

□ File No.: EXP202202576

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On February 13, 2022 A.A.A. (hereinafter, the claiming party)
filed a claim with the Spanish Data Protection Agency.

The claim is directed against INGENIERÍA Y TELECOM JAÉN, S.L. with NIF
B23693260 (hereinafter, the claimed party or INYTEL).

The reasons on which the claim is based are the following:

The claimant states that, on 01/12/2022, she received a call from INYTEL
(VODAFONE franchise) in which he had contracted his services, located in the center
commercial ALCAMPO of Granada, informing him that the promotion that was being
applying ended that same month of January.

Likewise, the claimant states that the person in charge of said store offered her
renew the promotion, the claimant having indicated that she had to think about it and that
it would contact VODAFONE for such purposes.

In order to renew the promotion that had been applied to the services
contracted, the claimant went to an INYTEL store where she was informed of
that his promotion had already been renewed without his consent.

A copy of the formalized contract without your
consent on January 14, 2022 without your signature, emails addressed to the
claimed reporting the irregularities in the contracting.

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 March 7, 2022 as It appears in the acknowledgment of receipt that is in the file.

On April 4, 2022, this Agency received a written response from the company INYTEL, stating that it has decided to adopt the measures that are www.aepd.es

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necessary to ensure compliance with protection legislation of personal data and give this facet of the company the highest priority to guarantee that the rights and freedoms of the data subjects are respected at all moment.

In relation to the activation of the offer to the interested party without their consent, it indicates that offers for customers can be sent to Vodafone from our establishment through the information system provided by Vodafone, but that for its activation the certified signature of the client is necessarily required via SMS.

It is further stated that "recruitments are always sent to Vodafone for subsequent confirmation by the client.

Such confirmation is beyond our control.

In other words, we cannot confirm offers or contracts from our establishment.

In no case was our intention to establish a contract without the consent of the interested party, but rather the opposite, facilitating the client the procedure so that you could benefit from a more advantageous offer but always with your necessary approval.

THIRD: On April 19, 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:

On May 31, 2022, the Data Inspectorate carried out an inspection visit in the headquarters of the VODAFONE company, during the development of which they met I manifest the following facts collected in the Inspection Report:

1.- Vodafone has a network of stores (franchises) throughout the Spanish territory for the commercialization of the products and services of the brand. The stores have an application provided by VODAFONE called RETAIL-X for management of services and contracts with clients.

2.- The procedure followed in franchises to carry out the contracting of a VODAFONE product is as follows:

- Only face-to-face contracts are carried out, since telephone contracts

They are carried out exclusively by VODAFONE agencies or own personnel.

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- When a customer appears in a store, he is presented with an offer summary, according to the needs expressed by the client. Previously, you are asked for the DNI to check if you are already a VODAFONE customer and retrieve your data.

If the client accepts the offer, it is sent to the system so that the contract can be signed.

contract. Normally the signature process is certified digital, by sending of an SMS to the contact telephone number provided by the client, for which

They have the service of a certifying entity.

In cases where the client does not have a mobile line, or for some reason does not receives the SMS, you can perform the manual signature, which consists of printing the proposal in a contractual document that must be signed by the client of handwritten form.

In order to start the service activation process, the client must have given their consent by signing the contract before leaving the store.

Manual contracts are kept in the store for 6 years and a copy is sent to VODAFONE, for which they have contracted the services of a service company logistics that is responsible for the collection and scanning of contracts for register them in the VODAFONE system.

The stores, as deference or customer service, to guarantee loyalty, sometimes they contact the client by phone to inform them of events

related to their rates, such as the imminent expiration of the discounts that have been applied to their rates so that they proceed with their renewal.

The inspectors verified that in the VODAFONE information system contained the following records:

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o On January 12, 2022 at 9:45 an order is created, which according to the representatives of VODAFONE corresponds to the order to renew the discount on the rate that the client had been enjoying. It is verified that said order is associated with the seller (...) which corresponds to ENGINEERING AND TELECOM JAEN SLU.

o On January 14, 2022 at 11:09 a.m. there are several notes of "Signature Certified". The VODAFONE representatives stated that these notes correspond to the generation of the certified signature that was sends the customer to the mobile contact line.

o In the "Communications Audit" tab, which according to what they stated VODAFONE representatives show SMS communications maintained with the client, there is no record of the SMS that reflect that the process of certified signing has been completed.

o On January 14 at 11:29 a.m. there is a note of change of method of signature. The VODAFONE representatives stated that since they did not receive response to the SMS of certified signature by the client proceeds to the change of manual signature method. This change is done manually by the commercial that is managing the contracting.

o The inspectors obtained a copy of the Mobile Service contract of the claimant registered with VODAFONE. The representatives of

VODAFONE state that the contract kept in the store does not

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contains the client's handwritten signature due to an error in the registration process

commercial management of the store by having activated the omitting hiring,

involuntarily, the process of handwritten signature by the client

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The representatives of VODAFONE sent, at the request made in the minutes

inspection, screen print of the SMS that were sent to process the

certified signature process, which were sent on January 14, 2020, according to

It appears in the screenshot taken from the relationship management system with

Vodafone customer.

The representatives of VODAFONE sent, at the request made in the minutes

inspection, copy of the contract signed with the franchise and the annexes that

regulate penalties (Annex I) and the protection of personal data (Annex

V). Annex I includes a series of cases in which VODAFONE

may impose an economic penalty on those agents who do not comply with

with the necessary requirements for the contracting and activation of services

(regulated in the fourth clause of Annex I). The contract includes, among others,

following clauses:

"14.6 As a consequence of the provision of the services that constitute the

object of this contract, the AGENT may access certain data of

personal nature of the people who, through him or his collaborators,
in accordance with clause 6.1 of this contract, hire the
VODAFONE services. For this reason and in accordance with the regulations
in force, the AGENT will be considered as the person in charge of the treatment,
having to formalize the Standard Data Processing Agreement that is
attached as Annex IV, through which your obligations in this
subject."

Annex V to the contract includes, among others, the following clauses:

"2.1. The Treatment Manager guarantees and undertakes that in all
moment:

2.1.1. It will only process the Personal Data to carry out the activities
entrusted in the Agreement, in accordance with the purposes
entrusted and as agreed in writing by the parties and, only
will act in accordance with the instructions provided in writing by Vodafone. In
In particular, the Treatment Manager will not itself exercise control, nor
will transfer said Personal Data to a third party, unless Vodafone
expressly authorize and in writing;

2.1.1.1. will not process, apply or use the Personal Data to
for any purpose other than that required by Vodafone and that is not
necessary to provide the agreed Services;

2.1.1.2. will not process the Personal Data for its own purposes or
include Personal Data in products or services offered to third parties;

2.1.1.3. must complete a separate Treatment Addendum
independently for each Service that requires Treatment
of Personal Data."

FIFTH: On October 25, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,
of the Common Administrative Procedure of Public Administrations (in
hereafter, LPACAP), for the alleged infringement of article 6 of the GDPR, typified in the
Article 83.5 of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in
Law 39/2015, of October 1, on the Common Administrative Procedure of
Public Administrations (hereinafter, LPACAP), the claimed party submitted a written
of allegations in which, in summary, he stated the following:

“All our employees have been duly informed and trained on what
what they can and cannot do during the hiring and renewal process
VODAFONE customers.

In this sense, we understand that, despite the efforts made, always
there is a possibility that one of our employees may make a mistake
time to properly execute the contract renewal process, although it is

It is true that we cannot be held responsible for the RETAIL-X system provided by
VODAFONE allows this form of contracting to be possible.

INYTEL has no possibility of modifying the system itself to prevent or

Supervise that this irregular form of contracting is possible and, consequently,
take the necessary corrective measures to prevent it

SEVENTH: On December 15, 2022, the procedure instructor agreed

perform the following tests:

The claim filed by A.A.A. and

your documentation, the documents obtained and generated during the admission phase

processing of the claim, and the report of previous investigation actions that

are part of the procedure AI/00168/2022.

Likewise, it is considered reproduced for evidentiary purposes, the allegations to the

start of the referenced sanctioning procedure, presented by INGENIERÍA Y

TELECOM JAEN, S.L. and VODAFONE ESPAÑA, S.A., and the documentation that they

accompanies.

EIGHTH: On December 26, 2022, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency sanction

to ENGINEERING AND TELECOM JAEN, S.L. with NIF B23693260, in accordance with the

provided for in article 58.2.i) of the GDPR, for the alleged infringement of article 6 of the

GDPR, typified in article 83.5 of the GDPR and for prescription purposes, by the

article 72.1 b) of the LOPDGDD, with a fine of 10,000 euros (TEN thousand euros)

No arguments have been received regarding said proposal.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

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PROVEN FACTS

FIRST: The renewal of the contract by the entity claimed on the 14th of

January 2022, in order to maintain the promotion he enjoyed, without the

consent of the claimant.

FUNDAMENTALS OF LAW

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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

Article 6 of the GDPR, in relation to the processing of personal data, establishes the

following:

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

nes:

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

the interests or the fundamental rights and freedoms of the interested party do not prevail.

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that require the protection of personal data, particularly when the interest

sado be a child

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out

by public authorities in the exercise of their functions.”

II

In the present case, the renewal of a contract without the consent

of the contracting party by INYTEL (VODAFONE franchise).

This disciplinary proceeding is directed against INYTEL in its capacity as

manager of VODAFONE, not being the object of this file to establish the possible

responsibility of VODAFONE, without prejudice to the fact that, if any, it was subject to

from another procedure.

In its defense, the defendant entity states that "hiring is always

sent to Vodafone for subsequent confirmation by the customer.

Such confirmation is beyond our control.

In other words, we cannot confirm offers or contracts from our establishment.

In no case was our intention to establish a contract without the consent of the interested party, but rather the opposite, facilitating the client the procedure so that you could benefit from a more advantageous offer but always with your necessary approval.

However, this Agency, through the investigative actions carried out, has verified that the contracting was carried out in the INYTEL store in an manual, without stating that the client, complainant here, gave her consent by signing the contractual document, being therefore responsible for said Hiring as person in charge of their treatment.

Therefore, it is considered that the claimed party has violated article 6 of the GDPR, as indicated in the legal basis II.

IV.

Article 83.5 of the GDPR establishes that infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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Article 72.1 b) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679, 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 fulfillment of any of the conditions of legality of treatment in article 6 of Regulation (EU) 2016/679."

V

Article 58.2 of the GDPR provides the following: "Each control authority shall have of all of the following corrective powers listed below:

d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

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This infraction can be sanctioned with a fine of a maximum of €20,000,000 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 of greater amount, in accordance with article 83.5 of the GDPR.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR.

Therefore, it is appropriate to graduate the sanction to be imposed according to the criteria that establishes article 83.2 of the GDPR, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR.

Article 83.2 of the GDPR establishes that:

"Administrative fines will be imposed, depending on the circumstances of each individual case, as an addition to or substitute for the measures contemplated in article Article 58, section 2, letters a) to h) and j)).

When deciding to impose an administrative fine and its amount in each individual case dual will 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 such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

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c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor, taking into account the technical or organizational measures that they have applied under of 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 mechanisms of certification approved in accordance with 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.”

In the present case, they have been taken into account, as aggravating circumstances, the clear intention of the claimed party to renew the contract of the complaining party despite not having your consent, according to article 83.2 b) of the GDPR, as well as the link between INYTEL and the processing of personal data, according to article 76.2 b) of the LOPDGDD.

For all these reasons, it is considered that the sanction to be imposed would be 10,000 euro.

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, to comply with with the GDPR and the LOPDGDD.

To determine the responsibility of the claimed party, it is necessary to take into account that, if a processor infringes the Regulation when determining the purposes and means of treatment, will be considered responsible for the treatment with respect to said treatment (article 28, paragraph 10, of the GDPR).

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In this case, the claimed party has not proven that it acted following the detailed instructions of the person in charge, on the contrary, it has decided for itself not to follow the instructions of the controller and process the personal data of the party claimant in order to renew the service contract provided by Vodafone, without having obtained your prior consent for the hiring.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE INGENIERÍA Y TELECOM JAÉN, S.L. with NIF B23693260], for a violation of article 6 of the GDPR, typified in article 83.5 of the GDPR, a fine of 10,000 euros (ten thousand euros euros).

SECOND: NOTIFY this resolution to ENGINEERING AND TELECOM JAEN, S.L.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (hereinafter LPACAP), within the payment period voluntary 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 means of its income, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESXXXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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 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 reversal before the

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

count 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

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

referred Law.

Finally, it is noted 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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