: and to evaluate if we can assign you credit limits

preconceived that you can use when you consider it most appropriate, so, when you need it,

We can serve you as quickly as possible.

Don't worry. In these treatments we will not use more information than what you have given us

or the one generated from the products contracted during the last year and, if you prefer not to

do, you just have to tell us, at any of our offices, in the post office box no.

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209 of Valencia (46080), at the electronic address www.CaixaBank.es/ejerciciodederechos or

through the options enabled for this purpose in your internet banking and in our applications

mobiles.

For any other commercial use that we want to make, we will ask you before, as you will see

continuation. Remember that one of our core values is trust.

04 WE CANNOT HIDE IT FROM YOU: WE WANT TO KNOW YOU BETTER!

Today, there are many possibilities to use information to get to know you better, give you a

better service, be more attentive and always ready to meet your needs. Therefore, you

We will ask for authorization to process your data a little more than what we told you before.

If you have already tried it, or try it in the future, surely you will not regret it, but do not worry, no

you have to decide now, we will ask you about it in the office, in the electronic channels or in your

relationships with the rest of the CaixaBank Group companies.

Uses based on your consent

Only if you authorize us when we ask you, we would like to process all the data that

we have about you to get to know you better, that is, to study your needs to know what new

products and services are adjusted to your preferences and analyze the information that allows us to have

determined in advance what your creditworthiness is.

We would also send you product offers from all Group companies and third parties that

We think they may interest you.

As we have told you, CaixaBank is a big family, so when you authorize us these

treatments you will benefit from the joint work of the CaixaBank Group companies from the table that

follows (remember that the list will be updated at all times in the link

www.CaixaBank.es/empresasgroup).

Your bank CAIXABANK, S.A.

The issuer of your credit and debit cards CAIXABANK PAYMENTS, E.F.C., E.P., S.A.U.

The issuer of your prepaid cards CAIXABANK ELECTRONIC MONEY, EDE, S.L.

Your insurer VIDACAIXA, S.A.U. INSURANCE AND REINSURANCE

The marketer of your funds CAIXABANK ASSET MANAGEMENT, S.G.I.I.C., S.A.U.

Your social bank, an expert in microcredits NUEVO MICRO BANK, S.A.U.

Your consumer finance company CAIXABANK CONSUMER FINANCE, E.F.C., S.A.U.

Your renting company CAIXABANK EQUIPMENT FINANCE, S.A.U.

Your e-commerce company PROMOCAIXA, S.A.

The company that manages payments at your stores COMERCIA GLOBAL PAYMENTS, E.P., S.L.

Finally, if you want, we can communicate your data to third parties with whom we have agreements,

whose activities are included among banking, investment services, forecasting and

insurer, shareholding, venture capital, real estate, road, sale and distribution of goods

and services, consultancy, leisure and charitable-social services.

We want you to be very clear that we respect your choices and act in accordance with them,

so that we will treat your data only for those purposes that, among the three above, we

you have expressly authorized.

05 AND WHAT HAPPENS TO MY DATA WHEN I BROWSE THROUGH THE WEB PAGES OR

CAIXABANK GROUP MOBILE APPLICATIONS?

When you browse our web pages or use our mobile applications, we want to be able to

personalize your experience to make it as exceptional as possible. It is also possible that

we want to remind you of our products and offers when you are browsing the internet.

You already know that cookies are used for that. We will inform you at all times of the details of its use

in the Cookies Policy, which you will find on all our web pages, as well as in the conditions

of use of the mobile applications that you download.

There we will describe at all times what data we can collect, how and what it is used for.

In addition, most web browsers allow you to manage your preferences about the use of

cookies. Remember that you can adjust the browser at any time to reject or eliminate

certain cookies at your discretion.

Likewise, the privacy settings of the mobile device allow you to manage the treatment of your

data.

06 BY THE WAY, WHAT MY DATA IS PROCESSED?

As you can imagine, thanks to the trust you have placed in us, we have a lot of

information about you. We have already told you what we use them for and how you can control each

At the moment these uses, but what specific information of yours are we going to treat?

Basically, they are your identification data and details of the professional or work activity, your

contact information and financial and socioeconomic data, both those you have provided us with and those

generated from the contracted products or services.

Also, only if you consent to it when we consult you, we can process data that we obtain from you.

the provision of services to third parties when you are the recipient of the service, those obtained from networks

that you authorize us to consult, those obtained from third parties as a result of services

of aggregation of data that you request, those obtained from the navigations that you carry out through the service

Internet banking, mobile phone applications and other web pages of the companies in the

CaixaBank Group or those obtained from companies that provide commercial information.

07 IS HEALTH DATA, IDEOLOGY OR OTHER SPECIAL OR SENSITIVE DATA PROCESSED?

In general, we do not need to process certain data of yours that are considered as

special categories of data, for example those relating to ethnic or racial origin, political opinions,

religious convictions or sexual identity.

If it is necessary to process this type of sensitive data, in each case we will request your consent.

explicit. These are some of the situations in which we will need to use any of this data:

Health data related to insurance products

Health data is within the category of sensitive data, and its treatment is essential

in the marketing of certain insurance products (health, life...). when we trade

these products, the person responsible for the health data is the insurance company, which is why we want

that you know that all the insurance companies whose products we commercialize respect and

They strictly comply with data protection regulations.

Biometric data collected in the electronic signature of documents

When we use electronic signature systems, sometimes, for your greater security and comfort,

biometric elements are used in the creation of the signature, for example the signature stroke on tablets

digitizers or fingerprints on the mobile phone. These data are essential for

make sure that it is you who is using the applications and that, therefore, nobody is

impersonating your identity.

To use these means of signature or identification, you must explicitly accept these

biometric data processing.

08 IS MY DATA SAFE?

For us, the security of your data is essential, and we assume the obligation and commitment to

protect them at all times.

For this reason, within this standard of maximum protection, we protect them against treatments that are not

authorized or unlawful and against accidental loss, destruction or damage, and we have implemented the

strictest information security protocols following the best practices in this

matter.

09 FOR HOW LONG DO I NEED TO KEEP MY DATA?

We will treat your data while the authorizations of use that you have given us remain in force.

granted or you have not canceled the contractual or business relations with us.

We will stop treating them once the authorizations of use that you have given us have been revoked or, if you have not revoked the authorizations but you have ceased to be a client, six months after they expired established contractual or business relationships, provided that your data is not necessary to the purposes for which they were collected or processed.

This does not mean that we delete them immediately, since we are obliged by different regulations to keep the information for a certain time (in many cases up to ten years), but in accordance with the regulations, your data will only be kept to comply with these legal obligations, and for the formulation, exercise or defense of claims, during the limitation period of the actions derived from the contractual or business relationships signed.

10 TO WHOM ARE MY DATA COMMUNICATED?

In addition to the exchange of commercial information between the companies of the CaixaBank Group (of which you previously informed), on certain occasions we need to share certain information with third parties to be able to provide our services, or because a regulation requires it, or because we need the support of specialist companies to help us in our work.

Below we explain with whom we can share your information, always with the maximum security and confidentiality:

Communication of data for the fulfillment of a legal obligation

As we have explained, we collaborate with the authorities, courts and public bodies. If the regulations establish it, we will share with them the information they request.

Communication of data for the execution of a contractual relationship

Sometimes, we use service providers with potential access to personal data.

These providers provide adequate and sufficient guarantees in relation to data processing, since we carry out a responsible selection of service providers that incorporates specific requirements in the event that the services involve the processing of personal data.

personal character.

Next, you will see what type of services we order:

FINANCIAL BACKOFFICE SERVICES

ADMINISTRATIVE SUPPORT SERVICES

AUDIT AND CONSULTING SERVICES

LEGAL SERVICES AND RECOVERY OF ASSETS AND UNPAID

PAYMENT SERVICES

MARKETING AND ADVERTISING SERVICES

SURVEY SERVICES

CALL CENTER SERVICES

LOGISTICS SERVICES

PHYSICAL SECURITY SERVICES

COMPUTER SERVICES (SECURITY OF SYSTEMS AND INFORMATION,

CYBERSECURITY, INFORMATION SYSTEMS, ARCHITECTURE, HOSTING, PROCESS

OF DATA)

TELECOMMUNICATIONS SERVICES (VOICE AND DATA)

PRINTING, ENVELOPE, POSTAL SHIPPING AND COURIER SERVICES

INFORMATION CUSTODY AND DESTRUCTION SERVICES (DIGITAL AND PHYSICAL)

MAINTENANCE SERVICES OF BUILDINGS, FACILITIES AND EQUIPMENT

We may also communicate your data to third parties that are necessary for the development, fulfillment

and control of the contracts of products and services that you have subscribed with us, for example, to

clearing houses or systems for the execution of transfers or receipts or for the payment of

rates or taxes.

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www.aepd.es

sedeagpd.gob.es

11 IS MY DATA TRANSFERRED OUTSIDE THE EUROPEAN ECONOMIC AREA?

The treatment of your data is carried out, in general, by service providers located
within the European Economic Area or in countries that have been declared with an adequate level of
protection.

In other cases, we guarantee the security and legitimacy of the processing of your data, requiring
its suppliers that have binding corporate rules that guarantee the protection of the
information in a similar way to those established by European standards, which are accepted
to the Privacy Shield, in the case of service providers in the USA, or who subscribe to the clauses
European Union type.

At all times we will ensure that whoever has your information to help us
provide our services, it does so with all guarantees.

12 DO CAIXABANK AND ITS GROUP COMPANIES HAVE A DELEGATE FOR THE PROTECTION OF
DATA?

Indeed, as required by data protection regulations, the companies of the Group
CaixaBank has a Data Protection delegate who ensures that all processing carried out
carried out are done with total respect for your privacy and the applicable regulations at all times.

The Data Protection delegate is at your disposal to attend to all the questions you may have.
have regarding the processing of your personal data and the exercise of your rights. you can contact
with the Data Protection delegate at: www.CaixaBank.es/delegadoprotecciondedatos

13 WHAT RIGHTS DO I HAVE IN RELATION TO MY DATA AND ITS PROCESSING?

These are the rights you can exercise in relation to your data:

Right of access: Right to know what data of yours we are treating.

Right to withdraw consent: Right to withdraw consent at any time
when you have given us authorization to process your data.

Right of rectification: Right to rectify or complete your data if they are inaccurate.

Right of opposition: Right to oppose those treatments based on legitimate interest.

Right of deletion: Right to delete your data when they are no longer necessary for the purposes for which they were collected.

Right of limitation: Right to limit the processing of your data (in certain assumptions, expressly provided for in the regulations).

Right of portability: Right to deliver your data (data processed for the execution of the products and services and data that we treat with your consent) so that you can transmit them to other responsible.

You can exercise your rights in any of the channels that we make available to you:

- At the offices of CaixaBank or of the Group companies
- By postal communication addressed to the Post Office box No. 209 of Valencia (46080)
- At the electronic address www.CaixaBank.es/ejerciciodederechos
- Through the options enabled for this purpose in your internet banking and in our applications mobiles

Additionally, you already know that, if in spite of everything you have a claim derived from the treatment of your data that we have not been able to solve, you can direct it to the Spanish Protection Agency of Data (www.agpd.es).

Note: The Privacy Policy includes an Annex in which the companies of the Group are listed CaixaBank (the same ones listed in point 04), indicating their address, NIF and registration in the Mercantile Registry and Special Administrative Registry of the Bank of Spain, Registry Administrative of Insurance Entities of the General Directorate of Insurance and Pension Funds, Registry of Management Companies of Collective Investment Institutions of the National Commission of Stock Market, as appropriate in each case.

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ANNEX VI

Document called "Processing of personal data based on interest

legitimate", obtained from the caixabank.es website, in the "Privacy" section, on 01/07/2020:

<<Processing of personal data based on legitimate interest

We inform you that, in accordance with the provisions of article 6.1.f) of the General Regulations of

Data Protection, CaixaBank sometimes processes customer data based on legitimate interest.

Below you will find the list of all the treatments that CaixaBank can carry out with this

legal base. This list will be permanently updated to include new treatments, or give

cancel those that are no longer carried out.

You can oppose the treatments that we relate below by indicating it in any

from our offices, in writing to post office box No. 209 in Valencia (46080), at the address

electronically www.CaixaBank.es/ejerciciode Derechos or through the options provided for this purpose

in your internet banking and mobile applications.

Processing based on legitimate interest

. Sending information about products or services similar to those you have already contracted or

information that we think may be of interest to you, or that we think may have

a reasonable expectation of receiving.

. Study of the information that we have about you (account movements, movements of

card, loans, etc.) to personalize your experience with the Entity, for example

first showing you at ATMs and websites your most common operations, or offering you

products and services that fit your profile and apply current benefits and promotions

in every moment.

. Follow-up of the fulfillment of the objectives, incentives or prizes set for our

employees.

. Communication of data between CaixaBank and the companies in which it has a stake for the purpose to make internal reports (without personal data), which allow us, among others aspects, carry out market studies and mathematical models to establish the strategy of CaixaBank Group business.

. Creation of statistical models (without personal data) that help the Entity to know better the preferences and tastes of our customers, collaborating in the improvement of the design and execution of commercial actions, as well as carrying out aggregated reports on the result of the models to carry out the follow-up of the behavior of the clients.

. Structuring and profiling of the information processed by the Entity to maintain the resources and technical systems prepared to efficiently meet management needs.

. Control and supervision of the Entity's activity through sampling and self-assessments with the purpose of identifying and assessing possible risks in the marketing of products, controls and evaluate compliance with internal rules and regulations.

. Control and supervision of operations in order to prevent fraud, both to customers and to the Entity itself.

. Use of contact data of employees or representatives of legal entities to maintain relations with the legal entity in which it provides services>>.