

□ Procedure No.: PS/00352/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated June 4, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against Vodafone Spain, S.A.U. with NIF A80907397 (in

later, the claimed one).

The claimant states that his bank account has been charged with an invoice for

telephony of the month of May of the year 2020 of which he was not the owner but his ex-partner.

And, provide the following documentation:

- Bank document of the charge made.

SECOND: 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 October 5, 2020, the agreement for admission to processing of the application was signed.

claim.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD.

On January 28 and April 13, 2021, requests for

information to the claimant. Notifications are made electronically and consist

delivered on February 1 and April 19, 2021.

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

The respondent responds to the information request sent to him on April 13, 2021 stating:

1st. "The claimant is a former client of the respondent who had several active services associated with your customer account ID ***ID.1, for different periods of time, between November 2017 and July 2020, when I caused the definitive withdrawal due to portability of the last service that was active with Vodafone, so data processing

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claims of the claimant was legitimated as it was necessary for the execution of a contract to which the interested party was a party.

2nd. The charge object of the claim, for an amount of €XX.XX, corresponds to a of the invoices generated by your client account ID ***ID.1, in which the line is invoiced mobile ***PHONE.1, showing consumption in it. Specifically, it is about the invoice with number ***FACTURA.1, issued on May 22, 2020. The line mobile generating the charge was active to the ownership of the claimant in three different occasions. It was first active between November 2017 and November 2018. Later it was reactivated in May 2020, causing low that same month, and causing the charge that motivates this claim. finally activated again between June 2020 and July of the same year. From that

At the moment, the line is ported to a third operating company, on the 14th of

July 2020, and is not active with the claimed one.

3rd. Currently, in the systems of my client there is an outstanding debt

associated with the claimant, the amount of which amounts to X.XX euros, relating to the invoice generated by the same line, with issue date June 8, 2020.

And they attach, among others, the following relevant documents:

- Copy of the contract in the name of the claimant, on May 1, 2020, regarding the referred line (2.1_Contrato_XXXXXXXXX_***ID.1_XXXXXXXXX.pdf of the entry XXXXXXXXXXXXXXXXXXXX)

- Invoice dated May 22, 2020 that generated the charge claimed in the claimant's bank account (DOC_1_Factura_XXXXXXXXX.pdf of the entry XXXXXXXXXXXXXXXXXXXX).

- SEPA direct debit mandate dated May 1, 2020 of ownership of the claimant (2.3_SEPA_XXXXXXXXX_***ID.1_XXXXXXXXX_0.pdf of entry XXXXXXXXXXXXXXXXXXXX)

It is observed in the documentation provided by the respondent, that the hiring of dated May 1, 2020 was produced through the authorized Ms. B.B.B..

Ms. B.B.B. power of attorney or equivalent document to act on behalf of and representation of the claimant in the contract signed on May 1, 2020 with the reclaimed.

On June 10, 2021, this Agency received a response letter stating:

That in November 2017 he contracted in his name, with the claimed services of internet, tv, landline and two mobile lines, his own ***TELEPHONE.1, and another ***PHONE.2 whose user is the claimant. As of August 2018 they requested, due to the breakup of the couple, that all services except for the line of Ms.

BBB will become the property of the claimant and will be billed to him. After continuous

incidents and errors, in May 2020, all services (including the mobile line of Ms. B.B.B.) were owned and billed to the claimant. Subsequently got his phone line back. He adds that the negotiations with the claimed were agreed upon with the claimant.

From the statements of Ms. B.B.B., in which the mobile line is identified of this ***PHONE.1 and that of the claimant ***PHONE.2, it is verified that both the contract dated May 1, 2020 and the invoice cited above that has motivated the claim, the claimant appears as the owner and, correspond to www.aepd.es

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the mobile phone line of Ms. B.B.B.. That is, in the aforementioned contract dated 1 May 2020, it is verified that Ms. B.B.B., acting as authorized, contracts the mobile line of which he was a user, in the name of the claimant, being then issued the corresponding invoicing against the bank account of the claimant.

FOURTH: On July 9, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6.1 of the RGPD, typified in Article 83.5.a) of the aforementioned GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, the claim dated July 27, this year, he filed a pleadings brief in which, in summary, he states that: “that the line was contracted by Ms. B.B.B., as it appears as authorized in the contract of the line ***PHONE.1. In this sense, it is important to point out that, following the

security policy, the registration of an authorized person can only be requested by
of the company administrator or, additionally, evidencing that in the
deeds of the company is already recorded as authorized. Therefore, the discharge of Ms.
BBB as authorized in the file of the claimant's client could only
have been processed through these two channels, the claimant being the only one capable of acting
these authorization requests. Next, once you have registered a
authorized, it can act on behalf of the holder. However, the line
***TELEPHONE.1, even though it was supposedly hired by an authorized person, continues
appearing under ownership of the claimant the first notification that the
claimed that the line ***TELÉFONO.1 is not owned by the claimant occurred
May 29, 2020, not May 1, 2020. In this sense, May 29 is
processed the withdrawal at the request of the claimant, being reactivated on June 4,
2020, in the face of the erroneous withdrawal request notified to the claimant on June 3,
2020.

That is, on May 22, when the disputed invoice is issued, the line is
was under the ownership of the claimant, having contributed the claimed surplus
supporting documentation of this fact.

Finally, on July 14, 2020, the line ***TELEPHONE.1 was ported to Lowi by request
of Ms. B.B.B., where it is kept today (July 27, 2021).

Furthermore, the defendant has shown that in their systems there is no
registration of a disintegration of the lines until May 29, 2020, not having
been proven by the claimant or by Ms. B.B.B. otherwise."

SIXTH: On July 28, 2020¹ the instructor of the procedure agreed to the
opening of a period of practice tests, considering incorporated the
previous actions, as well as the documents provided by the claimed party.

SEVENTH: On September 14, 2021, a resolution proposal was formulated,

proposing that Vodafone Spain be sanctioned in the amount of 40,000 euros,

S.A.U. with CIF A80907397, for an infringement of Article 6.1 of the RGPD, typified in

Article 83.5.a) of the RGPD.

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EIGHTH: On October 4, 2021, the respondent made allegations to the

motion for a resolution, ratifying the previous allegations and in summary

states that: "the line was contracted by Ms. B.B.B., as it appears as authorized in

the contract of the line ***TELEPHONE.1. In this sense, it is important to point out

that, following Vodafone's security policy, the registration of an authorized

It can only be requested by the company administrator or,

additional, evidencing that in the deeds of the company it already appears as

authorized. Therefore, the registration of Ms. B.B.B. as authorized from the file of the

claimant could only have been processed by these two ways, being the

claimant the only one capable of triggering these authorization requests. TO

Then, once an authorized person is registered, they can act on behalf of the

headline. However, the line ***TELEPHONE.1,

even though it was supposed to be

contracted by an authorized person, continues to appear under the ownership of the claimant.

The first notification that my client received that the line ***TELEPHONE.1 was not

is owned by the claimant occurred on May 29, 2020, not May 1,

2020. In this sense, on May 29, the withdrawal was processed at the request of the claimant,

being reactivated on June 4, 2020, due to the erroneous withdrawal request that was

notify my client on June 3, 2020.

In other words, on May 22, when the disputed invoice is issued, the line is was under the ownership of the claimant, having contributed my represented plenty of supporting documentation of this fact.

Requests the claimed, the dismissal of the file with the consequent file of the actions, for not having committed any of the imputed infractions or, subsidiarily, that in case of imposing any sanction, it is imposed in the amount minimum, in light of the mitigating circumstances indicated in this case.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

1º- It is stated in the receipt provided by both the claimant and the respondent that charged their bank account with an invoice for the mobile line ***TELÉFONO.1 of dated May 22, 2020, for an amount of XX.XX euros of which he was not the owner but Ms. B.B.B..

2º- There is proof of the charge made by the claimed party in the account of the claimant. Bank receipt from Caja Siete.

3º- It is stated in the contract dated May 1, 2020, provided by the respondent, that Ms. B.B.B., acting as authorized, contracts the mobile line ***TELEPHONE.1 of which she was a user, in the name of the claimant, being then issued the corresponding invoicing against the claimant's bank account.

4º- There is no proof that Ms. B.B.B. was authorized by the claimant to formalize the contract dated May 1, 2020.

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FOUNDATIONS OF LAW

I

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

II

The defendant is imputed the commission of an infraction for violation of Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the cases in which the processing of third party data is considered lawful:

"one. The treatment will only be lawful if at least one of the following is met terms:

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;

(...)"

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 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:

"one. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned in it and, in particular, the following:

(...)

b). 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.”

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III

Examining the documentation in the file, it is evident that the conduct allegedly infringing for which the defendant is held responsible consisted, therefore, in that from the segregation of the lines that occurred on May 1, 2020, the claimed despite stating said segregation, I charge an invoice for the month of May of 2020 to the claimant when he was not the owner of that line but his former partner. The defendant alleges that the mobile line ***TELÉFONO.1 was contracted by Ms. B.B.B., by appearing as authorized, but there is no accreditation of this. In the sight of

contract dated May 1, 2020 provided by the respondent, it is evident that

acts as authorized of the claimant contracts the mobile line

Mrs.

***TELEPHONE.1 of which he was a user, in the name of the claimant, being then

issued the corresponding billing against the claimant's bank account, but

the respondent has not provided this Agency with proof that Ms. B.B.B. will act

in the name and on behalf of the claimant.

BBB,

Thus, when the invoice was issued, they processed the claimant's data without legitimacy

violating the principle of legality, loyalty and transparency in the treatment referred to

Article 5.1.a) of the RGPD.

Article 6.1 RGPD says that the treatment "will be lawful if it is necessary for the performance of a contract to which the interested party is a party.

Thus, it is estimated that the facts that are submitted to the assessment of this Agency constitute an infringement of article 6.1.b), in relation to article 5.1. to) of the GDPR.

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

IV

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“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

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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 remedy the violation 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 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 obtained or losses avoided,

directly or indirectly, through the infringement.”

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

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of the 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

personal data processing.

c) The benefits obtained as a result of the commission of the

infringement.

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 not mandatory, a data protection officer.

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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 precepts transcribed, in order to set the amount of the sanction of a fine to be imposed in the present case, the defendant is considered as responsible for an infringement typified in article 83.5.a) of the RGPD, they are estimated the following factors concur.

As aggravating factors:

-

That the facts object of the claim are attributable to a lack of diligence of the claimed, given that the claimant is listed as the holder of a line mobile that did not contract and then being issued the corresponding billing against the bank account of the claimant (article 83.2.b, RGPD).

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).

This is why it is considered appropriate to adjust the sanction to be imposed on the

claimed and set it at the amount of €40,000 for the infringement of article 6.1 of the GDPR.

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

FIRST: IMPOSE VODAFONE ESPAÑA, S.A.U. with CIF A80907397, for the infringement of article 6.1. of the RGPD typified in article 83.5.a) of the RGPD, a fine of 40,000 euros (forty thousand euros).

SECOND: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U. with NIF A80907397.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if

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

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

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 in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

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

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

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

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

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

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

documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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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