

□ File No.: EXP202204189

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

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

### BACKGROUND

FIRST: On April 21, 2023, the Director of the Spanish Agency for  
Data Protection agreed to start a sanctioning procedure against VODAFONE  
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that  
transcribe:

<<

File No.: EXP202204189

### AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in  
based on the following:

### FACTS

FIRST: Ms. A.A.A. (hereinafter, the claiming party) on March 16,  
2022 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in  
forward, the claimed party or Vodafone). The reasons on which the claim is based  
are the following:

The claimant, user of a mobile phone line contracted with Vodafone,  
has been a victim of malicious actions by unknown third parties,  
consisting of requesting without your consent a duplicate of your SIM card, and, after  
be granted the same, access your bank information and make a

fraudulent bank transfer.

Specifically, the claimant states that, on February 25, 2022,

began to receive calls from abroad on his mobile terminal, to which he did not

answered and then received several SMS from his bank informing of movements

in your bank account and in your online banking application, being able to verify that

Both his account and the aforementioned application had been blocked.

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2/13

Thus, after taking steps with Vodafone, he revealed that "they had

provided to an unknown male, the data of my SIM card, as well as the deviation

of said services to the phone \*\*\*TELEPHONE.1>>. Apparently, said third party only

He identified himself with his first name, then gave the claimant's information

indicating that the SIM card had been damaged and requested the diversion to another

terminal, without the requested entity carrying out any type of verification

additional.

And, provide the following relevant documentation:

Copy of the complaint filed with the Police, on February 26, 2022, as well

as an extension of it.

Extract of bank movements.

Written complaint addressed to your financial institution.

Printed screenshots provided by the telephone operator, relating to the details of

the disputed interaction and what was subsequently indicated by the complainant.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to the claimed party, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on May 4, 2022 as It appears in the acknowledgment of receipt that is in the file.

On June 9, 2022, this Agency received a written response indicating:

<<That after analyzing the claim and investigating what happened, Vodafone has been able to verify that, on February 25, 2022, the forwarding of calls from line \*\*\*TELEPHONE.2, owned by the claimant, to the telephone number of a third.

To request said call forwarding, said third party provided all the information of the claimant, thus exceeding the Vodafone Security Policy.

Once the claimant became aware of the abnormal operation of her mobile line, contacted Vodafone, which forwarded the incident to the Department of Fraud. After investigating what happened, Vodafone's Fraud Department returned the [www.aepd.es](http://www.aepd.es)

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3/13

control of line \*\*\*TELEPHONE.2 to the claimant and declared the incident as

fraudulent, implementing security measures in the client account of the claimant

additional security necessary in order to avoid similar incidents.

This part wants to point out that the effective management of a call forwarding entails the

overcoming the security policies that Vodafone has implemented in order to

prevent fraudulent practices on the personal data of their

customers. In this sense, and having processed said management subject to said policy

security, my client understood at all times that they were

lawful, real and truthful efforts.

Notwithstanding the foregoing, on February 26, 2022, just one day after

of suffering the call forwarding, the Vodafone Fraud Department reversed the

call forwarding, giving the claimant back control over her mobile line.

Likewise, the fraud victim check was activated in the claimant's customer ID.

In this sense, as a consequence of the application of the fraud victim check,

a security notice was inserted into the claimant's customer account with the

legend:

"Do not provide information, make changes, activate products, orders, etc.,

if the customer calls from lines other than those contracted with Vodafone,

call concealment and international origin. You should always consult and follow the

security policy".

With regard to carrying out bank transactions of a

fraudulent evidence revealed by the claimant in her claim, it is opportune

express that carrying out a call forwarding implies only receiving

of incoming calls in a third terminal and not an access to the accounts

bank of the owner.

Therefore, it does not seem possible that there is a correlation between the events that occurred in

relationship with my client and what happened with the bank of which he is a client

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4/13

the claimant. In this sense, the bank movements that he alleges in his claim do not have their origin, nor have they been caused by invoices for Vodafone services that he had contracted, but are due to accesses made through your bank account. Therefore, Vodafone cannot be responsible for the accesses and banking movements that could have been made fraudulently.

With all this, we can confirm that currently my client has carried out all pertinent actions to resolve the claim, estimating that has been correctly resolved prior to the receipt of this written.>>

THIRD: On June 13, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

#### RESULT OF INVESTIGATION ACTIONS

It is on record that a call diversion has been made on the claimant's line in

dated February 25, 2022, which was reversed the following day, having been qualified

fraudulent by the fraud department of the claimed party.

There is a contact dated February 25, 2022 in which the customer service agent

telephone company recorded the following annotation: "reason: customer who wants to forward

because the SIM is broken. management: I inform him that it has to be with the code but he

He says that they have done it other times before I consult but it cannot be done while

management is cut off I call again but they don't answer".

There is another contact minutes later in which the telephone service agent

recorded the following annotation: "B.B.B.[...] client provides all the policy data and

request a diversion."

The representatives of the claimed party have stated that they do not have the

Evidence that allows confirming the personal data that was requested from the applicant

of call forwarding on February 25, 2022, while said calls

they were not recorded.

The representatives of the claimed party have confirmed that the claimant did not

He had a customer service access code on the date of the facts.

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5/13

The representatives of the claimed party indicate that, from the investigations

practiced, have been able to verify that the referred incident took place because the

The agent who carried out the contracting described did not follow the procedure established in

the security policy to properly identify the applicant for the procedure and

make sure it was the owner of the phone line.

They state that the agent, contrary to the established procedure, did not verify properly that the calling telephone did not correspond to a telephone line to name of the claimant nor did it subsequently verify the adequacy of the procedure contacting the number of the claimant. They indicate that, consequently, breached the Security Policy implemented by Vodafone and action was taken against the guidelines provided by the entity to its agents for contracting services by phone call.

They do not mention, therefore, that according to the security policy they provide, if a caller person other than the owner (and in this case it is clear to state that Juan José called), the

The applicant must provide the telephone service code, which was not activated, being

Therefore, it was impossible for him to provide it and the process could not be carried out. The acting correct according to the supplied policy (the second supplied policy) would be the one followed by the agent who answered the first call on the day of the events, who according to what has been commented, denied the request without having the active password or without providing the password.

It is established that the claimant has been marked in the entity's information system, as a result of the facts and to avoid their recurrence, with the following notice pop-up in your customer file that is shown to the manager of telephone attention "No provide information, make changes, product activation, orders, etc., if the client calls from lines other than the ones he has contracted with Vodafone, call concealment and international origin. You should always consult and follow the security policy".

FIFTH: According to the report collected from the AXESOR tool, the entity VODAFONE SPAIN, S.A.U. is a large company established in 1994, and with a turnover of 2,028,817,000 euros in the year 2022.

FUNDAMENTALS OF LAW

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## Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions [www.aepd.es](http://www.aepd.es)

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6/13

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

## II

### Breached Obligation

Well then, the defendant is accused of committing an offense for violation of the Article 6 of the GDPR, "Legacy of the treatment", which indicates in its section 1 the cases in which the processing of third-party data is considered lawful:

"1. Processing will only be lawful if at least one of the following is fulfilled conditions:

a) the interested party gave his consent for the processing of his personal data



for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

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

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests do not outweigh the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested is a child. The provisions of letter f) of the first paragraph shall not apply. application to processing carried out by public authorities in the exercise of their functions”.

## II

### Classification and classification of the offense

The infringement is typified in article 83.5 of the GDPR, which considers as such:

"5. Violations of the following provisions will be penalized, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent in accordance with articles 5,6,7 and 9.”

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7/13

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

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

The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679".

In the present case, it is proven that a third party requested a change of services to the claimed party, that is, the activation of call forwarding due to fracture, supposedly, from the SIM card.

Well, in your responses dated June 9 and October 28, 2022, the part

The defendant acknowledges that there was identity theft in the activation of the call forwarding of the line owned by the complaining party.

It is clear that calls were diverted on the claimant's line on the day

September 25, 2021, which was requested by a third party.

Vodafone acknowledges that it cannot prove the data that the customer service agent phone asked the requester when he activated the diversion and also that the manager did not continue the procedure provided for in the security policy to properly identify the applicant, and states in its response to the requirement of this Agency dated October 28, 2022, the following: <<Vodafone has been able to verify that the referred incident occurred because the agent who carried out the contracting described did not follow the procedure provided in the Security Policy to identify properly to the applicant of the procedure and make sure that it was the holder of the telephone line. The agent, contrary to the established procedure, did not verify

properly that the calling telephone did not correspond to a telephone line in the name of the claimant nor did it subsequently verify the adequacy of the procedure contacting the number of the claimant>>.

Based on the foregoing, in the case analyzed, the diligence used by the defendant to identify the person who requested call forwarding.

In any case, the procedure implemented by the claimed party was not followed, since, if it did, the diversion activation should have been denied of calls.

In view of the foregoing, the claimed party fails to prove that this procedure and therefore there was an illegal treatment of the personal data of the complaining party, thereby contravening article 6 of the GDPR.

In this sense, Recital 40 of the GDPR states:

"(40) For processing to be lawful, personal data must be processed with the consent of the interested party or on some other legitimate basis established in accordance a Law, either in this Regulation or under other Union law or of the Member States referred to in this Regulation, including the the need to comply with the legal obligation applicable to the data controller or the need to execute a contract to which the interested party is a party or for the purpose of take measures at the request of the interested party prior to the conclusion of a contract."

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#### IV.

##### Sanction proposal

The determination of the sanction that should be imposed in the present case requires observe the provisions of articles 83.1 and 2 of the GDPR, precepts that, respectively, provide the following:

"1. Each control authority will guarantee that the imposition of fines administrative proceedings under this article for violations of this Regulations indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive."

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infraction;
- c) any measure taken by the person in charge or in charge of the treatment to settle the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi-gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;
- e) any previous infringement committed by the controller or processor;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

- 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 whether the person in charge or the person in charge notified the infringement and, if so, in what extent;
- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to certification mechanisms. fications approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case,

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9/13

as the financial benefits obtained or the losses avoided, directly or indirectly.

mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio- and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU) 2016/679.”

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the fine to impose on the entity claimed as responsible for an infringement classified in the article 83.5.a) of the GDPR and 72.1 b) of the LOPDGDD, in an initial assessment,

The following factors are considered concurrent in this case:

As aggravating circumstances:

-

The evident link between the business activity of the defendant and the treatment of personal data of clients or third parties (article 83.2.k, of the GDPR in relation to article 76.2.b, of the LOPDGDD).

The Judgment of the National Court of 10/17/2007 (rec. 63/2006), in which, with respect to entities whose activity entails the continuous processing of

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10/13

customer data, indicates that "...the Supreme Court has understood that recklessness exists whenever a legal duty of care is neglected, that is that is, when the offender does not behave with the required diligence. And in the assessment of the degree of diligence, special consideration must be given to the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is constant and abundant handling of personal data must insist on rigor and exquisite Be careful to comply with the legal provisions in this regard."

As mitigations:

The claimed party proceeded to resolve the incident that is the subject of the claim effective (art. 83.2 c).

It is appropriate to graduate the sanction to be imposed on the defendant and set it at the amount of 70,000 € for the alleged violation of article 6.1) typified in article 83.5.a) of the cited GDPR.

Therefore, in accordance with the foregoing, by the Director of the Agency Spanish Data Protection.

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN, S.A.U. with NIF A80907397, for the alleged violation of article 6.1) typified in the Article 83.5.a) of the aforementioned GDPR.

SECOND: APPOINT as instructor D.C.C.C. and as secretary to Ms. D.D.D.,

indicating that any of them may be challenged, if applicable, in accordance with the provisions established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime co of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, the documents obtained and generated by the General Subdirectorate of Data Inspection.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be for the infringement of article 6.1 of the GDPR, typified in article 83.5 a) of the GDPR, the sanction that would correspond would be a fine for an amount of 70,000 euros (seventy thousand euros) without prejudice to what is of the instruction.

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF A80907397 granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

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In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% for the sanction that should be imposed in this proceeding, equivalent in this case to fourteen thousand euros (€14,000).

With the application of this reduction, the amount of the sanction would be established in fifty-six thousand euros (€56,000), resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, in accordance with the provisions of article 85.2 LPACAP, which will mean a reduction of 20% of the amount of the same, equivalent in this case to fourteen thousand euros (€14,000), for the alleged offence. With the application of this reduction, the amount of the sanction would be established at fifty-six thousand euros (€56,000) and Your payment will imply the termination of the procedure, without prejudice to the imposition of the corresponding measures.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In In this case, if both reductions were to be applied, the amount of the penalty would remain established at forty-two thousand euros (€42,000).

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated, 56,000 euros or 42,000 euros, you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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12/13

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SECOND: On May 8, 2023, the claimed party has proceeded to pay

the sanction in the amount of 56,000 euros making use of one of the two reductions

provided for in the Startup Agreement transcribed above. Therefore, there has not been acknowledgment of responsibility.

THIRD: The payment made entails the waiver of any action or resource in the against the sanction, in relation to the facts referred to in the Commencement Agreement.

## FUNDAMENTALS OF LAW

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### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

### Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature but the inadmissibility of the second, the voluntary payment by the presumed perpetrator, in any moment prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

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13/13

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202204189, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U..

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation Chamber of the

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

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

Contentious-Administrative Jurisdiction, within a period of two months from the

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

referred Law.

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Director of the Spanish Data Protection Agency

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