

Procedure No.: PS/00235/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00235/2019, instructed by the Spanish Agency for Data Protection, to the entity VODAFONE ESPAÑA SAU. (VODAFONE), with CIF A80907397, (hereinafter, "claimed entity"), having regard to the complaint filed by D. A.A.A., (hereinafter, "the claimant"), and based on the following,

BACKGROUND

FIRST: On 03/09/19, you had a written entry to this Agency, submitted by D. B.B.B., acting as representative and father of the claimant in which he was exhibiting, among others, the following:

"In September 2018, my minor son received a letter from Vodafone España SAU, in which it informs you that it has contracted with them a debt of 93.77 euros and that in the event of non-payment, it will be included in a list of delinquent I contacted them to tell them about the case, but far from pay attention to me, letters continued to arrive stating that either it was paid or it would be included in an ASNEF file. I filed a claim with the "Service Office to the Telecommunications User", which agreed with me (N/REF.: RC1020566/18)". To this claim, the documentation that was already detailed in the writing was provided. of initiation of the file and in the written resolution proposal.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes,

On 04/02/19, an information request is addressed to the entity claimed.

THIRD: On 07/03/19, the claimed entity sends this Agency

information already exposed in the letter of initiation of the file and in the letter of resolution proposal.

FOURTH: On 07/19/19, an information request is addressed to the entities

ASNEF-EQUIFAX and EXPERIAN to inform this Agency of the data

that appear in the ASNEF and BADEXCUG files, regarding the claimant.

On 07/24/19 and 08/28/19, this Agency received reports from the companies

indicated above in which they indicate the following, with respect to the claimant:

File

Lack

f low

ASNEF

10/18/18

BADEXCUG 10/21/18

11/16/18

11/18/18

Days

signed up

30 days

29 days

Balance

debtor

Entity

Informant

VODAFONE 93.77 euros

VODAFONE 93.77 euros

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FIFTH: On 09/09/19, a request is addressed to the representative of claimant requesting to send to this Agency, a copy of the DNI or documentation that proves the claimant's age at the time the events occurred.

On 09/11/19, the claimant sends this Agency a copy of the DNI of which appreciates that the date of birth is 12/23/2003, so, on the date of events occur, (date of registration of the telephone line and date of inclusion of their personal data in the ASNEF and BADEXCUG files: 01/17/18 10/18/18 and 10/21/18 respectively), the claimant was 14 years old, turned 12/23/17.

FIFTH: On 11/04/19, the test practice period began, agreeing-
se: a).-take as reproduced for evidentiary purposes the complaint filed by the de-advertiser and its documentation, the documents obtained and generated that form part of file E/3639/2019 and b).- consider reproduced for evidentiary purposes, the allegations to the initiation agreement of PS/00235/2019, presented by the entity.

SIXTH: On 01/16/20, the respondent entity was notified of the proposed resolution in which it is proposed that, by the Director of the AEPD, the entity be sanctioned VODAFONE ESPAÑA SAU, for infraction of arts. 6.1.a) and 5.1.a) of the GDPR, considered as "very serious", for the purpose of prescription of the same, in article 71.1.a and b) respectively, of the LOPDGDD. with a fine of 120,000 (one hundred and twenty thousand euros), in accordance with the provisions of article 58.2) of the aforementioned RGPD.

SEVENTH: Once the proposed resolution has been notified, the entity complained against submits

tions to the proposal on 01/30/20, in the period granted for this purpose, substantiating essentially the following:

“That the facts are as detailed below: Mr. A.A.A. affirms in his de-
announces that, in September 2018, his son received a letter from Vodafone
informing him that he had contracted a debt of 93.77 euros and that, in the event of
non-payment, it would be included in the delinquent file. Given the lack of payment, finally in the
month of October, their data was included in the delinquency file.

In the Resolution Proposal, the Agency maintains that “the entity claiming
The respondent has processed the claimant's personal data without their consent.

feeling, after having tried to cancel the services provided and that

In addition, said treatment was carried out illegally and not loyally in relation to the
inclusion of the same in the solvency files.” Reason for which he is charged

I represent the infringement of articles 5.1 and 6.1 of the RGPD.

The registration in the services occurred on January 27, 2018, due to an error made
by himself, as long as he registered for the line by including the personal data of his
child, a minor, instead of their own.

It was Mr. A.A.A. himself. who requested the registration of the mobile line, through the online store
Vodafone line, providing of his own initiative the personal data of his son to my re-
presented. Note that Mr. A.A.A. was not a previous Vodafone customer,

therefore, my client did not have any personal data of the claimant in their systems.

plus. This means that, in no case, Vodafone was able to assign or associate other data

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personal than those Mr. A.A.A. completed at the time of managing the discharge of the services through the Online Store.

In the same way, if it had not been for the contracting carried out on behalf of the claimant,

However, my client would not have been able to obtain the data of the minor.

As evidenced by the brief of Allegations of the Agreement of Initiation, re-

issued by this party to the Agency on October 16, 2019, realizing that

your mistake, Mr. A.A.A. contacted Vodafone on February 12,

2018 (barely only two weeks after discharge), and informed my client about

your error in registering the line by providing your child's data. Whereupon, my representative

tada offered him the possibility of changing the type of line contract, from postpaid to

prepayment, the claimant expressly consenting to said change.

So much so, that said acceptance was recorded in the internal systems of my representative.

sitting, processing that same day the opening of a change of postpaid line

prepaid, and processing the delivery of a SIM card at home

By virtue of which, it is thus accredited, again, the consent granted

by Mr. AAA, that is, said hiring was admitted and wanted by him.

It is also understandable that, if the claimant had not wanted

change the line from postpaid to prepaid, I would have returned the SIM card

received, or had expressed its refusal to my client in one way or another.

Being up to this point clearly a consensual hiring by Mr.

A.A.A., and without having received any type of communication from my client

for a whole year, Vodafone receives a resolution issued by the SETSI,

as a result of a claim filed by Mr. AAA.

Said notification is received on 02/08/19, as we have mentioned, one year later,

being required in the same to my client to proceed to the lowering of the mobile line

vil, and a payment is made for the amounts invoiced to the claimant, as well

made by Vodafone immediately when managing the cancellation, carrying out the payment and confirm that the minor was not included in solvency files on 02/15/19.

It is fully observable that Vodafone acted at all times in accordance with requested by the claimant, and that clearly said contracting had the consent of Mr. A.A.A., not once, but in three moments:

- i) when you acknowledge having registered online by mistake;
 - ii) when you agree to change the line contract from postpaid to prepaid and
 - iii) when he receives and confirms that the SIM has been delivered to his address, without indicating the denial.
- tive before said reception.

Specifically, this party wants to emphasize that the actions it has carried out in at all times are considered diligent, without having proceeded to a treatment of the data that may be considered erroneous or in bad faith, but has been adequate to what the claimant required of my client at all times.

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In short, from the description of the facts made and the documents provided

Throughout the entire procedure it can be observed and this part reiterates that for par-Vodafone there has been no fraud or intent.

What is appropriate is that the Agency agrees to dismiss this file and

the file of the actions since the facts have occurred without intention

some by my represented being the origin of all this is the discharge managed

by mistake in the Online Store by Mr. A.A.A. on behalf of his son.

Subsidiarily and in the event that despite the explanations previously given, cilitadas, the Agency understood that my client is deserving of a sanction for the commission of infringement of articles 5.1 and 6.1 of the RGDP, the amount of said The sanction must be moderate, imposing its minimum amount, taking into account the following circumstances set forth in art. 83.2 of the RGPD: The treatment has carried out at a local level and that there is no intention on the part of Vodafone in the claimed rights that, on the contrary, cause my client clear damages.

By virtue of the foregoing, I REQUEST to proceed to agree: (i) dismissal of the tooth and filing of proceedings, (ii) subsidiarily, a reduction of the sanction is initially stipulated, taking into account the aforementioned mitigating factors.

Of the actions carried out in this procedure, of the information and documentation presented by the parties, the following have been accredited:

a).- Regarding the minority of the claimant:

PROVEN FACTS

The claimant's date of birth is 12/23/03, so on the date of the events, (date of registration of the telephone line and date of inclusion of your personal data in the ASNEF and BADEXCUG files: 01/17/18; 10/18/18 and 10/21/18 respectively), the claimant was 14 years old, completed on 12/23/17, so he did not need parental consent or guardians for the treatment of the personal data of the minor.

b).- Regarding the unauthorized processing of the personal data of the claimant, to contract a mobile line, of the documentation presented and of the internal notes of the company, the following is verified:

1st. On 01/27/18 there was a registration in Vodafone services, at through the online store, in the name of the claimant. This registration is made by the father.

2nd. On 02/12/18, the father calls the company indicating the error in the registration and your intention to cancel the services. Whereupon, Vodafone offers you the possibility of changing the type of line contract, from postpaid to prepaid, consenting the claimant.

3rd. Dated 10/17/18, the complainant receives a letter from ISGF Informes Comerciales SL, in which they claim a debt with Vodafone, informing you, among others, that: "in case of not paying the debt within 10 days, VODAFONE could include your data in a financial solvency file and credit". Said period, therefore, would end on 10/27/18.

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4th. On 10/17/18, the claimant's father files a letter with the

Secretary of State for Digital Advancement (SEPAD), in which it denounces that:

"VODAFONE has proceeded to register some services in the name of your child without your consent and has transferred them to a collection management company that requires the payment of 93.77 euros".

5th. On 10/19/18, the claimant receives a notification from ASNEF, where

inform you that: "We inform you that on 10/18/18 the entity

VODAFONE has requested registration in the ASNEF file of personal data

related to the non-payment of the contract that it maintains with said entity for an amount of 93.77 euros".

6th. On 10/23/18, the claimant receives a notification from EXPERIAN,

where they inform you that: "An operation has been incorporated into this file in the

that a payment default has occurred and in which you intervene,

Entity: VODAFONE Amount: €93.77.

7th. On 02/08/19, SEPAD issues a resolution in which, among others, it indicates

that Vodafone has not proven at any time, that the claimant had

You have given your consent for the processing of your personal data during

the 13 months that the mobile line was active. It is also indicated in the resolution

solution that: "The claim regarding the activation of the

services by VODAFONE ESPAÑA, S.A.U., on behalf of the claimant,

regarding unsolicited discharge, recognizing the claimant's right to

obtain immediate cancellation of the unsolicited service, as well as not to pay the

invoices that VODAFONE ESPAÑA, S.A.U. may have issued, owing this

proceed to its return in the event that the subscriber has paid them

Already".

8th. Dated 02/08/19, the claimant's father makes a call to

Vodafone to communicate the facts and cancel the line. but the company

alleging that there was also a request for "registration of fiber", associated with the

phone number, kept the line active and continued to bill it until the

02/15/19, (7 days), when he proceeds to cancel the line and regularize the

billing.

c).- Regarding the inclusion of the personal data of the claimant in the files of

capital solvency, ASNEF and BADEXCUG, it is verified that:

- The complainant received a letter, dated 10/17/18, from the company ISGF

Informes Comerciales SL, in which they claimed a debt in favor of

Vodafone, granting him a period of 10 days to regularize his situation.

Otherwise, they indicated that their personal data would be incorporated into

capital solvency and credit files.

- Despite granting him a period of 10 days to regularize his presumed situation debtor with Vodafone, as of 10/17/18, Vodafone included its data personal data at ASNEF the next day, on 10/18/18, and at BADEXCUG, on 10/21/18, 4 days later, without meeting the deadline granted to the claimant for the payment of the presumed debt.

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- The personal data of the claimant was included in the ASNEF file for 30 days (from 10/18/18 to 11/16/18) and in the file BADEXCUG, for 29 days (from 10/21/18 to 11/18/18).

FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the denounced action that has been reflected jada in the facts declared proven above related.

However, in this case, and in response to the allegations presented by the claimed entity, it is necessary to re-emphasise the following points:

The entity admits that, through the online store, a mobile line was registered to name of the claimant and who remained discharged from 01/17/18 to 02/15/19.

However, even SEPAD, in its resolution dated 02/08/19, indicated that,

At no time, Vodafone had been able to prove that the claimant or his representative (in father, in this case), had given his consent for the processing of personal data during the 13 months that the line was active mobile.

However, everything indicates that if there is a registration in Vodafone services on 01/27/18, in the name of the claimant, made by the father. But on 02/12/18 (15 days later), the father calls the company indicating the error in the registration and his intention to cancel services. Whereupon, Vodafone offers you the possibility of changing the type of con-treatment of the line, from postpaid to prepaid, and depending on the entity, the parent consents.

On 10/17/18, the claimant receives a letter from ISGF Informes Comerciales SL, in which claiming a debt with Vodafone, informing him, among other things, that: "in the event of not pay the debt within 10 days, VODAFONE could incorporate your data in a file of patrimonial solvency and credit", before which, the father presents a complaint before the Secretary of State for Digital Advance that resolves, on 02/08/19 estimating the claim. That same day, the claimant's father gets in touch contact with the entity to communicate the facts and cancel the line but it is not until after 7 days (02/15/19), when Vodafone proceeds to execute the request of the father.

Apart from the unauthorized treatment of the personal data of the claimant indicated in the previous points, there is also an improper inclusion of your data in the ASNEF and DADEXCUG asset solvency files, since the claimant received the prior request for payment dated 10/17/18, granting a period of 10 days to remedy the presumed non-payment, but only one day later, Vodafone includes the personal data of the claimant in the ASNEF file and 4 days later in the DADEXCUG file, without waiting for the 10 days granted.

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As regards the company's request to apply as extenuating circumstances the points collected in art. 83.2 of the RGD: a) The treatment has been carried out locally tea. b) There is no intent on the part of Vodafone in the facts claimed. two that, on the contrary, cause my client clear damages indicate that, the treatment carried out locally refers to treatment circumscribed to a certain state of the EU, in this case Spain, so it is not appreciated to consider it as mitigating factor, and with regard to non-intentionality on the part of Vodafone, indicate that negligent action by the company has been proven.

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

:

RESOLVE

FIRST: IMPOSE the entity VODAFONE ESPAÑA SAU. (VODAFONE), with CIF A80907397, a penalty of 120,000 euros (one hundred and twenty thousand euros), for infringement of articles 6.1.a) and 5.1.a) of the RGD, considered as "very serious", for prescription of the same, in article 71.1.a and b) respectively, of the LO-PDGDD.

SECOND: NOTIFY this resolution to the entity VODAFONE ESPAÑA SAU. and, and INFORM the claimant of the outcome of the claim.

THIRD: Warn the sanctioned party that the sanction imposed must make it effective

Once this resolution is executed, in accordance with the provisions of art.

Article 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-Public Administrations (LPACAP), within the voluntary payment period that points out article 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 17 December, by depositing it in the 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. or otherwise, it will be collected in the executable period.

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Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is will make public, once it has been notified to the interested parties. The publication is made will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the established in articles 112 and 123 of the LPACAP, the interested parties may interpose have, optionally, an appeal for reconsideration before the Director of the Spanish Agency of Data Protection within a period of one month from the day following the notification

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fication of this resolution, or, directly contentious-administrative appeal before the Contentious-administrative Chamber of the National High Court, in accordance with the provisions placed in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned legal text.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to through any of the other registers 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 was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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