

□ File No.: EXP202103912

## 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 December 21, 2022, the Director of the Spanish Agency  
of Data Protection agreed to start a sanctioning procedure against VODAFONE  
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202103912

### 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: On September 27, 2021, A.A.A. (hereinafter, the part  
claimant) filed a claim with the Spanish Data Protection Agency.

The claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397  
(hereinafter, the claimed party).

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

In 2019, after a problem of identity theft, he requested to protect his  
personal data to VODAFONE, establishing the request for telephone access  
of a security key as of 06/18/2019, noting that any  
procedure or modification can only be carried out in person at the

Vodafone offices.

On 09/05/2021, he receives an email from VODAFONE indicating that

I had requested a duplicate invoice, not having requested it. After accessing your

personal area verifies that the contact email data has been modified

to another address.

On 09/07/2021, he went to a VODAFONE store indicating that he had already suffered with

before an identity theft, and the employee who attends tells you that

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2/18

send email to the fraud department so that they are pending, and that

If your identity were impersonated, your notice to Vodafone would remain on record. manifest

who insisted that any procedure by telephone to be carried out in his office be blocked

contract, and that any modification or change should be made in person

in their offices.

Dated September 10, 2021, you receive an email from VODAFONE at

the one that informs you that your cancellation has been made, canceling all the services that

I had contracted for portability to LOWI. Tried to retrieve the line without success using

Contact VODAFONE.

Contact LOWI to block the line, and they tell you that you must provide a copy of the

DNI, however they inform you that the policy to admit the contracting / portability is

provide the ID number (not a copy of the ID), full name and telephone number.

Request the cancellation by mail on 09/11/2021 and receive a response on 09/13/2021

indicating that the line has been temporarily frozen. also ask

how the SIM was delivered without requesting the DNI of the contract holder, according to what indicates the web page, and states that the manager who attends it indicates that normally they are deposited in the mailbox of the address that appears in the contract and the identity document.

Declares that as a consequence of these events they have tried to access your account current, which was blocked by your bank.

Date on which the claimed events took place: September 5, 2021

(access to the invoice and modification of the data) and September 10, 2021 (portability).

Relevant documentation provided by the claimant:

- Copy of the duplicate of the invoice with VODAFONE that states that there is no required.
- Copies of the police complaints filed on September 10 and 17, 2021.
- Copy of contract with LOWI in your name.

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), on November 3, 2021, said claim was notified to the claimed party, to proceed with its analysis and inform this Agency in within one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

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 November 8, 2021 as It appears in the acknowledgment of receipt that is in the file.

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3/18

On December 6, 2021, a response to said requirement was received from

VODAFONE, indicating that it sent an email to the claimant on 8

September 2021 to the address \*\*\*EMAIL.1, in which he informed him that he was leaving

to carry out said portability, without expressing his rejection of it.

However, by not recognizing the portability made by the claimant,

VODAFONE informed him that the VODAFONE Fraud Department did not

It was not possible to carry out any additional management on the line since this line was

was discharged from LOWI.

For this reason, the respondent entity indicated to the claimant that she should contact

with LOWI and process said incident with said operator, informing them of the

events occurred.

Likewise, it informed the claimant that, once the fraud was declared in LOWI and

regained control over the line, could request portability again to

VODAFONE.

Thus, on October 5, 2021, the fraud department contacted

with the claimant to return the affected line to VODAFONE by means of a

retroportability, although the claimant's husband rejected said portability.

Therefore, VODAFONE considers that the incident was correctly resolved.

THIRD: On December 27, 2021, in accordance with article 65 of

the LOPDGDD, the claim presented by the complaining 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:

ONE. Information and documentation has been requested from VODAFONE with the following result:

The existence of a registered interaction in the systems of VODAFONE consisting of an incoming phone call dated 09/05/2021 5:21 p.m. requesting a duplicate invoice for the month of September, and information on bank details and the bank. As a result of the call, "informo" appears.

The entity has been required to provide documentary evidence of the passage of the privacy policy security (with the data requested to pass it on) and have requested the password security to the applicant to carry out this procedure, having indicated the representatives of the entity that there is no additional information on this interaction.

It does not appear in the VODAFONE systems, according to the information provided by the entity, no interaction corresponding to the change to the email address

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4/18

email address of the alleged supplanter. There is only one change to the email address of the claimant on 09/05/2021 via the web.

Requested information on the operation of the security key

VODAFONE representatives state that the entity makes available to its customers the option of passing a strict security policy, being able to choose between only be attended in person in a store, or always be requested the password security (call or not the owner). If you want to waive this strict policy in the future, the request will have to be made in writing, not being able to return to security policy usual with telephone request. In the Attention with password option, the tab is marked client with this type of policy, in such a way that a pop up pops up at the moment that the call comes in: "ONLY ANSWER WITH ACCESS PASSWORD FOR CALL CLIENT", in such a way that by telephone only and exclusively management of the services you have contracted if you provide the security key. You will never be attended without the Customer Service access code, even if you provide the owner data. (There is another option available for customer service access code. client to be attended requesting only the password, without requesting it from Vodafone no other data. In this case it could be addressed by passing the security policy providing the data of the owner or with the key, either of the two options would be valid).

Required the relationship and detail of all contacts maintained with the claimant between 09/01/2021 and 09/15/2021 including the annotations made by the telephone service managers and the reflection in the systems that accredits the actions undertaken by the entity in each contact, VODAFONE provides, among others, the following interactions in chronological order, with annotations reflected in

Their case:

- 09/05/2021 16:51 incoming phone call, check invoice, no further notes.
- 09/05/2021 17:07 incoming phone call, customer data modification, no more annotations.
- 09/05/2021 17:12 incoming phone call, reason: check invoice.

- 09/05/2021 17:21 (call already specified in this report above) call from

Incoming telephone number dated 09/05/2021 5:21 p.m. requesting a duplicate invoice for the month September, and information on bank details and the bank. consists as a result: "inform".

- 09/07/2021 16:45 incoming phone call consists of: possible fraud, impersonation, and the note: "we send email to fraud for data review possible fraud attempt".

- 09/07/2021 16:49 incoming phone call note: "we correct address on request customer".

- 09/10/2021 18:41 incoming phone call. Client indicates that they have ported his telephone number without having requested it. A case is generated by the Service Customer Service with the following comments:

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5/18

"Client indicates that without his consent the portability of his line has been generated number \*\*\* TELEPHONE.1 on September 8, 2021 to the operator lowi, it is mentioned that said client has a certificate of identity theft and therefore all

The procedure generated does not correspond to the decision of the owner of the services.

It is requested, it can be reviewed immediately and manage the activation again of the mobile service because it is urgent for the owner since he is outside his address completely isolated and also the ported number is being used by another person since it is certified at the time of making calls. "

On 09/12/2021 at 2:20 p.m. the case is closed from the fraud department with the following comments:

“As the client claims that his line \*\*\*TELEPHONE.1 has been ported from vdf in

another company- lowi

Essential mobile withdrawal Reverse Portability FV 09/9/2021, ea line in portability dp.

Since vdf fraud, we don't have access to lowi.

In this situation the customer has to contact the operator lowi- and with

the vdf portability/lowering department that has made the low.

The line is no longer active in vdf and from fraud no management can be generated.

; reason for improper submission to this queue, I return the case to the origin queue”

Information has been requested on whether portability notices were issued by SMS to the

claimant's line, as well as documentary evidence of the notices in case

affirmative. The representatives of VODAFONE have stated in this regard that in the

internal systems of the entity there are no SMS records in which the

portability claimant.

TWO. Information and documentation has been requested from LOWI with the following

result:

The portability procedure followed by LOWI includes a digital signature process,

which according to the representatives of the entity:

- Applies to all channels and it is a mandatory process for both new

customers as well as own customers.

- During the digital signature process, two communications are sent to the client, both

for the same channel. The first where you receive a link to access, entering your

DNI, detailing the contracted products and rates and where you can download a

copy of your contract. In the second communication you receive an authentication code

with a one-time password (for its acronym in English “OTP” or “One Time

Password”) that you must enter to digitally sign your order.

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6/18

- If there is a mobile phone with portability in the contract, the signature communications digital are sent via SMS to the mobile you are carrying.

-(...)

The portability object of this file, dated 09/10/2021, was processed

by phone. They attach the recording of the portability request. It is found that

In the telephone conversation, the requesting person provides the data of the claimant:

DNI, name, surname, and number to carry, beginning with 607, indicating

VODAFONE as origin operator with the contract modality. The manager too

requests during the conversation, among other information, a contact telephone number (which the

applicant provides and beginning with 649), a postal address for sending the

SIM card and bank account.

It is verified that the manager indicates to the applicant that he is going to send her a text message

to the contact telephone number, which begins with 649, so that I can review the contract and

accept. (...).

LOWI representatives indicate that in March 2022 a

modification in the procedure to reinforce the telephone contracting process and

thus avoiding possible fraudulent registrations. Specifically, the change that was carried out is the

following:

"If the recording includes portability, a call must be made to the telephone number

portability to do it. It cannot be done in the same call". The

representatives of the entity indicate that the digital signature, when carried out on the

device to be carried (in cases of portability), serves as a guarantee of

that the signer is in possession of the number being carried. In cases where it is impossible to carry out the digital signature, it must be carried out, as a guarantee, a call to the portable number. They indicate that this is because, if the portability is carried out through a call made by the interested subject, the agent that attends the request may not know the numbering from where it is receiving the call.

On whether portability notices were issued by SMS to the line to be ported and the accreditation documentary evidence of the sending of these notices, LOWI representatives have manifested Since these SMS are archived only for a period of 3 months, so they do not there is a history for the case. They provide a screenshot of a model message sent to inform new clients of a port.

With regard to the postal delivery service for the delivery of SIM cards, it has been dear to LOWI to provide a complete copy of the service contract signed with the postal delivery entity for the delivery of the SIM cards, as well as documents contractual indication indicating the method of delivery and the way to identify the SIM card receiver. LOWI representatives have stated that they have adopted, together with the entity that provides the service, a series of controls to increase Edit the identity of the recipient of the shipment.

Specifically, there are the following controls:

(i) Validated delivery

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7/18

The ID of the person who receives the shipment is collected.

(ii) Exclusive delivery to the title recipient of the shipment.

The operation consists in that when the driver is going to make the delivery, in the delivery site skips a notification indicating the following:

“Do not deliver if they do not present us with the original ID of the owner of the shipment. Just deliver to the indicated address”.

Provide a copy of the service provision agreement with the parcel delivery entity in the which is indicated:

"The recipient's data will be processed to proceed with the delivery and, in those cases, positions in which the Client so requires, accredit its receipt by means of:

The registration of the name and surname of the recipient of the delivery and his ID along with the capture of your signature, either on paper or through our PDAS, which includes, together with the image of the signature, Information about certain features (line speed, pre-sion...) that uniquely identify it. In any case, the receiver can request tar sign on paper.

Additionally, in the event that the contracted services include it, the verification proof of authenticity of the recipient's DNI. To do this, [the service provider], complying with the Client's requirements, you will obtain a copy of your authenticating document of identification and will verify the existence of signs of falsification through means machine reading or other verification techniques.”

This document therefore points out different possibilities or accreditation options. of the identity of the recipient, as required by the client (in this case LOWI), but it is not provide supporting documentation that reflects whether said options have been required or contracted by LOWI with the parcel company.

Among the contacts registered in the entity's information system is the mentioned by the claimant dated 09/10/2021, including the note that the Activate security word for theft, at the client's request, facilitating the email manager

for the claimant to send a complaint since she states that she fears that it will generate debt. On 09/13/2021 there is a note informing the customer that the line is frozen, management motivated by an incoming email from the claimant.

THREE: VODAFONE ESPAÑA has absorbed VODAFONE ENABLER (LOWI) with date of 10/13/2022

## FUNDAMENTALS OF LAW

Yo

In accordance with the provisions of articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the

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8/18

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

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

Security in the processing of personal data is regulated in article 32 of the GDPR where the following is established:

"1. Taking into account the state of the art, the application costs, and the nature of nature, scope, context and purposes of processing, as well as probability risks

and variable severity for the rights and freedoms of natural persons, the responsibility responsible and the person in charge of the treatment will apply appropriate technical and organizational measures. measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include yeah, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence of the destruction, loss or accidental or illegal alteration of personal data transmitted collected, preserved or processed in another way, or the unauthorized communication or access two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanism certification document approved in accordance with article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of this article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and having ga access to personal data can only process such data following instructions of the controller, unless it is required to do so by Union law or by the Member States.”

Article 73.f) of the LOPDGDD, under the heading "Infringements considered serious

has:

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9/18

"Based on article 83.4 of Regulation (EU) 2016/679, serious and

Offenses that involve a substantial violation of the law shall prescribe after two years.

of the articles mentioned therein, and in particular the following:

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679

II

For its part, article 6.1 of the GDPR establishes that "The processing will only be lawful if at least one of the following conditions is met:

a) the interested party gave his consent for the processing of his personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is 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 be a child.”

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.”

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10/18

IV.

Circular 1/2009, of the Telecommunications Market Commission, by which Verbal consent with verification by a third party is introduced in the contracting of regulated wholesale services of fixed communications, as well as in requests for conservation of numbering establishes in relation to the processing of requests for regulated wholesale services of fixed communications and/or portability with verbal consent to the following:

"In order for the beneficiary operator to start processing an application with verbal consent of the subscriber, it will be necessary:

a) That the verification that proves the subscriber's consent to change operator with or without number portability, or that which proves the consent

to keep the numbering due to change of operator (fixed or mobile) comply with the following requirements:

1. The verification call is initiated by the subscriber (by calling the verifier), or by the operator's sales agent (forwarding the call to the verifier and abandoning it).
  2. Verification is carried out directly by telephone by a security agent verification by a third party, without systems being able to be used for said operation based on recordings or voice synthesis mechanisms.
  3. During the verification call the verification agent does not take place promotion of the service, or any other type of commercial or marketing activity.
  4. The verification call matches the content of the verification questionnaire included in annex I of this Circular that is appropriate for each type of action, with regardless of the specific phrases that are going to be used in the call of check.
  5. The verification call must be encoded in MP3 or WAVE format.
- b) That once the verification call is finished, the verifier has determined if it is a positive verification, taking into account the verification criteria included in this Circular and thus communicate it to the beneficiary operator.
- c) That the beneficiary operator sends the subscriber the documentary confirmation of the agreed telephone contract and its verification, once the positive verification communication. For these purposes, the beneficiary operator, to which bears the burden of proof, you must submit documentary confirmation of in accordance with current regulations.

This documentation must include:

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11/18

1. Terms and conditions to which the processed application is subject.
2. Indication that said request for action has been verified by a third party in the during a telephone call, indicating the date and time of verification.
3. Information on the right of revocation by the subscriber, indicating the procedure to follow (at least, the beneficiary operator will have a number telephone number belonging to the 901 range, where the subscriber may revoke his request) and term to exercise it, in accordance with current regulations, without incurring penalty or any expense on the part of the subscriber, which must be assumed by the beneficiary operator.
4. The subscriber will be informed that in the event of a claim they should contact the department or specialized customer service of the operator, within the term of one month from the moment you become aware of the fact that motivates it (in In the event that the claim is related to billing, it will be from the date of receipt thereof), obtaining the reference number given to the claim.

Likewise, the subscriber will be informed that if, within a period of one month, he had not received satisfactory response from the operator, you can direct your claim through the following routes, in accordance with the regulations of each body:

Secretary of State for Telecommunications and for the Information Society

(SETSI), consultation telephone number 901 33 66 99 and website <http://www.usuriostelego.es>

Consumer Arbitration Boards, directly or through an Association of

Consumers."

V

In accordance with the evidence available at this time, and

without prejudice to what results from the investigation of this disciplinary procedure, it is considers that the claimed entity has violated the confidentiality required in the processing of personal data, since despite the indicated security measures, the claimant's line has been ported to another company without his consent.

It has been proven that VODAFONE issued a duplicate invoice on 09/05/2021, which was requested by telephone, together with a request for data information banks and the banking entity, the entity not having provided accreditation documentation of the transfer of the security policy to the applicant for its correct identification, nor if the security key was requested from the applicant to carry out this management.

Regarding the change of email address mentioned by the claimant, the VODAFONE representatives indicate that there are no interactions. Yes it is found, in the history of interactions, one from 09/05/2021 17:07 through which they modify the customer data, without further annotations, not containing any type of accreditation

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12/18

documentation of the transfer of the security policy to the applicant for identification, or on the request for the security key to carry out this process.

Regarding portability, the process begins at LOWI, as the receiving operator of the portability. VODAFONE, as a donor operator, accepts the portability whose request arrives from another operator with the correct data, having verified that the applicant (alleged impersonator) provided them in a telephone call to LOWI.

(...)

LOWI has provided the voice recording of the portability request conversation of 09/10/2021 as documentary accreditation, indicating that it is the legal recording of portability.

LOWI has stated that in March 2022 it has incorporated into its procedure of portability with legal recording, control over the line to be carried, consisting of the making a call to it, to avoid fraudulent portability.

Regarding the contracting of parcel services to send the SIM cards, card necessary to carry out the portability, LOWI has not provided documentation that reflects the shipping method contracted and that proves the way to identify the SIM card receiver.

Therefore, this Agency considers that we are facing a violation of the Article 32 of the GDPR, since the security measures of the requested entity do not are adequate allowing identity theft, having proceeded to the issuance of a duplicate invoice and change of email address to a third party other than the owner of such data, so it is considered that they should be improved after it has been verified that they have not been sufficient to avoid the reported facts.

In relation to the portability of the line carried out by LOWI, we also find ourselves in the event of a violation of article 32 of the GDPR for carrying out said portability without have adequate security measures on the part of the claimed entity, that the existing ones did not prevent the identity theft of the owner of the line object of said portability and the delivery of the SIM card to a person who was not the line holder.

In this sense, it must be taken into account that as of 10/13/2022, VODAFONE SPAIN has absorbed VODAFONE ENABLER (LOWI), so this Agency

considers that it is VODAFONE ESPAÑA who has to answer for the portability improperly carried out by VODAFONE ENABLER (LOWI), not having the consent of the owner of the line, since VODAFONE inherits the breaches made by LOWI.

Therefore, we must consider that VODAFONE, without prejudice to what results from the instruction, allowed a change of e-mail address of the claimant, a duplicate of the invoice at the request of a third party other than the owner of the line without there being accredited that the security policy was passed to the applicant for its correct identification, nor that the security key was requested, which is an infringement

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13/18

of art. 32 of the GDPR. In addition, it was carried out by LOWI, an entity absorbed by the entity claimed, the portability of the line object of this procedure, without checking adequately the identity of the applicant, nor the identity of the person to whom delivered the SIM card, which implies a second violation of article 32 of the GDPR, by not adopting the necessary security measures to guarantee the protection of the personal data of its clients.

SAW

On the other hand, we can consider that LOWI requested the portability of the line and tried to the data of the claimant without having a legal basis, according to the Circular 1/2009 of the CMT (currently CNMC), which introduces consent verbal with verification by a third party in the contracting of regulated wholesale services of fixed communications, as well as in requests for conservation of numbering,

as indicated in the legal basis IV.

Therefore, by virtue of said regulation, it is the beneficiary operator who has to verify that there is verbal consent and cannot process the request if it is not has such consent.

Therefore we could say that we are facing a violation of article 6 of the GDPR in accordance with the legal basis III as it lacks a basis of legitimacy to carry out said portability, by not following the established protocol in Circular 1/2009 of the CMT, indicated in the legal basis IV.

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

VII

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;

VIII

The violation of article 6 of the GDPR can be sanctioned with a fine of 20,000,000 € maximum or, in the case of a company, an amount equivalent to 4% maximum of the overall annual total turnover of the financial year above, opting for the one with the highest amount, in accordance with article 83.5 of the GDPR.

Violations of article 32 of the GDPR can be sanctioned with a fine of 10 €000,000 maximum or, in the case of a company, an amount equivalent to 2% maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount, in accordance with article 83.4 of the GDPR.

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14/18

Likewise, it is considered appropriate to graduate the sanctions to be imposed in accordance with the following criteria established in article 83.2 of the GDPR:

- Linking the activity of those investigated with the performance of treatment of

personal data: the development of the business activity carried out

entities require continuous processing of personal data.

- Recurrence of infractions already resolved in relation to the same facts:

there are several sanctioning procedures resolved, or in process at the signing of the

present report, for violations by VODAFONE in the last year in relation to

security measures and customer identification, such as references

PS/00001/2021,

PS/00296/2022, PS/295/2022, PS/290/2022, PS/00324/2022,

PS/611/2022.

- Business volume is 2,954 million euros and 3,064 employees.

- Nature of the most serious damages caused to the claimant: possible breach of

security in the second step of banking or financial operations that use

as a second authentication step, confirmation of the operation by SMS, with

possible economic damages for the claimant only if the impersonator is also

in knowledge of other data, necessary for the first step of authentication, such

such as credentials (username and passwords) used in entities

banking/financial

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN,

S.A.U., with NIF A80907397, in accordance with the provisions of article 58.2.b) of the

GDPR, for the alleged violation of article 6 of the GDPR, typified in article

83.5.b) of the GDPR for processing the data of the claimant to process the portability of the line without legitimation base.

SECOND: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN,

S.A.U., with NIF A80907397, in accordance with the provisions of article 58.2.b) of the

GDPR, for the alleged infringement of article 32 of the GDPR, typified in article

83.4.a) of the GDPR for allowing a change of the complainant's e-mail address, without have your consent, and issue a duplicate invoice at the request of a third party other than the owner of the line.

THIRD: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN,

S.A.U., with NIF A80907397, in accordance with the provisions of article 58.2.b) of the

GDPR, for the alleged infringement of article 32 of the GDPR, typified in article

83.4.a) of the GDPR for processing a portability without ascertaining the identity of the applicant and for the delivery of the SIM card to a person who was not the holder of the line without having adequate security measures to prevent impersonation of identity.

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FOURTH: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

FIFTH: 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 Sub-directorate of Data Inspection during the investigation phase, as well as the report of previous inspection actions.

SIXTH: 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, for processing the data of the claimant to process the portability of the line without a base of legitimization, a sanction of €70,000 (seventy thousand euros) would correspond, for the violation of article 6 of the GDPR, without prejudice to what results from the instruction.

SEVENTH: 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, for allowing a change of the claimant's e-mail address, without having his consent, and issue a duplicate invoice at the request of a third party outside the owner of the line, would be subject to a penalty of €50,000 (fifty thousand euros), for the violation of article 32 of the GDPR, without prejudice to what results from the instruction.

EIGHTH: 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, for processing a portability without ascertaining the identity of the applicant and for the delivery of the SIM card to a person who was not the owner of the line without having the appropriate security measures to prevent identity theft, a sanction of €50,000 (fifty thousand euros) would correspond, for the infringement of the Article 32 of the GDPR, without prejudice to what results from the instruction.



NINTH: 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).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your

responsibility within the period granted for the formulation of allegations to the

present initiation agreement; which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this

reduction on the three sanctions would remain for a total of €136,000, resolving the

sanction procedure.

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16/18

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, which

will mean a reduction of 20% of its amount. With the application of this reduction

on the three sanctions would remain for a total of €136,000 and its payment will imply the

completion of the procedure.

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 this case, if it were appropriate to apply both reductions, the total amount to be paid for the three sanctions would be established at 102,000 euros.

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 €136,000 or €102,000, you must make it effective through your deposit in the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at the bank CAIXABANK, 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 Subdirectorato 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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SECOND: On January 17, 2023, the claimed party has proceeded to pay of the sanction in the amount of 136,000 euros using one of the two reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not The acknowledgment of responsibility has been accredited.

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17/18

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

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.

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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 EXP202103912, 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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