

968-150719

Procedure No.: PS/00277/2019

RESOLUTION R/00575/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00277/2019, instructed by the Agency

Spanish Data Protection Agency to VODAFONE ESPAÑA, S.A.U., in view of the

claim filed by A.A.A., and based on the following,

BACKGROUND

FIRST: On September 23, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against VODAFONE

ESPAÑA, S.A.U.. Having notified the initiation agreement and after analyzing the allegations

presented, on October 17, 2019, the resolution proposal was issued

which is transcribed below:

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Procedure no.: PS/00277/2019

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

to the following:

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on March 19, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed

against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (hereinafter, the claimed).

The reasons on which the claim is based are that he has been a Vodafone customer since

11/21/2018 and that said entity is making the charges in an account other than the one

provided that you are not the owner or authorized (specifically, it is your child's account,

which is not a VODAFONE customer)

Likewise, it states that the postal address that is in the files of Vodafone  
(corresponding to a premises owned by you) is not the one provided in the contract.

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Provides burofax dated 01/16/2019, in which it informs the entity of the  
existence of inaccurate data, received by the entity on 01/17/2019, as well as  
claim before the Telecommunications User Service Office, in relation to the  
disagreement of the amount of the charges.

SECOND: In view of the facts denounced in the claim and the documents  
provided by the claimant, the General Subdirectorate for Data Inspection proceeded to  
carrying out preliminary investigative actions to clarify the facts  
in question, 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 Organic Law 3/2018, of December 5, of  
Protection of Personal Data and guarantee of digital rights (hereinafter  
LOPDGDD).

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:

The claimant is informed of this claim on May 20, 2019,  
requiring you to submit to this Agency, within a period of one month, information on the  
response given to the claimant before the exercise of the rights regulated in 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.

THIRD: On September 23, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.f) of the RGPD, typified in the Article 83.5 of the RGPD.

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FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that “Mrs. A.A.A. states in his denounces that VODAFONE, being a client of this entity, is making charges to a bank account other than yours. Specifically, this is your child's account, which is not a VODAFONE customer.

Likewise, it indicates that the postal address that is in the files of VODAFONE does not is the one provided in the contract, but corresponds to the address of a local of your property.

The account number to which you were initially billed for services was the account number that was provided at the time of contracting on the 21st of November 2018 when he requested registration in the Vodafone Fibra 600MB + Fixed Package

928460219 + Total TV and Mobile Phones \*\*\*PHONE.1 and \*\*\*PHONE.2 (hereinafter, the "Services").

At the time of contracting through the Carrefour Las Palmas point of sale, Mrs. A.A.A. was the one who provided the account number and postal address indicated below:

-Bankinter checking account: \*\*\*ACCOUNT.1

-address: \*\*\*ADDRESS.1

These data are those that were included in the invoices issued in the name of Mrs. A.A.A. for the accrual of contracted services.

As for the management, the services contracted in November 2018 are associated with a subaccount whose address is \*\*\*ADDRESS.1 in Las Palmas, being this direction the one that was provided in the contract of November 2011, which It is not discussed at any time by Mrs. AAA.

For these purposes, it is important to highlight that all services depend on one account previous teacher who was registered at the address \*\*\*ADDRESS.2 in Las Palmas, since this account is considered the master account in the systems.

But it is important to highlight that under said master account hang the rest of accounts associated with Mrs. A.A.A. and specifically, the account that collects the services November 2018 are associated with \*\*\*DIRECTORATE.1.

Therefore, the address (\*\*\*ADDRESS.2) does not affect the active subaccounts, nor is it It is not processed for any purpose, but it is inactive information corresponding to to a previous contract.

Therefore, the services that were registered in the month of November 2018 are associated with the account ending in XXXX.

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However, in the month of January 2019, the system records that Ms. A.A.A. I know contacted to change the account number to a new one ending in "YYYY".

As the process indicates, to make the change of account it is necessary to call the customer number and confirm it. It is tried twice without result and it is send a message to the number \*\*\*TELEFONO.1 to request confirmation of said change. We understand that no response was obtained because there was no change of account number.

Subsequently, on February 14, 2019, my client received a claim made by Ms. A.A.A. for the same matter before the Secretary of State of Telecommunications and Information Society.

At present, the appropriate steps have already been taken to solve the claim of Mrs. A.A.A. as quickly as possible, applying to services the contracted promotions, billing to the current account indicated and without stating debt assigned to said account.

The invoices are provided where it can be seen that as of February they had already changed the bank details for the correct ones.

In conclusion, the address and bank account data that were provided by Mrs. A.A.A. at the time of hiring in the month of November 2018.

Later, in January 2019, he tried to carry out the change of account requested by Ms. A.A.A., but not being able to satisfactorily carry out the verification of the application after two calls and one SMS sent to Mrs. A.A.A., he did not carry it out. Remember that these checks are made for the sake of

protect our customers and prevent bank account changes from taking place without any verification.

Therefore, it is considered that he acted at all times with the diligence that is required since the data provided by Ms. A.A.A. at the time of contracting have been treated with the sole purpose of billing the services contracted, as shown in the invoices. Recruitment that has never been questioned by Mrs. A.A.A..”

FIFTH: On October 10, 2019, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/05015/2019, as well as the documents provided by the claimant.

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## FACTS

FIRST: A claim is filed against VODAFONE ESPAÑA, S.A.U. because said entity is making the charges for the services contracted by the claimant, in a account other than the one provided, of which they are neither the owner nor authorized.

The Spanish Data Protection Agency transfers this claim to said entity so that it solves the situation and informs this Agency of the measures adopted, despite this, the respondent has not responded to this Agency in the deadline given for it.

The claimant also states that they were billing her in an account different from the one provided since 11/21/2018, and the respondent was aware of the facts and

Even so, he did not solve it, this is proven by providing burofax dated 01/16/2019, in which informs the entity of the existence of inaccurate data, received by the entity on 01/17/2019, as well as a claim before the User Service Office of Telecommunications, in relation to the disagreement of the amount of the charges.

SECOND: The entity claimed affirms that "currently, there have already been the timely steps to resolve the claim of Mrs. A.A.A. with the biggest as quickly as possible, applying the contracted promotions to the services, billing to the current account indicated and without stating debt assigned to said bill.

The invoices are provided where it can be seen that as of February they had already changed the bank details for the correct ones."

#### FOUNDATIONS OF LAW

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The defendant is imputed the commission of an infraction for violation of the Article 5 of the RGPD, which regulates the principles related to data processing personal establishing that they must be:

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a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, 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");

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

are processed ("data minimization");

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

to have inaccurate personal data deleted or rectified without delay

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

e) kept in a way that allows the identification of the interested parties for no more

time necessary for the purposes of the processing of personal data; the data

Personal data may be kept for longer periods as long as they are treated

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 data controller will be responsible for compliance with the provisions of the

paragraph 1 and able to demonstrate it ("proactive responsibility").

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## II

In accordance with the evidence available in this

At this time, it is considered that the facts denounced, that is, the carrying out of charges to an account other than the one provided, of which the claimant is neither the owner nor authorized, allow verifying that the claimed has not been able to guarantee the security adequate in the processing of the personal data of the claimant, thereby incurring in the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

## III

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 the 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;

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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.

The infringement is typified in article 83.5 a) of the RGPD, which establishes that "The Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount:

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

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 facing unintentional negligent action, but of data identified significant (article 83.2 b)

Basic personal identifiers are affected (name, surname),  
(article 83.2g)

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

That by the Director of the Spanish Agency for Data Protection  
sanction VODAFONE ESPAÑA, S.A.U., with NIF A80907397, for an infraction of the article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a fine of €75,000.00 (SEVENTY-FIVE THOUSAND euros).

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Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

You are informed that 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 the amount of this. With the application of this

reduction, the sanction would be established at 60,000.00 euros and its payment will imply the

termination of the procedure. The effectiveness of this reduction will be conditioned to the

Withdrawal or waiver of any administrative action or recourse against the

sanction.

In case you chose to proceed with the voluntary payment of the amount

specified above, in accordance with the provisions of article 85.2 cited,

You must make it effective by depositing it in the restricted account number ES00 0000

0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the number of

reference of the procedure that appears in the heading of this document and the

cause, by voluntary payment, of reduction of the amount of the sanction. Also, you must

send proof of entry to the General Subdirectorate of Inspection for

proceed to close the file.

By virtue thereof, the foregoing is notified, and the

procedure so that within a period of TEN DAYS you can allege whatever you consider

in his defense and present the documents and information that he considers pertinent,

in accordance with article 89.2 in relation to art. 73.1 of the LPACAP).

RRR

INSPECTOR/INSTRUCTOR

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: On November 5, 2019, VODAFONE ESPAÑA, S.A.U. he has

SECOND

proceeded to pay the penalty in the amount of 60,000 euros using the  
reduction provided for in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via  
against the sanction, in relation to the facts referred to in the  
resolution proposal.

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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 the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00277/2019, of

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

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

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

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

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

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

regulation of the Contentious-Administrative Jurisdiction, within a period of two months to

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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