

□ Procedure No.: PS/00242/2021

## RESOLUTION

### OF TERMINATION OF THE PROCEDURE FOR PAYMENT

#### VOLUNTARY

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

#### BACKGROUND

FIRST: On September 9, 2021, the Director of the Spanish Agency  
of Data Protection agreed to initiate a sanctioning procedure against Vodafone  
Services, S.L.U. with NIF B87539284, S.L.U. with NIF B87539284 that below  
is transcribed:

<<Procedure no.: PS/00242/2021

#### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant party) dated February 8,  
2021 filed a claim with the Spanish Data Protection Agency.

The claim is directed against Vodafone Servicios, S.L.U. with NIF B87539284 (in  
hereafter, the party claimed).

The claimant states that she has been receiving notices of availability of  
bills and charges in your bank account in payment for some Vodafone services whose  
Ownership belongs to a third party. Likewise, the claimant states that she has been  
receiving calls from the collection entity Bureau Veritas, requesting  
the payment of a debt generated by the return of the receipts loaded in your  
bank account and that belong to the services registered with Vodafone and not  
recognized by the claimant.

Provide the following documentation:

- Claim made before the respondent on November 17, 2020 and

burofax dated February 3, 2021.

-Invoices issued by the claimed party from June 8, 2020 to June 9

January 2021 for two mobile lines and fees for two terminals.

- Screen print of the application of your banking entity that reflects the transfer of

the said invoices. As well as their return.

- Complaint filed with the National Police station in Cádiz dated

October 20, 2020 for the aforementioned events.

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SECOND: Prior to the acceptance of this claim for processing, it is

transferred to the claimed party on March 9, 2021, in accordance with the

established in article 65.4 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD), in the actions with reference E/02727/2021. The notification is

performed electronically, and is delivered on March 15, 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 May 17, 2021, the agreement for admission to processing of the application was signed.

claim.

FOURTH: When transferring the claim to the claimed party, he/she submitted a written document on the 25th

June 2021, stating that it proceeded to investigate the reported facts and

declared the claimed incident as fraudulent, finding, at present,

canceled the debt and having adopted security measures the ID of the party claimant to prevent further invoices and claims for payment from being generated of debt in the name of the claimant.

On the other hand, they state that they have proceeded to send a letter to the claimant informing you about the steps taken and apologize for the facts facts. Attach as document number 1, a copy of the letter sent to the party claimant.

They add that they have been able to verify that there is no customer ID in the systems of Vodafone under the ownership of the complaining party or linked to its N.I.F. No However, they have been able to verify that your bank account and email were included in the contracts formalized on May 27 and 29, 2020 by a third Vodafone customer and in the customer ID regenerated as a result of the execution of the same. Both contracts are attached as document number 2, as well as the purchase summary.

On the other hand, they state that they have blocked the affected client ID. Also, it has removed the email address of the complaining party as the email address contact of said customer ID and have deleted your bank details. In this sense it has replaced in the affected client ID the payment by direct debit for the payment by transfer in order to assure the claimant that she cannot receive any charges in the future in your bank account or any notification of notice of invoices. By last, has proceeded to cancel the debt claimed from the claimant and has verified that the claimant is not registered in any solvency file negative equity.

They provide as document number 3, the security measures applied by the claimed, being its last modification carried out on November 21, 2019.

FOUNDATIONS OF LAW

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I

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

II

The exposed facts may imply, on the part of the claimed party, the Commission of an infringement of article 6.1 of the RGDPR that establishes the assumptions that allow the processing of personal data to be considered lawful. Article 6 of the RGDPR, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"one. The treatment will only be lawful if it meets at least one of the following 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 infraction for which the claimed entity is held responsible is typified in article 83 of the RGDPR 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:

"one. 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

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Regulation (EU) 2016/679."

The documentation in the file offers evidence that the claimed, violated article 6.1 of the RGPD, since it carried out the treatment of the

personal data of the complaining party without having any legitimacy to

it.

The personal data of the complaining party were incorporated into the systems information of the company, without proving that it had contracted legitimately, had legitimacy for the collection and subsequent treatment of your personal data, or there is any other cause that makes the treatment lawful effected.

Based on the foregoing, in the case analyzed, it remains in questioned the diligence used by the respondent to identify the person who made the contract on behalf of the complaining party.

Well, it is accredited as recognized by the defendant in his written response to this Agency dated June 25, 2021, which was produced fraudulent hiring.

It has been verified that the contracts formalized on the dates 27 and 29 of May 2020, in the billing data section, the data of the claimant party, that is: DNI, name, surnames, email and your account banking. However, they are not signed.

Thus, the respondent did not verify the identity of the alleged contracting party, took the necessary precautions so that these events did not occur.

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.

In short, the respondent has not provided a document or evidence one that shows that the entity, in such a situation, would have deployed the

minimum diligence required to verify that your interlocutor was indeed the one claimed to hold

Respect for the principle of legality that is in the essence of the fundamental right of protection of personal data requires that it be accredited that the responsible for the treatment displayed the essential diligence to prove that extreme. Failure to act in this way -and this Agency, who is responsible for ensuring for compliance with the regulations governing the right to data protection of personal character - the result would be to empty the content of the principle of legality.

In this sense, Recital 40 of the GDPR states:

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“(40) For the processing to be lawful, the personal data must be processed with the consent of the interested party or on some other legitimate basis established in accordance with Law, either in these Regulations or by virtue of another Law of the Union or of the Member States referred to in this Regulation, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.”

III

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:

"one. 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

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

cular if the person in charge or the person in charge notified the infraction and, if so, in what

measure;

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;

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j) adherence to codes of conduct under Article 40 or to certification mechanisms

fication 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, direct or indirect.

straight, through the infraction.”

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

“Sanctions and corrective measures”:

"one. 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 delegate.

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 mitigating factors:

- Immediately proceeded to cancel the debt and block the customer ID

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affected, delete the email of the complaining party as address of

contact of said customer ID and deleted their bank details (article 83.2.c,

GDPR).

As aggravating factors:

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That the facts object of the claim are attributable to a lack of diligence of the claimed party (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)

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at 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 A PUNISHMENT PROCEDURE against VODAFONE SERVICIOS, S.L.U. with NIF B87539284, for the alleged infringement of article 6.1) 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, 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).

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.

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 for the violation of article 6.1 of the RGPD, typified in article 83.5 a) of the RGPD, the corresponding sanction would be a fine for an amount of 50,000 euros (fifty thousand euros) without prejudice to what

result of 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.

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

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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% for the sanction to be imposed

in this proceeding, equivalent in this case to ten thousand euros (€10,000).

With the application of this reduction, the amount of the sanction would be established in

forty thousand euros (€40,000), 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,

in accordance with the provisions of article 85.2 LPACAP, which will mean a

reduction of 20% of the amount of the same, equivalent in this case to ten thousand

euros (€10,000), for the imputed infraction. With the application of this reduction, the

The amount of the sanction would be established at forty thousand euros (€40,000) 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

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at thirty thousand euros (€30,000).

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, 40,000 euros or 30,000 euros, you must make it effective

by depositing it in account number ES00 0000 0000 0000 0000 0000 open to

name of the Spanish Data Protection Agency at CAIXABANK Bank,

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

is welcomed.

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.

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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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Director of the Spanish Data Protection Agency>>

SECOND: It is stated that the Start Agreement was notified on September 13, 2021,

proceeded on September 30, 2021 to pay the penalties in the amount of

40,000 euros making use of the reduction provided for in the Start Agreement,

stating: "That Vodafone has ordered the payment of €40,000 corresponding to the

initially foreseen infraction, less 20% for the reduction of the amount when paying

in the voluntary period and in this act desists and waives any action or resource

in administrative proceedings in relation to this assumption of fact, in accordance with the

established in art. 85 of the LPACAP".

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

Home Agreement.

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

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:

"one. 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.

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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/00242/2021, of

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

SECOND: NOTIFY this resolution to VODAFONE SERVICIOS, S.L.U.

with NIF B87539284.

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

Pérez Sanjuán, Resolution 4/10/2021

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