

□ File No.: PS/00312/2021

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 October 18, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against VODAFONE
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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File No.: PS/00312/2021

AGREEMENT TO START A 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 complaining party) dated March 4, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against Vodafone Spain, S.A.U. with NIF A80907397 (in
hereinafter, the claimed party or Vodafone). The grounds on which the claim is based
are the following.

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The claimant states that I.S.G.F. Commercial Reports, S.L. (hereinafter ISGF) is claiming a debt from the respondent party, on which it obtained favorable resolution of the Secretary of State for Telecommunications and Vodafone.

Provide the following documentation:

- Letter from the respondent dated October 6, 2018 informing that complying with the resolution of the Secretary of State for Telecommunications have proceeded to make a payment in their favor and after discounting said payment, the Vodafone Customer Account ***ACCOUNT.1 has been up to date with payments.
- Subsequent letters from I.S.G.F dated September 17 and December 18, 2019 claiming the aforementioned debt on behalf of the claimed party.
- Claim sent by the complaining party on March 17, 2020 to I.S.G.F., stating that it has not contracted the aforementioned debt.

SECOND: Prior to the acceptance of this claim for processing, it is transferred to the claimed on April 21, 2021, in accordance with the provisions in article 65.4 of the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD), in the actions with reference E/04513/2021. Notification is done electronically, and figure delivered on April 26, 2021.

THIRD: In accordance with the provisions of article 65.2 of the Organic Law 3/2018, on Data Protection and Guarantee of Digital Rights (LOPDGDD), in On June 15, 2021, the agreement to process the claim is signed.

FOURTH: It is stated that outside the term granted on July 4, 2021, the part Respondent responds to the transfer of the claim, stating the following:

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3/13

On the one hand, it states that it encloses as document number 1 a copy of the letter that has been sent to the complaining party informing him that the amount that was claimed has been canceled and paid. Also, it is reported that your data has been blocked in Vodafone systems.

At the same time, it indicates that the personal data of the user has been deleted. claimant from the respondent's systems.

It also indicates that as a result of sending a series of letters for the claim of a debt by ISGF, on behalf of Vodafone, the complainant exercises his right of cancellation before ISGF on March 17, 2020.

This right was answered in a timely manner by ISGF on March 23, 2020. Attached as document number 2 is a copy of the answer. In this response, the complainant is informed that ISGF acts as the manager of the treatment of Vodafone, because you have to redirect your right of suppression before Vodafone. However, Vodafone systems do not record the exercise of that right and attached as document number 3 capture of the internal systems of Vodafone.

On the other hand, they state that the unpaid amounts that were required from the claimant had as concept "Expenses for non-payment of invoices", of the invoices issued on dates 11/22/2018 and 08/01/2018. Attached as document number 4 copy of invoices.

On the other hand, they state that these invoices have their origin in a registration not requested by the claimant, but in which they used their personal data. This aspect It was already solved as a result of a resolution of the Secretary of State for Telecommunications, in which the claim of the claimant was estimated with registration not requested from the fixed line ***TELÉFONO.1, acknowledging the claimant's right to obtain immediate cancellation of the unsolicited service, as well as not to pay the bills. As a result of this resolution, Vodafone paid in favor of the claimant the amount of the two unpaid invoices. attached as a document number 5 letter sent to the claimant indicating the payment of the amount.

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4/13

Likewise, they point out that, due to a failure in the system, despite having canceled the debt of the invoices of 11/22/2018 and 08/01/2019, there was no canceled the debt in concept of "Expenses for non-payment of invoices", this being debt requested by the ISGF entity on behalf of Vodafone.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The exposed facts may imply, by the claimed party, the commission of

an infringement of article 6.1 of the RGPD that establishes the assumptions that allow consider the processing of personal data lawful.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
 - b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;
- (...)"

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5/13

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of administrative fines", states:

"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 without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.”

III

The respondent acknowledges the facts in her letter to this Agency dated March 4,

July 2021, in which it states: that these invoices have their origin in a registration not

requested by the claimant, but in which they used their personal data. This aspect

It was already solved as a result of a resolution of the Secretary of State for

Telecommunications, in which the claim of the claimant was estimated with registration not

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6/13

requested from the fixed line ***TELÉFONO.1, acknowledging the claimant's right to

obtain immediate cancellation of the unsolicited service, as well as not to pay the

bills. As a result of this resolution, Vodafone paid in favor of the

claimant the amount of the two unpaid invoices.

Likewise, they point out that due to a failure in the system, despite having canceled the debt of the invoices of 11/22/2018 and 08/01/2019, there was no canceled the debt in concept of "Expenses for non-payment of invoices", this being debt requested by the ISGF entity on behalf of Vodafone.

Hence, the absence of legitimacy for the treatment is confirmed, for how much they show that there was no contract between the two.

It must be taken into account that the documentation in the file offers evidence that the party complained against violated article 6.1 of the RGPD, whenever that processed the personal data of the claimant without legitimacy.

The lack of diligence displayed by the entity in complying with the obligations imposed by the personal data protection regulations it is therefore evident. Diligent compliance with the principle of legality in the treatment of third-party data requires that the data controller be in a position to prove it (principle of proactive responsibility).

According to the evidence currently available procedural, and without prejudice to what results from the investigation of the procedure, it is estimated that the conduct of the complained party could violate article 6.1 of the RGPD being able to constitute the infraction typified in article 83.5.a) of the aforementioned Regulation 2016/679.

IV

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the following:

"1. 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.”

"two. 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

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate 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,

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 person in charge or the person in charge of the treatment;

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, to what extent.

gives;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

adherence to codes of conduct under article 40 or mechanisms of

i)

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

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

mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sancio-

tions and corrective measures”:

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8/13

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned 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 treatment of

personal information.

- 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 subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them 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 sanction of fine to impose on the claimed entity as responsible for an infraction typified in the article 83.5.a) of the RGPD 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 intentionality or negligence of the infringement (article 83.2.b, RGPD). In the present case we are that despite having canceled the debt of the invoices of 11/22/2018 and 08/01/2019, it continued to be claimed by the ISGF entity in name of the claimed party

The evident link between the business activity of the respondent and the

processing of personal data of clients or third parties (article 83.2.k, of the

RGPD in relation to article 76.2.b, of the LOPDGDD)

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9/13

It is appropriate to graduate the sanctions to be imposed on the claimed party and set them in the amount of €50,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD.

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

HE REMEMBERS:

FIRST: Start sanctioning procedure against Vodafone España, S.A.U. with NIF

A80907397, for the alleged infringement of article 6.1. of the RGPD typified in the article 83.5.a) of the aforementioned RGPD.

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

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

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and his documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection during the investigations phase.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be 50,000 euros (fifty thousand euros), without

prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to Vodafone España, S.A.U. with NIF

A80907397 granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

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10/13

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to 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 40,000 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 40,000 euros and its payment will imply the termination of the

process.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. The pay

volunteer of the amount referred to in the preceding paragraph may be made at any

time prior to resolution. In this case, if it were appropriate to apply both

reductions, the amount of the penalty would be established at 30,000 euros.

In any case, the effectiveness of any of the two reductions mentioned

will be conditioned to the withdrawal or renunciation of any action or resource in via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the

amounts indicated above, 40,000 euros or 30,000 euros, you must do so

cash by depositing it in account number ES00 0000 0000 0000 0000 0000 opened

on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank,

S.A., indicating in the concept the reference number of the procedure that appears in

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11/13

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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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SECOND: On November 9, 2021, the claimed party has proceeded to payment of the penalty in the amount of 30,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of 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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12/13

FOUNDATIONS OF LAW

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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 Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

- "1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.
2. When the sanction is solely pecuniary in 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 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 with each other.

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 recourse against the sanction.

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

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00312/2021, of in accordance with the provisions of article 85 of the LPACAP.

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

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13/13

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

Director of the Spanish Data Protection Agency

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