

□ Procedure No.: PS/00190/2021

## 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 19, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against Vodafone Spain,  
S.A.U. with NIF A80907397 which is transcribed below:

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Procedure no.: PS/00190/2021

## BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated December 15,  
2020 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 there has been improper access by a third party to her  
Vodafone customer account, modifying your personal data (email), rates  
and contracting services using your personal data without your consent.

And, among other things, provide the following documentation:

Request for access to the voice recordings of the aforementioned operations, provides  
acknowledgment of receipt of August 26, 2020.

Complaint filed with the notional police on August 7, 2020.

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

transferred to the claimed on February 4, 2021, in accordance with the provisions of Article 65.4 of the Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter, LOPDGDD), in the actions with reference E/00861/2021. Notification is done electronically, and figure delivered on February 8, 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 April 23, 2021, the agreement to process the claim is signed.

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FOURTH: When transferring the claim to the respondent, he filed a letter on June 2 of 2021, stating that the unrecognized efforts that were carried out in his client account, as of September 13, 2020, currently consists duly canceled and informs about the Security Policy of obligatory compliance with which the claimed party has to prevent the carrying out of formalities fraudulent and indicate that they have adopted additional security measures that are have been applied to the customer account associated with the claimant.

They also point out that the petitioners' requests to exercise the rights access to your personal data and rectification of your postal address, have proceeded to its due correction in the databases of the claimed and in the profile of the claimant on the "My Vodafone" website.

Attached as document number 1, the response provided to the claimant, by virtue of of its exercise before the claimed right of rectification, in accordance with the

article 16 of the RGPD. In this sense, the claimant is confirmed that the data information regarding your postal address has been duly rectified in your systems and in your profile on the "My Vodafone" platform, so that, currently,

Your address is correctly listed in \*\*\*ADDRESS.1. Also, according to his request in which you exercise the right of access to your personal data,

In accordance with article 15 of the RGPD, in the aforementioned Document number 1, it is grants the claimant a due response, informing about the personal data that the claimant has.

The respondent has been able to verify that, on August 7, 2020 and December 13, September 2020, their systems contain various interactions in relation to the client account of the claimant. Specifically, as has been verified, the

On August 7, a series of calls were made from a line allegedly unrelated to the claimant, in which information was requested about the offers of fiber and terminals that were in force in the claimed.

On the other hand, on September 13, according to the systems of the respondent, he had place a call in which the Unlimited Vodafone rate was contracted and a iPhone 11 Pro Max terminal, 256 GB with the installment payment method. Likewise, according to the claimant, the contact address and the shipping address were modified of orders associated with your profile on the "My Vodafone" platform. However, these negotiations were duly canceled the next day, before the processing was completed, when the claimant informed the claimed that she did not recognize them.

In this sense, in what refers to the modification of the rate of the complainant, the claimed could not reestablish its rate because it had been discontinued. However, the respondent charged the claimant a fee

equivalent to the modified one. They attach, as Document number 2, a copy of the contract formalized between the parties for contracting the new rate.

On the other hand, the respondent states that it has implemented a Security Policy which is mandatory for all its employees and agents.

Specifically, for those cases in which the client has activated the password for

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security, a strict Security Policy is applicable, through the

which is only allowed to answer calls if the caller provides the access code of

Customer Service correctly, whether or not you are the owner of the customer account. In any

In this case, the claimed company does not provide the personal data related to its clients to

third parties, without compliance with the security procedures referred to in the

previous paragraphs. For all these reasons, and after analyzing the claims filed by the

claimant, we understand that the respondent acted at all times in accordance with the

security procedures you have in place. Attached as

Document number 3, a document that contains the Security Policy of the

claimed for private clients. Lastly, regarding the exercise of the right to

rectification, after verifying that, indeed, the postal address associated with the

claimant was registered with errors in any of the systems used

by the claimed one, when the postal address appears in the contact information as

\*\*\* ADDRESS.2, has been corrected in accordance with the request of

the claimant, having modified the remaining 0, so that, at present, the

postal address that appears in the Vodafone systems is \*\*\*ADDRESS.1, both in

the databases of the claimed as in the profile of the claimant of the platform

“My Vodafone”.”

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, 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 defendant, the commission of an infringement of article 6.1 of the RGPD that establishes the assumptions that allow consider the processing of personal data lawful.

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

- 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 RGPD that, under the heading “General conditions for

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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:

"1. 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 particular 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 Regulation (EU) 2016/679.”

In the present case, it is accredited, as recognized by the respondent, that the September 13, 2020, a call took place in which the rate was contracted Unlimited Vodafone and a 256 GB iPhone 11 Pro Max terminal was purchased with the method of payment in installments. Also, according to the claimant, the

contact address and shipping address for orders associated with your profile on the "My Vodafone" platform, and these procedures were not canceled until the claimant he did not inform the defendant.

Therefore, there is no doubt that there was improper access by a third party to the personal account "My Vodafone" of the claimant, modifying their personal data (email, rates and contracting services). Thus, the claimed, not verified the identity of the person who accessed the claimant's personal account "My Vodafone", did not take 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 this sense, Recital 40 of the GDPR states:

“(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

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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:

"1. 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 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 the 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 whether the person in charge or the person in charge notified the infringement and, if so, to what extent. gives;
- i) when the measures indicated in article 58, section 2, have been ordered

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previously 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 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, directly or indirectly.

mind, through infraction.”

Within this section, the LOPDGDD contemplates in its article 76, entitled "Sanctions and corrective measures":

"1. 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:

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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 €70,000 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: INITIATE PUNISHMENT PROCEDURE against VODAFONE SPAIN, S.A.U. with NIF A80907397, 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, where appropriate, in accordance with the provisions established in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime Public Sector Co (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 70,000 euros (seventy thousand euros) without prejudice to what results

of 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

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

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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 fourteen thousand euros (€14,000).

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

fifty-six thousand euros (€56,000), 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 fourteen thousand euros (€14,000), for the imputed infraction. With the application of this reduction, the amount of the penalty would be established at fifty-six thousand euros (€56,000) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding reduction 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 forty-two thousand euros (€42,000).

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, 56,000 euros or 42,000 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.

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 Agency for Data Protection”

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SECOND: It is stated that the Start Agreement was notified on July 26, 2021,

proceeded on August 9, 2021 to pay the penalties in the amount of 56,000

euros making use of the reduction provided for in the Start Agreement, stating:

“That Vodafone has ordered the payment of €56,000 corresponding to the infringement

initially planned, taking into account the 20% reduction for the payment

voluntary sanction, 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

Yo

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:

"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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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/00190/2021, of

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

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

NIF A80907397.

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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