

□ Procedure No.: PS/00309/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated February 25, 2020

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against Vodafone Enabler España S.L. with NIF B82896119 (in later, the claimed one).

The claimant states that, since July 2018, the respondent (Lowi. ES) uploaded in your bank account receipts in the name of a third party.

The claimant provides the following documents with his written claim:

- 1.- Complaint before the OMIC (Council of Bueu).
- 2.- Bank receipt from Abanca Corporación Bancaria S.A. where is the entity issuer of the debit Lowi.ES, date 07/17/2018. In the field "holder and reference" it states "B.B.B." and also includes the name, surnames and postal address of the claimant.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed person on June 2, 2020, in accordance with the provisions of Article 65.4 of the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD), in the actions with reference E/03560/2020. Notification is done electronically, and figure delivered on June 4, 2020.

That, at the same time and date, the respondent was notified of the request E/03558/2020.

That both requirements; E/03558/2020 and E/03560/2020, were answered, to through a single writing by the claimed party on July 7, 2020.

The respondent stated: "After being notified of these requests for information by this Agency on June 4, 2020, the respondent has proceeded to carry out the appropriate investigations and steps from the Department of Collections, in order to solve the incident that occurred in relation to the receipts claimed by the claimant. Given the information analysed, the respondent has taken the decision to pay the claimant those receipts that have been subject to this claim.

Likewise, the respondent has unlinked the number of the account of the claimant, of the Customer ID of the third party so that it is impossible to collect new invoices to the C/ Jorge Juan, 6

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claimant for services owned by the third party. Similarly, the respondent has proceeded to make the payment of the total amount, in order to cancel in internal systems the debt that was associated in the name of the claimant."

As a result, the claim against the respondent was not admitted for processing.

E/03558/2020, on July 14, 2020.

THIRD: In accordance with the provisions of article 65.2 of the Organic Law

3/2018, on Data Protection and Guarantee of Digital Rights (LOPDGDD), in

On September 23, 2020, the agreement for admission to processing of the application was signed. claim.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

On February 1, 2021, a request for information is sent to the respondent.

The notification is made electronically and is delivered on the 3rd of the same month.

no longer.

The respondent has not responded to the information request sent to him.

FIFTH: On June 28, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6.1 of the RGPD, typified in Article 83.5.a) of the aforementioned GDPR.

SIXTH: By transferring the claim to the respondent, I submit a letter on July 7,

2021, stating that it will proceed to return the amounts claimed

and to unlink the claimant's account number from the third party's ID, contacting

knowledge of the claimant by sending the letter attached as

document number 1.

On the other hand, the claimant has made the decision to pay the claimant those receipts that have been the subject of this claim.

Also, the respondent has unlinked the account number of the claimant,

of the third-party customer ID so that it is impossible to collect new invoices from the

claimant for services owned by the third party. Similarly, he has proceeded to

make the payment of the total amount, in order to cancel in internal systems the debt that

was associated with the name of the claimant. Document number 7 is attached.

SEVENTH: Once the aforementioned initiation agreement has been notified, the claim dated July 12, this year, he filed a pleadings brief in which, in summary, he states that

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“replicates the allegations that were presented to the Agency on July 7, 2021 and that

attached as Document number 1 and that the dismissal of this

Agreement to initiate the sanctioning procedure and the filing of the proceedings”.

EIGHTH: On July 13, 2020 the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous actions, as well as the documents provided by the claimed party.

NINTH: On August 3, 2021, the resolution proposal was formulated, proposing

that the Director of the Spanish Data Protection Agency sanction the

claimed, for an infringement of Article 6.1 of the RGPD, typified in Article 83.5

of the RGPD, with a fine of 60,000 euros.

TENTH: Notification of the proposed resolution, the claim dated August 23

of 2021, presented a brief of allegations in which, in summary, it states that "with

dated June 4, 2020, the Agency notified the request for information

E/03558/2020 and E/03560/2020, based on the same facts and violation.

That both requirements; E/03558/2020 and E/03560/2020, were answered, to

through a single statement of allegations, in a timely manner by Vodafone Spain,

S.A.U. and Vodafone Enabler España S.L., on July 7, 2020. As a result, it was

the claim against Vodafone España S.A.U. (E/03558/2020)

by the Agency on July 14, 2020.

That the Agency considers that the respondent did not answer the reference file E/03560/2020, initiated this Sanctioning Procedure.

Therefore, that the Agency agrees to dismiss this procedure sanctioning.”

Of the actions carried out in this proceeding and of the documentation in the file, the following have been accredited:

PROVEN FACTS

1º- It is stated that the claimant received charges from the claimant in his account number bank, from a line owned by a third party.

- Receipt for an invoice issued by the claimant with an amount of XX.XX euros.
- Receipt by invoice issued by the claimed party with an amount of YY, YY euros.
- Receipt by invoice issued by the claimed party with an amount of RRR, RR euros.

2º- The events took place since July 2018.

3º- The receipts contain the charges made by the claimed party in the account of the claimant.

4º- Complaint before the OMIC (Council of Bueu).

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5º- Bank receipt from Abanca Corporación Bancaria S.A. where is the entity issuer of the debit Lowi.ES, date 07/17/2018. In the field "holder and reference" it states “B.B.B.” and also includes the name, surnames and postal address of the claimant.

6º- It is stated that this Agency requested, on the one hand, Vodafone España, S.A.U., to who will answer the reference file E/03558/2020 and on the other hand addressed Vodafone Enabler Spain, so that it will answer the request for information E/03560/2020.

It is accredited by the respondent that both answered jointly records, since it is the same claimant.

7º- It is verified that in the framework of the file with reference E/03558/2020, that is transcribed below:

“In the present case, this Agency has received the claim filed by A.A.A., dated February 25, 2020 and with registration number of entry 009252/2020, against VODAFONE ESPAÑA, S.A.U., for an alleged violation of Article 6.1 of the RGPD.

In particular for the following circumstances:

He states that, in June and July 2018, VODAFONE charged his account bank receipts in the name of a third party. He asserts that said third party has also domiciled in the claimant's account, payments with other telephone operators

In accordance with the regulations set forth, prior to admission to processing of this claim, it was forwarded to VODAFONE ESPAÑA, S.A.U. to proceed with its analysis and respond to this Agency within the period of one month. Likewise, the respondent was requested: accreditation of the response provided to the claimant, in the event of exercising the rights regulated in articles 15 to 22 of the GDPR; report on the causes that led to the incidence produced; Y detail of the measures adopted to avoid similar situations.

In response to said request, this Agency has received a letter from VODAFONE ESPAÑA, S.A.U. which, for what is of interest here, states the following:

A response has been sent to D. A.A.A., dated 7/7/20. stating that

part of Vodafone is going to make the payments corresponding to a series of receipts. It is also reported that "the account number has been unlinked from the ID of customer of the third party to whom his receipts alluded. Impossible, therefore, the position in its account number of any other amount derived from services provided to third parties by Vodafone

After analyzing the reasons stated by VODAFONE ESPAÑA, S.A.U., that are in the file, this Agency considers that the person in charge has attended the claim filed.

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For this reason, in accordance with the provisions of article 65.4 of al LOPDGDD, the Director of the Spanish Data Protection Agency agrees not to admit for processing the claim presented by A.A.A. against VODAFONE SPAIN, S.A.U."

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGDPR recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed the commission of an infraction for violation of article 6 of the RGDPR, "Legality of the treatment", details in its section 1 the cases in which the

Processing of third party data is considered lawful:

"one. The treatment will only be lawful if it meets at least one of the following

terms:

a) the interested party gave their consent for the processing of their data

personal 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 measures

pre-contractual;

(...)"

The infraction for which the defendant is held responsible is typified in the

article 83 of the RGD that, under the heading "General conditions for the imposition

of administrative fines", states:

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

with section 2, with administrative fines of a maximum of 20,000,000 Eur or,

in the case of a company, an amount equivalent to a maximum of 4% of the

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

the largest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the

Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious" provides:

"one. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

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suppose a substantial violation of the articles mentioned in it and, in particularly 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 the Regulation (EU) 2016/679.”

III

In accordance with article 65.4 of the LOPDGDD, which has provided for a mechanism prior to the admission to processing of the claims made before the AEPD, consisting of transferring them 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 norm, or to these when he had not designated them, the transfer of the claim to the claimed entity so that it proceeded to its analysis and give response to the complaining party and to this Agency within a period of one month.

In the case at hand, after a detailed study of the documents arising in this proceeding, and the allegations of the claimed party, We must point out that a response was given to the request for information requested by part of this Agency within the framework of file E/03560/2020, but within the response to E/03558/2020, and a response was sent to the claimant by the claimed, dated July 7, 2020.

In said letter, it was stated that the defendant was going to make the payment of the receipt issued by the claimant. He was also informed that the account number of the customer ID of the third party to which your receipts referred.

Making it impossible, therefore, to charge your account number for any other amount

derived from services provided to third parties by the claimed party

Therefore, the file of this sanctioning procedure proceeds.

In view of the aforementioned precepts and others of general application, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: FILE sanctioning procedure PS/00309/2021, instructed to

VODAFONE ENABLER ESPAÑA S.L. with NIF B82896119, for having proven that

dated July 7, 2020, it met the request of the claimant.

SECOND: NOTIFY this resolution to VODAFONE ENABLER ESPAÑA

SL with NIF B82896119.

In accordance with the provisions of article 50 of the LOPDPGDD, this

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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Director of the Spanish Agency for Data Protection within a month from

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

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

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

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

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

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

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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