

936-031219

□ Procedure No.: PS/00474/2019

RESOLUTION R/00129/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00474/2019, instructed by the Agency

Spanish Data Protection Officer to VODAFONE ESPAÑA, S.A.U., given the complaint

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On January 22, 2020, 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 transcribed:

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Procedure No.: PS/00474/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

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

Data and based on the following:

FACTS

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated July 2, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in

later, the claimed one).

The claimant states that the previous user of her fixed telephone line

appears as the owner of the three lines of the claimant. In fact, the last invoice

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received appears in the name of said third party (in addition to the DNI), linked to the account and claimant's mailing address.

Provides an invoice dated May 22, 2019, in which the claimant appears as the owner of the lines and invoice dated June 22 of the same year, whose owner is a third.

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).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

In addition, the following extremes are noted:

The claimant is informed of this claim on August 29 of 2019, requiring you to send this Agency, within a period of one month, information about the response given to the claimant before the exercise of the rights regulated in the articles 15 to 22 of the RGPD, the causes that have motivated the incidence that has originated the claim and the measures taken to prevent similar incidents from occurring,

dates of implementation and controls carried out to verify its effectiveness.

After the given period has elapsed, no response has been obtained from the respondent.

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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 according to what is established in articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested 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 action affirmative, 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 he accepts, either through a statement or a clear action affirmative, the treatment of personal data that concerns you".

On the other hand, article 5 regulates the principles relating to data processing personal establishing that they must be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

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c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice

of the application of the appropriate technical and organizational measures imposed by the

this Regulation in order to protect the rights and freedoms of the data subject ("limitation

of the term of conservation»);

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in paragraph 1 and able to demonstrate it ("proactive responsibility").

III

In accordance with the evidence available in this time, and without prejudice to what results from the investigation, it is considered that of the facts reported, that is, the display of data from a third party other than the claimant, allow verifying that the defendant has not been able to guarantee adequate security in the treatment of the personal data of the claimant, thus incurring in the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of the personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

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IV

Article 72.1.a) 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:

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

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning 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 accordance with 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 volume of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

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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 negligent action, but

identified significant (article 83.2 b)

Basic personal identifiers are affected (name, surname),

according to article 83.2 g)

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A PUNISHMENT PROCEDURE against VODAFONE ESPAÑA, S.A.U.

with NIF A80907397, for the alleged infringement of article 5.1 f) of the RGPD, typified in the article 83.5 a) of the RGPD

SECOND: ORDER VODAFONE ESPAÑA, S.A.U. with NIF A80907397, in accordance

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

proceed to order the person in charge or in charge of the treatment, that the operations of treatment comply with the provisions of the RGPD.

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

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).

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FOURTH: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and their documentation, the documents obtained and generated by the General Subdirectorate of Data Inspection.

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

of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 70,000 euros (seventy thousand euros) without prejudice to what result of the instruction.

SIXTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF A80907397, granting him a hearing period of ten business days to formulate the pleadings and submit any evidence you deem 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 the 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 acknowledge its responsibility within the term granted for the formulation of allegations to this initial agreement; what it will take coupled with a reduction of 20% of the sanction to be imposed in the present process. With the application of this reduction, the sanction would be established in 56,000 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 entail the reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 56,000 euros and its payment will imply the termination of the process.

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 responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the amount referred to in

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the previous paragraph may be made 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 42,000 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 (56,000 or 42,000 euros), you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Department of Data Protection 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 it is accepted.

Likewise, you must send proof of entry to the Subdirector General for Inspection to continue with the procedure according to the amount entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, if applicable, the draft start-up agreement. After that period its expiration will occur and, consequently, the filing of proceedings; 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.

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: On February 18, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 42,000 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.

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. 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.

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00474/2019, of

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 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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