

□ File No.: PS/00308/2021

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 July 9, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against ORANGE ESPAGNE,
S.A.U. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00308/2021

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: A.A.A. (hereinafter, the claimant) dated March 17, 2020
filed a claim with the Spanish Data Protection Agency.

The claim is directed against ORANGE ESPAGNE, S.A.U., with CIF A82009812 (in
later, the claimed one).

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The grounds on which the claim is based are that on February 26, 2020, the

claimant requested the portability of YOIGO to MASMOVIL, and although the next day canceled the portability carried out by telephone, one of the lines (**TELEPHONE.1) was retained in MASMOVIL, despite assuring him that such portability was canceled (so the SIM card was not issued to you).

On March 05, 2020, he has no line on his mobile, he contacts YOIGO and they tell him they will figure it out.

On March 11, 2020, YOIGO sends you a new SIM card indicating that you They would reactivate the service in 48 hours.

Two days later (March 13, 2020), he discovers that third parties are making large, unauthorized bank transfers from your account from BBVA (two of them for reimbursement by Bizum).

Contact MASMOVIL, since he suspects that what happened has its cause in the disappearance of your SIM card and tell you that your card may have been destroyed by the carrier for security reasons.

That he subsequently discovers that his number ***TELÉFONO.1 belongs to Orange since March 13, 2020 and that is not in your name.

Along with the claim, provide a copy of the police report

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

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

In addition, the following extremes are noted:

On July 14, 2020, XFERA MÓVILES, S.A., sends to this Agency the following information and statements:

1.

That from February 26, 2020 to March 5, 2020 they receive repeated requests for portability of the claimant's line which are all ex officio stoppages in the systems due to fraud. This is possible because the operator donor and recipient (from YOIGO to MASMOVIL) belonged to the same company.

two.

That the fourth attempt of the scammer was not possible to stop the portability in the systems (the portability deadlines are very short), but it stopped in logistics of so the SIM card was not given to you.

3.

That the scammer tried the portability again on 03/13/2020 and manages to carry out the portability, this time to the ORANGE company, for which he had to pass the security of this company.

On February 6, 2021, ORANGE ESPAGNE, S.A.U. sends to this Agency the following information and statements:

1.

That the request to the donor operator regarding portability was completed through the SGP shared system with the data corresponding to the claimant and was accepted by the donor operator.

It provides a screenshot where there is a portability request dated 13 March 2020 related to the line ***TELÉFONO.1 and being name and surnames and number DNI of the client those of the claimant.

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two.

That the portability was carried out through the Online channel.

That he proceeded to inform by sending an SMS to the line object of

3.

portability on March 12, 2020 with the following content:

"Hello. you already have your order ***ORDER.1 in the store ***STORE.1 you have 7 days to pick it up Remember to bring the necessary documentation for the collection of your order. that you can consult in ***URL.1. If you don't take it, we won't be able to deliver. And if you haven't yet taken out Orange mobile insurance for your smartphone or tablet, order it at your store to protect it from theft/breakage ***URL.2"

A copy of the SMS is provided.

Provide a copy of the DNI that served to prove the identity of the client, stating

Four.

in it the name of D. B.B.B. with DNI number ***NIF.1.

5.

a.

b.

A copy of the portability contract is provided where it is stated:

In the "Orange customer data" section, there is B.B.B. with DNI number ***NIF.1.

The e-mail contains ***EMAIL.1.

In the "data of the owner of the donor operator line" there is the

c.

name and surname of the claimant with DNI number ***NIF.1.

There is an indication of "Accepted by the client electronically or by telephone

d.

date 03-11-2020 14:08:42" both by the Orange customer and by the operator customer

donor.

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That the line ***TELÉFONO.1 was blocked, placing it at

6.

disposition of the claimant again.

7.

That verifications are being carried out in order to clarify what happened, as well as

as to apply the corresponding internal measures since the controls

applied by the company in relation to identity verification of the contracting party

were applied correctly.

8.

That in recent months they have focused their efforts on implementing systems and measures that guarantee the verification of the holder's identity. That have as technologies already implemented the "Digital Signature" tool, which is a software that allows you to check if the DNI is valid, if it is one of those admitted by the policy of Orange or if it generates doubts due to having non-coinciding data. Also, they have the "MobileConnect" tool for sending challenge/sms with a message that the client You must accept on your device to continue with the management.

That, in response to the security mechanisms used to ensure

9.

the authenticity of the data provided by the client, as well as to verify its ownership over the line state that the SGP request to the donor operator with the data indicated by the user was validated and accepted by the donor operator. That Likewise, the communications indicated above were sent.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

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guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the RGPD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you".

III

In accordance with the available evidence, it is considered that, of the denounced facts, a treatment of data without legitimacy is clear, since the entity claimed carried out the portability object of this complaint, without ascertaining whether the person who requested it was or was not the claimant, which supposes an infraction of the article 6 of the RGPD.

In relation to the lack of security measures in the delivery of Sim cards reported, indicate that a response is being given through the procedure Sanction PS/0022/2021 still in progress.

IV

Article 72.1 b) of the LOPDGDD states that "according to what is established in the article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

c) The processing of personal data without the concurrence of any of the conditions of legality of the treatment in article 6 of Regulation (EU) 2016/679."

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Article 58.2 of the RGPD provides the following: "Each control authority will have

of all the following corrective powers indicated below:

b) send a warning to any person responsible or in charge of the treatment when the

treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum 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

of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

you identified (article 83.2 b)

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☐ Basic personal identifiers -image- are affected, (art 83.2 g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START PUNISHMENT PROCEDURE against ORANGE ESPAGNE,

S.A.U., with CIF A82009812, in accordance with the provisions of article 58.2.b) of the

RGPD, for the alleged infringement of article 6 of the RGPD, typified in article

83.5.b) of the RGPD

SECOND: ORDER ORANGE ESPAGNE, S.A.U., with CIF A82009812, from

in accordance with the provisions of article 58.2 d) of the RGPD, so that within ten

days proceed to carry out the necessary actions so that the treatment of the data

Personal data used comply with the provisions of the RGPD.

THIRD: APPOINT C.C.C. and, as secretary, to D.D.D.,

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, on the Regime

Legal Department of the Public Sector (LRJSP).

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

claim filed by the claimants and their documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection during the

investigation phase, as well as the report of previous Inspection actions.

FIFTH: 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.

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SIXTH: NOTIFY this agreement ORANGE ESPAGNE, S.A.U., with CIF

A82009812, 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.

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

set at €2,400 (two thousand four hundred 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 penalty would be established at €40,000 (forty thousand four hundred euros), and its payment will imply the termination of the procedure.

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 €30,000 (thirty thousand euros).

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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 previously indicated €40,000 or €30,000, you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for 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 August 4, 2021, the claimed party has proceeded to pay of the sanction 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.

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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.

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 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."

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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/00308/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ORANGE ESPAGNE, 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.

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