

□ File No.: EXP202203916

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 September 23, 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:

<<

File No.: EXP202203916

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: D.A.A.A. (hereinafter, the claiming party) dated March 7, 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 states that, on February 9, 2022, it contracted the services of
mobile telephony with Vodafone.

Thus, on that day he received an SMS from the entity Llamaya (Xfera
Mobiles), indicating "Your mobile portability has been rejected. call us for

provide us with the correct ownership data". The claimant indicates that this was the first attempt to steal the line, since he had just contracted with Vodafone and did not had requested any portability to Llamaya

He adds that, on February 12, 2022, someone on his behalf purchased a duplicate of the SIM card in a physical Vodafone store. He found out about this fact on the 26th of February 2022 when going to make a request to another Vodafone store.

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Likewise, it indicates that, as of February 20, 2022, it ceases to have access to its line of mobile telephony and, when contacting Vodafone, they tell you that your line has been ported to Llamaya (not having been requested by the claimant) for which he requests to recover the line, but Vodafone informs you that the portability has been rejected for not matching ownership data.

On the other hand, the claimant contacts the new operator (Llamaya) and tells him that, in their systems, it appears that it was the claimant who requested the portability controversial and that, at present, the ownership of the line corresponds to a third party.

And, provide the following relevant documentation:

Vodafone invoice corresponding to the month of February of the year 2022.

Vodafone invoice relating to the disputed duplicate SIM card (dated 12 February 2022), in the name of the claimant, appearing as the delivery address one other than yours.

Screenshot of Llamaya's message, warning of the rejection of a supposed first portability request.

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 April 26, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On May 27, 2022, this Agency received a written response indicating:

"After carrying out the appropriate investigations into what happened, it is confirmed that there is in the Vodafone systems that on February 12, 2022 a duplicate was requested of the SIM card corresponding to the line ***TELEPHONE.1 owned by the claimant. Said request was processed through a physical establishment, specifically in the store ***STORE.1 through the user ***USER.1.

Vodafone has proceeded to request a copy of the necessary documentation provided for the SIM duplicate process, but, for reasons unknown to this party, the establishment has not been able to facilitate the documentation requested, for which the store will be penalized following the policy of Vodafone due to the fact that the obligation of documentary custody is an obligation of the establishments.

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Notwithstanding the foregoing, all SIM changes made by Vodafone exceed the security policy established for this purpose.

A letter has been sent to the claimant through which we have proceeded to inform you of the steps that were carried out by Vodafone to solve the incidence. In this sense, a copy of the letter is attached as Document number 1 sent to the claimant, in which he is informed that what happened was declared as fraudulent by the Vodafone Fraud Department and have implemented additional security measures on the customer account of the claimant so that these events will not be repeated. Likewise, in the aforementioned letter the complainant of the security policies available to Vodafone to prevent the making duplicate SIM cards.

The incident arose, as indicated by the claimant, because on the 12th of February 2022 a SIM duplicate was made on your mobile line ***TELEPHONE.1 without your consent. Said change was managed in person at a point of sale Vodafone located in ***LOCATION.1. In this sense, once put in knowledge of my client the existence of a duplicate SIM obtained without the consent of the claimant, Vodafone proceeded to carry out all those procedures necessary to return control to the claimant over his mobile line and declared the happened as a fraudulent act. It also proceeded to implement all the necessary additional security measures by activating the victim check of fraud on your Vodafone customer ID to prevent this incident from happening again produce in the future.

This part wants to point out that the effective management of a change of SIM card entails the overcoming of 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. Regarding the portability requested to the operator Llamaya on the claimant's mobile line, this part confirms that this was canceled on February 16, 2022 after Vodafone received a request for cancellation of portability by the claimant himself. so this part can confirm that the mobile line ***PHONE.1 is still active in the Vodafone under the ownership of the claimant.

Therefore, my client managed to solve the incident that is the object of the claim of final form prior to the receipt of this requirement by from the agency.

On the other hand, in order to prevent similar incidents from occurring, Vodafone works continuously in improving Security Policies for their change processes and SIM duplicates as well as for any other process that entails possible risks of fraud or irregular actions for our clients. In this sense,

Since March 14, 2012, Vodafone has been acting under the Security Policy for the Hiring of Individuals, which has been progressively updated, and whose last modification has been implemented on September 30, 2021.

Through said Security Policy, my client establishes what type of information must be required from the client for each requested management. Also, it remains

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including how to proceed in case a user does not pass the Security Policy,

as well as preventive actions in fraud situations. The aforementioned

Security Policy is mandatory for all After Sales Services

Vodafone, who are in charge of applying and respecting it. Attached as Document

number 3 copy of Vodafone's security policy for individuals.

With regard to SIM card duplicates, it should be noted that the objective of

Vodafone is that all duplicates or card changes are made

face-to-face, since it is the safest way to guarantee that processes do not take place

irregular or fraudulent and that, when the management to be carried out requires overcoming the

Security Policy, the client must carry their original ID. In regards to the

processing of a duplicate SIM in person, as was the case that we

occupies, this Security Policy provides that, in order to carry out a SIM change in

store, the holder of the client account must go with his identity document

original to be able to change the SIM. In addition, as of May 30, 2019,

Vodafone has established as an additional security measure the obligation to

make and keep a photocopy of the identity document presented by the client,

as proof of the SIM duplication operation requested and carried out.

Additionally, my client also established a penalty of €300 to the

dealer who does not comply with this premise. Attached is provided as Document

number 3 copy of the statement issued by Vodafone on May 30, 2019,

in which it is observed in the last point related to "New SIM Change Policy"

(page 7) the procedure that has been described above.

In the case at hand, and without prejudice to having confirmed that the

established security policy, Vodafone has requested the store that processed the

duplicate SIM the documentation proving the applicant's identity and, since there is no

dispose of it, has imposed disciplinary measures on said establishment

corresponding.

In any case, if the processing of a SIM change and/or a change of ownership

exceed the previous Vodafone Security Policies, the

carrying out such procedures in accordance with what is indicated in said Policies, when considering

I represented the change as authentic, real and truthful. Not being able to represent me

knowing that a third party stole the claimant's data without their consent.

Likewise, internal processes are being reviewed to ensure that they comply with

the defined Security Policies or introduce the necessary changes when

consider pertinent.

Specifically, my client is working on the continuous improvement of: • Review of

internal processes to ensure compliance with Security Policies and

verification controls that have been defined and incorporated, both in channel

face-to-face and by telephone, for duplicate SIM scenarios.

- Periodic reinforcement of communication of Security Policies and verifications

that have been defined by Vodafone for SIM duplicates and that must be

applied by agencies, commercial stores and agents.

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- Sending periodic communications to the face-to-face and telephone channel, as well as to the

logistics operator, where it is alerted to the risk scenarios detected, its

characteristics and behavior patterns to prevent new cases.

- Application -if applicable-, of the existing Penalty Policy for agents or

distributors who carry out any duplicate or change of a SIM card without having

required documentation or to carry out any SIM change management without

Follow all the steps defined in the Security Policy.

Attached as Document number 4, a report on the steps taken by

Vodafone to solve this incident”.

THIRD: On May 31, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

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: "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

The defendant is accused of committing an infraction for violation of article 6

of the RCPD, "Legacy of the treatment", which indicates in its section 1 the assumptions in which

that the processing of data by third parties 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;

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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”.

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:

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

consent in accordance with articles 5,6,7 and 9.”

The Organic Law 3/2018, of Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infractions considered very serious" provides:

"1. Based on what is established in article 83.5 of Regulation (U.E.) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

to)

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.”

II

In the present case, it is proven that a Vodafone physical establishment provided a duplicate SIM card of the complaining party to a third party, without his consent and without verifying the identity of said third party. Thus, the defendant, not verified the personality of the person who requested the duplicate SIM card, did not take the necessary precautions so that these events do not occur.

Based on the foregoing, in the case analyzed, the

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diligence used by the defendant to identify the person who requested a duplicate SIM card.

Well, it is accredited as recognized by the claimed party in its writ of response to this Agency dated May 27, 2022, << The incident was originated, as indicated by the claimant, because on February 12, 2022 the ***PHONE.1 without your made a duplicate SIM on your mobile line consent. Said change was managed in person at a point of sale Vodafone located in ***LOCATION.1. In this sense, once put in knowledge of my client the existence of a duplicate SIM obtained without the consent of the claimant, Vodafone proceeded to carry out all those procedures necessary to return control to the claimant over his mobile line and declared the happened as a fraudulent act. It also proceeded to implement all the necessary additional security measures by activating the victim check of fraud on your Vodafone customer ID to prevent this incident from happening again produce in the future>>.

In accordance with the evidence available at this procedural moment and without prejudice to what results from the investigation of the procedure, it is estimated that the conduct of the claimed party could violate article 6.1 of the GDPR and may be constituting the offense classified in article 83.5.a) of the aforementioned Regulation 2016/679.

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."

IV.

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

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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,

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.

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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 factors:

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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 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.

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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. B.B.B. and as secretary to Ms. C.C.C.,

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).

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.

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

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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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SECOND: On October 21, 2022, the claimed party has proceeded to pay of the sanction in the amount of 56,000 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.

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 www.aepd.es

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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.

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 EXP202203916, in

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.

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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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