

Procedure No.: PS/00092/2019

RESOLUTION R/00212/2019 TERMINATION OF THE PROCEDURE BY  
VOLUNTARY PAYMENT

In sanctioning procedure PS/00092/2019, instructed by the Agency

Spanish Data Protection Officer to VODAFONE ONO, S.A.U., given the complaint  
presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On April 1, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against VODAFONE ONO,  
S.A.U. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00092/2019

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for Data Protection

before VODAFONE ONO, S.A.U., by virtue of the claim filed by D. A.A.A.

and in consideration of the following:

FACTS

FIRST: On 08/10/2018 it has entry in the Spanish Protection Agency

of Data (AEPD) a claim of D. A.A.A. (hereinafter the claimant) in which

states that, as a result of the fact that in April 2018 he had contracted the services of

VODAFONE ONO, S.A.U., (hereinafter, VODAFONE ONO or the claimed party) has

received at your email address (\*\*\*EMAIL.1) an advertising email from the commercial

with which he contracted the services "leaving open all the addresses and names of

the owners of the e-mail account you were targeting with your advertising, including

them my e-mail" (The underlining is from the AEPD)

With the written claim, provide a screenshot of an email sent from “onovodafone” on 08/10/2018 at 2:20:12 p.m. In section dedicated to the recipients contains more than eighty pieces of information, sometimes name and surnames and other electronic addresses. The subject of the email is “Vodafone Ono Offer”. The email is signed by D.D.D., Ono Vodafone.

SECOND: In view of the facts denounced, the General Subdirectorate of Data Inspection proceeded to carry out preliminary investigation actions aimed at its clarification, in accordance with the provisions of the Regulation (EU) 2016/679, of the European Parliament and of the Council, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (General Data Protection Regulation, hereinafter GDPR).

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As a result of the previous actions carried out, the following ends:

<<On October 8, 2018, the complaint was transferred to the entity denounced, in the framework of proceedings E/5944/2018.

(....)

Given that no response to the transfer is received, the present actions of research.

On December 11, 2018, a request for information is sent to

VODAFONE in relation to the reported facts:

On February 1, 2019, VODAFONE sends the Agency the following information in relation to said facts:

1. The incidence is not a usual practice of the company, being contrary to the existing instructions and policies.
2. They understand that it is caused by human error without malicious intent.
3. Although it is a specific error, they have sent a statement to all their commercials reminding them that this practice is not allowed.

They provide a copy of the email sent.

4. They provide a copy of the document sent to the complainant dated January 31, 2019, in relation to the claim filed with the Agency, in which they ask apologize for the incident and inform you that it is not a practice supported by the company and that it is human error. They also tell you about the statement sent to the staff and cited in the previous point.>>

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (General Data Protection Regulation, in hereinafter RGPD) recognizes each control authority and according to what is established in the Articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Protection of Personal Data and Guarantee of Digital Rights (hereinafter LOPDGDD), The Director of the Spanish Agency for Data Protection is competent to initiate this procedure.

Article 58 of the RGPD, "Powers", establishes in point 2:

"2 Each supervisory authority shall have all of the following powers

corrections listed below:

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(...)

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

The RGPD deals in its article 5 with the principles that must govern the  
treatment of personal data and mentions among them that of "integrity and  
confidentiality". The provision provides:

"1. The personal data will be:

(...)

f) Treated in such a way as to guarantee adequate security of the  
personal data, including protection against unauthorized or unlawful processing  
against its loss, destruction or accidental damage, through the application of measures  
appropriate technical or organizational

The infringement of article 5.1.f) of the RGPD, for which the  
entity VODAFONE, is typified in article 83 of the aforementioned legal text  
that, under the heading "General conditions for the imposition of fines  
administrative", says:

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

with section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

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

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

a)

The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

III

The documentation in the file shows that VODAFONE ONO violated the principle of confidentiality.

The claimant has provided a copy of the email he received on 08/10/2018 sent by VODAFONE ONO regarding the company's offers in which there is a list of more than eighty addressees identified some times by name and surname and

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others by electronic address.

#### IV

In order to determine the administrative fine that should be imposed in the matter that

We are dealing with it is mandatory to abide by the provisions of articles 83.1 and 83.2 of the

RGPD, provisions that establish:

“Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of

each individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case 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

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- 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 if the person in charge or the person in charge notified the infringement and, in such case, to what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms certificates 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 realized or losses avoided, direct or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

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“Sanctions and corrective measures”, provides:

“two. 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 treatments of personal data.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to determine the amount of the fine that proceeds impose VODAFONE ONO, S.A.U., as responsible for an infraction typified in the article 83.5.a) of the RGPD, in an initial assessment, it is estimated that the following concur factors:

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People whose rights have been affected by the conduct of VODAFONE have been more than eighty.

The damage caused to those affected by violation of the confidentiality of their



data cannot be considered significant.

The lack of diligence shown by VODAFONE can be described as significant.

After receiving the letter from the Agency transferring the claim, VODAFONE sent the claimant, dated 01/31/2019, a letter requesting apologizes for the inconvenience caused and informs you that the practice that complaint is not admitted by the company and that it has sent to the commercial staff a statement reminding them how to carry out commercial communications.

There is an obvious link between the processing of personal data and the activity carried out by the entity VODAFONE.

The defendant is considered a large company.

Therefore, based on the foregoing,

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By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.

START A SANCTION PROCEDURE against VODAFONE ONO, S.A.U., with NIF A62186556, for the alleged infringement of article 5.1.f) of the RGPD, infringement classified in article 83.5.a) of the aforementioned Regulation (EU) 679/2016 and classified as a very serious infringement in article 72.1.a) of the LOPDPGDD.

2. APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicating that any of them may be challenged, as the case may be, in accordance with

established in articles 23 and 24 of Law 40/2015, of October 1, of  
Legal Regime of the Public Sector (LRJSP).

3.

INCORPORATE to the disciplinary file, for evidentiary purposes, the  
claim filed by the claimant and his documentation, the documents  
obtained and generated by the Subdirector General for Data Inspection  
during the investigation phase, as well as the report of previous actions  
of Inspection.

4. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1  
October, of the Common Administrative Procedure of the Administrations  
Public, the sanction that could correspond would be 60,000 euros (sixty  
thousand euros) without prejudice to what results from the instruction.

5. NOTIFY this agreement to VODAFONE ONO, S.A.U., with NIF  
A62186556, granting a hearing period of ten business days for  
formulate the allegations and present the evidence that it deems appropriate.  
In your brief of allegations you must provide your NIF and the number of  
procedure at the top of this document.

If within the stipulated period it 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, of 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 was a fine, it may recognize its responsibility within the  
term granted for the formulation of allegations to this initial agreement; it  
which will entail a reduction of 20% of the sanction to be imposed in  
the present procedure. With the application of this reduction, the sanction would be

established at 48,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you 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, the sanction would be established at 48,000 euros and its payment will imply the termination of the process.

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The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The 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 amount of the penalty would be set at 36,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (48,000 euros or 36,000 euros), you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open 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 the reduction of the amount to which welcomes

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

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

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On April 26, 2019, the respondent has proceeded to pay the sanction in the amount of 36,000 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

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## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

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

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time 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 infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

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

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE

the termination of procedure PS/00092/2019, of

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in accordance with the provisions of article 85 of the LPACAP.

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

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

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

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

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

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

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