 Procedure No.: PS/00030/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter the claimant) filed a claim with the Agency

Spanish Data Protection Agency (hereinafter AEPD) for receipt on ***DATE.1,

at 11:34 a.m., from a commercial call on behalf of “Vodafone España, S.A.U.”,

with CIF A80907397 (hereinafter the claimed or VDF), to your telephone line

***PHONE.1, which is registered on the advertising exclusion list

Robinson, from the line ***PHONE.2.

Relevant documentation provided by the claimant:

- 34-second audio file corresponding to the recording of the call

claimed business.

- Copy of the invoice (issued by XFERA MÓVILES, S.A.U. with CIF A82528548) of the

telephone line ***TELÉFONO.1 in which the ownership of the claimant is accredited.

- Copy of the registration certificate on the Robinson List issued on 01/31/2020, in which

your telephone line ***TELÉFONO.1 registered against telephone calls

commercials from 08/03/2018.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant / of the facts and documents of which he has

had knowledge of this Agency, the Subdirectorate General for Data Inspection

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 found that the

responsible for the treatment is the claimed.

BACKGROUND

Claim entry date: ***DATE.2.

Complainant: A.A.A.

Claimed: VODAFONE ESPAÑA, S.A.U.

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28001 – Madrid

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Dated 04/15/2020 in entry record 014582/2020, associated with the

procedure E/02271/2020, the AEPD verified allegations of the respondent in which

it established that there is no record in its database of the number ***TELEPHONE.2

associated with your collaborators who make recruitment calls on your behalf. The

claimed in that same registry stated that the claimant was registered in the

the corresponding Robinson List since 08/03/2018. In addition, the respondent informs

have included in the internal Robinson list of your entity the telephone line

***TELEPHONE.1 of the claimant as a result of the transfer of the claim, passing to

be recorded as registered therein. The respondent stated that she had not contacted the

claimant to notify you of the steps taken for not having your data

Contact

INVESTIGATED ENTITIES

As stated in the Diligence, incorporated in the associated Investigation File (E/09385/2020) on 11/25/2020, the telephone line with number ***TELÉFONO.2 was operated by SEWAN COMUNICACIONES, as stated in the Records of Numbering and Telecommunications Operators of the National Commission of Markets and Competition (hereinafter, CNMC).

Consequently, during these proceedings, the following has been investigated:

entity:

SEWAN COMUNICACIONES, S.L.U. (hereinafter, the investigated #1), with CIF B73619215 and address at ***ADDRESS.1 (MADRID).

Likewise, in the course of the preliminary investigation actions, it was established the need to proceed to investigate also the following entity:

VAMAVI PHONE, S.L. (hereinafter, investigated #2), with CIF B87914446 and address at ***ADDRESS.2, ***LOCALITY.1 (MADRID).

RESULT OF THE INVESTIGATION ACTIONS

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The claimant's telecommunications operator, XFERA MÓVILES, S.A.U. expresses confirmation of receipt at the number ***TELEPHONE.1 (ownership of the claimant) of the call made by the line ***PHONE.2, on ***DATE.1 at 11:34:50 a.m. This line of origin the call is recorded as incoming on the operated interconnection platform by the investigated #1.

Investigated #1 claims to be a telecommunications operator that provides telephone services to customers, end users and resellers. The

investigated #1 provides a copy of the public registry of operators of the CNMC in

which is thus identified.

Investigated #1 identifies Investigated #2 as her main client of the

telephone line ***PHONE.2 on ***DATE.1 at 11:34:50 a.m., and

specifically in its ownership since October 2, 2019. The investigated

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□

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□

#1 alleges that he did not make the call or have a contract or

any connection with the one claimed to advertise its commercial services.

Investigated #1 confirms that the call from the telephone line

***PHONE.2 to line ***PHONE.1 (owned by the claimant) is

occurred on ***DATE.1 around 11:34 a.m. and lasted for

39 seconds. Respondent #1 provides a copy of the invoice corresponding to the

month of January 2020 issued to the investigated #2, as its main client of the

telephone line ***PHONE.2, in which said call is reflected

telephone.

The investigated #2 confirms the realization of a commercial call on

***DATE.1 at 11:34 a.m. to offer commercial services on behalf of and

on behalf of the claimed party, to the claimant's telephone line

***PHONE.1 from line ***PHONE.2 (under your ownership).

Respondent #2 states that attracting clients for the defendant

through commercial telephone calls occurred in the segment of

individuals, freelancers and micro-enterprises.

Respondent #2 alleges that she does not have files relating to the owners of the

telephone lines that he called commercially because he was

generated lists of random numbers from the list of numbers

valid ones published by the CNMC, in accordance with the instructions of the claimed party

according to contract. The investigated #2 provides a copy of the list of numbers

telephone numbers presumably extracted from the CNMC.

Respondent #2 states that she has access to the Robinson List in which

performs the filters to avoid numberings that have opposed the

business calls and adds recognize the claimant's phone line

***PHONE.1 included in said list. Investigated #2 alleges, after the

identification of the number of the claimant involved in the commercial call

produced, that [sic]: "(...) so it seems that it is a punctual error in

our filtration system."

THIRD: On January 27, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the defendant (VDF), for

the alleged infringement of Article 28 of the RGPD, typified in Article 83.4 of the

GDPR.

FOURTH: The person in charge has not requested the practice of evidence or the sending of the

documentation in the file.

FIFTH: In relation to the allegations made by the person in charge after the agreement

Initially, they are answered in the Fundamentals of Law II (FDII).

SIXTH: On March 5, 2021, a resolution proposal was formulated, in which

following terms:

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<That the Director of the Spanish Data Protection Agency sanction

VODAFONE ESPAÑA, S.A.U., with CIF A80907397, for a violation of Article 28

in relation to art. 24 both of the RGPD, typified in Article 83.4 of the RGPD and

according to art. 83.2, with a fine of 100,000 euros (one hundred thousand euros)>.

SEVENTH: It is known that investigated #2 (Vamavi) has direct access to VDF

by means of an access code, to proceed with the registration of the services contracted in

VDF direct distributor status since September 2019.

EIGHTH: On 03/23/2021, VDF submitted arguments to the Proposal for

Resolution, in summary, in the following terms:

1. VDF is not responsible for the processing carried out by its “collaborators…

that use their own databases in the development of their own activity”.

2. The AEPD has investigated the calling numbering and has concluded that it

is owned by the entity Vamavi, an entity that has acknowledged having made

the call to the claimant to promote VDF services. This entity has

identified before the Agency as Solivesa's sub-agent.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited,

PROVEN FACTS

FIRST: The respondent (VDF) is responsible for data processing

carried out by their entities in charge, among which is

the investigated #2, being the one that defines the purpose and means and acting the ones in charge

in the name and on behalf of VDF.

SECOND: The respondent (VDF) contracted with respondent #2 - as the person in charge

treatment - who made a commercial call to the claimant on the date

***DATE.1, 11:34m, 39 seconds long, to your line number

***TELEPHONE.1 from line ***TELEPHONE.2, offering VDF services.

THIRD: It is stated that VDF was aware of the facts now analyzed and of

the data of the claimant on 03/11/2020 (16:03:36, according to the support of the service of

electronic notifications and certified electronic address). In the transfer of the

claim contained the full contact details of the claimant. Nevertheless,

VDF alleges that it did not contact the claimant as it did not have his data.

FOURTH: The line ***TELEPHONE.1 of the claimant was registered in the list

ADigital robinson advertising exclusion from the date 08/3/2018.

FIFTH: In the treatment manager contract entered into between VDF and the

investigated #2, dated 09/19/2017, and in annexes II, III and IV provided that are

head with express reference to the investigated #2 as "in charge of the

treatment", there are no instructions on how to carry out the mandatory crossing

of data in order to eliminate the lines registered in the ADigital robinson list of

advertising exclusion. In this regard, VDF alleges that there is "no instruction for

VDF regarding the treatment of said data" (sic).

SIXTH: Nor does VDF record the monitoring and follow-up of the

execution of the processor contract from its beginning until the end of the treatment of

personal data object of order for advertising actions, including the

subcontracting with third parties of VDF's promotional services. the claimed

Until the beginning of this procedure, he was not aware that the number of

The claimant's telephone number was included in the advertising exclusion list

Adigital's Róbinson list, without any record of action against the investigated #2

to avoid the commercial call on his behalf by the investigated #2.

SEVENTH: Exhibit VI of the aforementioned contract states that the scope of this

contract for the provision of services is the promotion of services in the name and by

VFD account.

The second clause states: "The purpose of this contract is the promotion

commercial, in person, of the VODAFONE Services in the area

that is communicated by VODAFONE to the COLLABORATOR (hereinafter,

"Sale Area") so that they can be contracted by the Clients and consumed

recurring and consolidated manner. Exceptionally, the COLLABORATOR may

carry out their activity by making telephone calls when

VODAFONE expressly authorizes this authorization may be limited in time or

objectively to specific promotions/campaigns".

The fourth clause states: "In the Sales Areas in which the COLLABORATOR

develop their activity for VODAFONE, the COLLABORATOR may not, directly or

indirectly, promote the commercialization of services of other operators,

companies or professionals that intervene in the market in which it operates

VODAFONE, with or without its own network, that participate or compete directly or indirectly

with the Services provided by VODAFONE, regardless of the technology

used by the aforementioned operators, companies or professionals, and must develop

his professional activity in this field exclusively for the account and on behalf of

VODAFONE".

The fifth clause states:

"5.2 At the beginning of this contract, the COLLABORATOR has the

collaborating third parties listed in Annex II of this contract. (consists

investigated #2 as treatment manager)

5.3. The COLLABORATOR must expressly notify VODAFONE of the new

incorporations of collaborating third parties that must be expressly

authorized by VODAFONE in accordance with clause 6.1. Also, the

COLLABORATOR must submit to VODAFONE on a quarterly basis the list of

third-party collaborators with whom you have at that time".

EIGHTH: Section 6 of Annex IV of the aforementioned contract states the following:

< USE OF SUB-MANAGER OF TREATMENTS

6.1. The Treatment Manager will not subcontract or outsource any Treatment

of Personal Data to any other person or entity, including the Entities of the

Data Processor Group ("Subprocessor") unless and

until:

6.1.1. The Treatment Manager has notified Vodafone by notification

formal in writing the full name and registered office or main office of the

Processing Assistant by completing Annex 1.

6.1.2. The Treatment Manager has notified Vodafone of any change that

required to be made to Annex 1 in accordance with this Clause 6.

6.1.3. The Treatment Manager has provided Vodafone with the detail

(including categories) of the Treatment that must be carried out by the Sub-Processor of

Treatment in relation to the Services provided;

6.1.4. Treatment Manager has signed an agreement with said Sub-processor

of Treatment that, in no case, may be less demanding than what is contained in

this Agreement;

6.1.5. The Treatment Manager must send Vodafone a certificate or

responsible statement in which you state that you have signed with your Sub-managers

the corresponding contracts regarding data protection and processing

personal in which all the obligations required by VODAFONE are transferred

in accordance with the provisions of VODAFONE in clause 13 of the contract and in the

clause 6.1.4. of this Annex, VODAFONE reserving the right to request

evidence of compliance at any time;

6.1.6. Vodafone has not substantiatedly opposed the subcontracting or

outsourcing within ten (10) business days following receipt of the

written notification of the Treatment Manager established in Clause 6.1.1,

including the information established in Clause 6.1.3; Y

6.2. In all cases, the Treatment Manager will be responsible to Vodafone

of any act or omission carried out by the Treatment Sub-processor or any

another third party designated by him as if the acts or omissions had been

carried out by the Treatment Manager, regardless of whether the

Treatment Manager complied with its obligations specified in the Clause

6.1.

6.3. In case of breach of the obligations contained in this Agreement

for the commission of actions carried out by a Treatment Sub-processor, the

The Treatment Manager must, if requested by Vodafone, assign the

Vodafone's right to act as it deems necessary for the protection and

Safeguarding the Personal Data, under the contract of the Treatment Manager

with the Treatment Sub-manager>.

NINTH: Section 9 of Annex IV of the aforementioned contract states the following:

< 9. RIGHT TO AUDIT.

The Treatment Manager will ensure that any Sub-Data Processor

Processing allows Vodafone, its clients (including subcontractors, auditors

or other agents of Vodafone and their respective customers) and/or the Authorities of

Privacy (each an "Audit Party") access their systems

computer and other information systems, records, documents and agreements that

reasonably required by the Audit Party, to verify that the Person in Charge of

Treatment and / or its Sub-Processors of Treatments are complying with their

obligations under this Agreement (or any contract of

subsequent Sub-Processing) or any Applicable Privacy Legislation, provided

that such review does not involve review of third party data and that such entity

audit complies with the confidentiality obligations of the person in charge of

Treatment or with the pertinent Treatment Sub-manager, respecting the

confidentiality of the commercial interests of the Treatment Manager or

Subprocessor of Treatment and the data and information of third parties of which the

auditing entity may become aware in the course of carrying out the

audit…>

TENTH: It is stated that the sanctioning procedure of reference PS/00026/2021 initiated against investigated #2 (Vamavi), was resolved by advance payment and acknowledgment of the facts (those described in the Second Proven Fact), which knows the claimed every time it alleges it. Also, in the procedure sanctioning reference PS/00031/2021 is resolved in the sense of filing the facts imputed to Solivesa since in the twelfth proven fact there is evidence that Vamavi acted on behalf of and on behalf of VDF as the person in charge of the treatment in making the call now investigated to the claimant. consists that VDF is aware of the foregoing as it is accredited in the proven fact twelfth of the resolution of citation PS/00031/2021, the following:

<TWELFTH: After the agreement to initiate this sanctioning procedure, SOLIVESA requested a meeting with the DPD of Vodafone so that they inform how Vamavi had a direct access code from Vodafone for registering services contracted, at which time Vodafone informs SOLIVESA that effectively Vamavi has a direct key from Vodafone as an authorized distributor since September 2019.> (the AEPD is underlined).

FOUNDATIONS OF LAW

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.

Yo

II

In relation to the allegations made by the person in charge after the initial agreement,

are answered in the following terms:

1R) It should be noted that the object of the claim is not due directly to the

reception of an unwanted call, but to a call to a line registered in the

advertising exclusion list from 08/03/2018, violating the provisions of art

23 of the LOPDGDD.

As developed in the Foundations of Law, the controller must have

absolute control over the processing of data object of order, not only

Previously check the organizational and technical means available to the

entity in charge, but to carry out the necessary subsequent audits in order to guarantee

the rights and freedoms of those affected in the treatments carried out in

name and on behalf of the person in charge.

2R) As indicated in the Foundations of Law, the imputation to VDF in the

This sanctioning procedure does not exonerate other entities from liability

involved in data processing of VDF responsibility and object of order

to other entities as those in charge, although each one must answer for its

conduct contrary to the GDPR, if any, in separate procedures.

3R) In the present case, VDF is responsible for the processing carried out

by the entities in charge of them. The publicity call received by the

claimant being included in the Robinson advertising exclusion list of Adigital

should have been avoided by applying effective organizational and technical means in contracting

of the person(s) in charge, which does not show that they were implanted.

4R) VDF alleges that those in charge must introduce themselves to potential clients

in her name. Without prejudice to the internal rules of courtesy before a potential

client, it should be noted that in the treatment object of analysis it is carried out in the name and

on behalf of VDF at all times, regardless of the databases that

are used.

5R) Regarding the call routing system through the VDF trunk,

It should be noted that its effectiveness is not confirmed, since in the present case it has not been

performed or verified the correct filtering of calls with the exclusion list

Adigital advertising.

5, 6 and 7R) In addition, as VDF has stated in other proceedings, said system

routing was supposed to be activated in February 2020 and now VDF alleges that it is not

will be effective until February 2021, which denotes a serious lack of diligence regarding the

commercial activity carried out by data processors on behalf of and for

VFD account.

8.1R) As has already been reiterated, regarding the application of the aggravating circumstance of art 76.1.b)

of the LOPDGDD in relation to art 83.2.k) of the RGPD, its application is evident

since VDF is one of the country's large telecommunications operators and

acts as responsible for the data subject to treatment in its campaigns

advertising campaigns to attract customers and, in the present case, acting without due diligence

due in the contracting and follow-up of entities in charge.

8.2R) It must be insisted that VDF is responsible for the treatments object of

analysis in this proceeding, as evidenced in the proven facts and

It is developed in the Foundations of Law.

8.3R) It should be noted that article 83.2.e) of the RGPD states as an aggravating circumstance: “any

infraction…”, that is, the repetition of conduct contrary to the regulations of

jurisdiction of the AEPD.

III

In relation to the allegations made by the person in charge after the initial agreement,

are answered in the following terms:

1R) VDF is not responsible for the processing carried out by its "collaborators"

… that use their own databases in the development of their own activity”.

From the definition of data controller in art. 4.7 of GDPR, it is stated that VDF

It is the one that determines the purposes and means of the treatment. In the present case, it consists

that Vamavi materializes the call to the claimant in the name and on behalf of VDF

as stated in the contract signed between both entities in September 2019.

In the following Foundations of Law, the concept of responsible is specified

of the treatment, in charge of the treatment and the obligations of one and the other according to

provides the art. 28 of the GDPR. Consequently, the claim must be dismissed.

2R) The AEPD has investigated the calling numbering and has concluded that the

It is owned by the entity Vamavi, an entity that has acknowledged having

made the call to the claimant to promote VDF services. Is

entity has identified before the Agency as Solivesa's sub-agent.

According to the proven facts of this resolution, the allegation must

dismissed since it is proven that VDF and Vamavi signed a contract

direct and independent (in September 2019) from the one previously signed with

Solivesa, therefore, in the present case, Vamavi acted as the person in charge of the

processing on behalf of and on behalf of VDF in making the call to the

claimant on January 31, 2020. Consequently, making the call

by Vamavi in the name and on behalf of VDF (responsible) on the date

01/31/2020 when the claimant was included in the advertising exclusion list

Róbinson of Adigital since 08/3/2018, is the full responsibility of VDF for not

have had due diligence in ordering and ensuring beforehand and throughout

the period of execution of the contract that its manager (Vamavi) eliminated the records

included in the list of advertising exclusion Róbinson of Adigital, as provided

art 28 of the RGPD and art. 23 of the LOPDGDD.

Article 24 of the RGPD establishes the following:

IV

<Responsibility of the data controller

1. Taking into account the nature, scope, context and purposes of the treatment

as well as the risks of varying probability and severity for the rights and

freedoms of natural persons, the data controller will apply measures

appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the

processing is in accordance with this Regulation. These measures will be reviewed and

will update when necessary.

2. When they are provided in relation to treatment activities, between

the measures mentioned in paragraph 1 shall include the application, by the

responsible for the treatment, of the appropriate data protection policies.

3. Adherence to codes of conduct approved under article 40 or to a

certification mechanism approved under article 42 may be used

as elements to demonstrate compliance with the obligations by the

data controller.>

Report 0064/2020 of the Legal Office of the AEPD has emphatically stated

that “The RGPD has meant a paradigm shift when addressing the regulation of the

right to the protection of personal data, which is based on the

principle of "accountability" or "proactive responsibility" as pointed out

repeatedly by the AEPD (Report 17/2019, among many others) and is included in the

Statement of reasons for Organic Law 3/2018, of December 5, on the Protection of

Personal data and guarantee of digital rights (LOPDGDD)”.

The aforementioned report goes on to say that “…the criteria on how to attribute the different

roles remain the same (paragraph 11), reiterates that these are concepts

functional, which are intended to assign responsibilities according to roles

of the parties (section 12), which implies that in most cases

The circumstances of the specific case must be taken into account (case by case), taking into account

their actual activities rather than the formal designation of an actor as

"responsible" or "in charge" (for example, in a contract), as well as concepts

autonomous, whose interpretation must be carried out under the European regulations

on protection of personal data (section 13), and taking into account (section

24) that the need for a factual assessment also means that the role of a

controller is not derived from the nature of an entity that is

processing data but of their concrete activities in a specific context…”.

The concepts of controller and processor are not formal, but

functional and must attend to the specific case. The denomination by VDF of

“responsible for the treatment” to its collaborators, does not automatically confer

such condition.

The data controller is from the moment it decides the purposes and

means of treatment, not losing such condition the fact of leaving a certain margin of

action to the person in charge of the treatment or for not having access to the databases of the

duty manager.

This is unquestionably expressed in Guidelines 07/2020 of the European Committee for

Data Protection (CEPD) on the concepts of data controller and

manager in the RGPD -the translation is ours-, "A data controller is

who determines the purposes and means of the treatment, that is, the why and the

how of the treatment. The data controller must decide on both

purposes and means. However, some more practical aspects of

implementation ("non-essential means") can be left to the person in charge

of the treatment. It is not necessary that the controller actually has access to the

data that is being processed to qualify as responsible".

In the present case, it is clear that VDF is the data controller now

analyzed (call to the claimant on date ***DATE.1 made by Vamavi in

quality of person in charge of the treatment in the name and on behalf of VDF) whenever,

as defined in art 4.7 of the RGPD, it is the entity that determines the purpose and means

of the treatments carried out in direct marketing actions of the person in charge.

Therefore, in its capacity as data controller, it is obliged to comply with

the provisions of the transcribed article 24 of the RGPD and, in particular, regarding the control

effective and continued implementation of "appropriate technical and organizational measures in order to

guarantee and be able to demonstrate that the treatment is in accordance with this

Regulation" among which are those provided in article 28 of the RGPD in

relationship with those in charge of the treatments that act in the name and on behalf of

VDF.

In this sense, and in relation to the allegation made by VDF in its written

allegations that those responsible for the treatments that the entities

commissioned carry out on behalf and name of VDF and, therefore, those who have

of their own files do not act as managers but as

responsible for these treatments, it should be noted that in the Guidelines 07/2020

of the European Committee for Data Protection (CEPD) on the concepts of

responsible for the treatment and in charge in the RGPD -the translation is ours-,"42.

It is not necessary for the data controller to actually have access to the data.

data being processed. Anyone who outsources a processing activity and, by

do so, has a determining influence on the purpose and (essential) means of the

treatment (for example, adjusting the parameters of a service in such a way that

influence whose personal data will be processed), should be considered as

responsible even though he will never have real access to the data". Let us remember that VDF

determines to whom calls can be made, since calls cannot be made to

who are already customers of the company, in addition to filtering regarding lists of

advertising exclusion (Robinson ADigital) or what corresponds with respect to the exercise

of opposition (internal Robinson).

Likewise, following the legal report of the AEPD dated 11/20/2019, with

internal reference 0007/2019 and STS 1562/2020 (for all of them), we must point out that

analyzes the legal figure of data processor from the perspective of the GDPR

that regulates it exclusively.

Article 28 of the GDPR establishes the following:

v

Treatment Manager

<1. When a treatment is going to be carried out on behalf of a person in charge of the

treatment, this will only choose a person in charge who offers sufficient guarantees

to apply appropriate technical and organizational measures, so that the

treatment is in accordance with the requirements of this Regulation and guarantees the

protection of the rights of the interested party.

2. The person in charge of treatment will not resort to another person in charge without prior authorization

in writing, specific or general, of the person in charge. In the latter case, the manager

will inform the person in charge of any change foreseen in the incorporation or

replacement of other processors, thus giving the controller the opportunity to oppose

to these changes.

3. The treatment by the person in charge will be governed by a contract or other legal act with

under the law of the Union or of the Member States, binding the person in charge

with respect to the person in charge and establish the object, duration, nature and

purpose of the treatment, the type of personal data and categories of interested parties, and the

obligations and rights of the controller. Said contract or legal act shall stipulate, in

particular, that the person in charge:

a) will process personal data only following documented instructions of the

responsible, including with respect to transfers of personal data to a

third country or an international organization, unless required to do so under

of the Law of the Union or of the Member States that applies to the person in charge; in

In such a case, the person in charge will inform the person in charge of that legal requirement prior to the

treatment, unless such Law prohibits it for important reasons of interest

public;

b) will guarantee that the persons authorized to process personal data have

committed to respecting confidentiality or are subject to an obligation of

confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another

treatment manager;

e) will assist the person in charge, taking into account the nature of the treatment, through

appropriate technical and organizational measures, whenever possible, so that this

can comply with its obligation to respond to requests that are intended to

the exercise of the rights of the interested parties established in chapter III;

f) will help the person in charge to guarantee the fulfillment of the obligations

established in articles 32 to 36, taking into account the nature of the treatment

and the information available to the person in charge;

g) at the choice of the person in charge, will delete or return all personal data once

Once the provision of treatment services ends, and will delete the copies

existing unless the retention of personal data is required under

of the Law of the Union or of the Member States;

h) will make available to the person in charge all the information necessary to demonstrate

compliance with the obligations established in this article, as well as

to enable and assist in the performance of audits, including inspections, by

part of the person in charge or of another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform

immediately to the controller if, in his opinion, an instruction violates this

Regulation or other provisions on data protection of the Union or of

the member states.

4. When a person in charge of the treatment resorts to another person in charge to carry out

certain treatment activities on behalf of the person in charge, will be imposed on

this other manager, by contract or other legal act established in accordance with the

Law of the Union or of the Member States, the same obligations of

data protection than those stipulated in the contract or other legal act between the

responsible and the person in charge referred to in section 3, in particular the provision

of sufficient guarantees of application of appropriate technical and organizational measures

so that the treatment is in accordance with the provisions of this

Regulation. If that other processor breaches its data protection obligations,

the initial processor will remain fully accountable to the controller

treatment with regard to the fulfillment of the obligations of the other

duty manager.

5. The treatment manager's adherence to a code of conduct approved by

under article 40 or to an approved certification mechanism under article

42 may be used as an element to demonstrate the existence of guarantees

enough referred to in sections 1 and 4 of this article.

6. Without prejudice to the fact that the person in charge and the person in charge of the treatment celebrate a

individual contract, the contract or other legal act referred to in sections 3 and 4

of this article may be based, totally or partially, on the clauses

standard contracts referred to in sections 7 and 8 of this article, inclusive

when they form part of a certification granted to the person in charge or in charge of

in accordance with articles 42 and 43.

7. The Commission may establish standard contractual clauses for the matters to which it is

referred to in sections 3 and 4 of this article, in accordance with the procedure of

examination referred to in article 93, paragraph 2.

8. A supervisory authority may adopt standard contractual clauses for the

matters referred to in sections 3 and 4 of this article, in accordance with the

coherence mechanism referred to in article 63.

9. The contract or other legal act referred to in sections 3 and 4 shall be recorded by

written, including in electronic format.

10. Without prejudice to the provisions of articles 82, 83 and 84, if a person in charge of the

treatment infringes this Regulation by determining the purposes and means of the

treatment, will be considered responsible for the treatment with respect to said

treatment>

The definition of "processor" includes a wide range of actors,

whether natural or legal persons, public authorities, agencies or other bodies.

The existence of a data processor depends on a decision made by the data processor.

responsible for the treatment (VDF), which may decide to carry out certain

treatment operations or contract all or part of the treatment with a

duty manager.

The essence of the function of "processor" is that the personal data

are processed in the name and on behalf of the data controller. In practice,

it is the person in charge who determines the purpose and the means, at least the essential ones,

while the person in charge of the treatment has a function of providing services to the

Treatment Managers. In other words, "acting in the name and on behalf of

data controller" means that the data controller is at the

servicing the interest of the controller in carrying out a task

specific and, therefore, follows the instructions established by the person in charge of the

processing, at least as regards the purpose and essential means of processing.

ordered treatment.

Article 28, section 1, of the RGPD establishes that “When a

processing on behalf of a controller, the latter will choose only one

manager that offers sufficient guarantees to apply technical measures and

appropriate organizational structures, so that the treatment is in accordance with the

requirements of this Regulation and guarantee the protection of the rights of the

interested".

The obligation provided for in article 28.1 of the RGPD -to select a person in charge of the

treatment that offers sufficient guarantees to guarantee the application of the

Regulation and the rights and freedoms of the interested party - it is not exhausted in the action

prior selection and hiring of treatment manager. This forces the

responsible for the treatment to be evaluated at all times during the entire execution

of the contract if the guarantees (technical or organizational) offered by the person in charge of the

treatment are sufficient to guarantee the rights and freedoms of

interested.

Guidelines 07/2020 of the European Committee for Data Protection (CEPD) on the

concepts of controller and manager in the RGPD -the translation is

ours- have, without a doubt, that “97. The obligation to use only the

treatment managers "that provide sufficient guarantees" contained in the

Article 28(1) GDPR is a continuing obligation. does not end in

moment in which the person in charge and the person in charge of the treatment conclude a contract or

other legal act. Instead, the controller should, at appropriate intervals, verify the

processor assurances, including through audits and inspections when

correspond

”.

And this, because the data controller is the one who has the obligation to guarantee

the application of data protection regulations and the protection of the rights of

interested parties, as well as being able to prove it (articles 5.2, 24, 28 and 32 of the

GDPR). The control of compliance with the law extends throughout the

treatment from start to finish. The data controller must

act, in any case, diligently, consciously, committed and actively.

This mandate of the legislator is independent of whether the treatment is carried out

directly the person in charge of the treatment or that it is carried out using a

treatment manager. Where the Law does not distinguish, we cannot distinguish ourselves.

In addition, the treatment carried out materially by a treatment manager for

account of the person in charge of the treatment belongs to the sphere of action of this

last, in the same way as if he did it directly himself. The person in charge of

treatment, in the case examined, is an extension of the person responsible for the

treatment.

The data controller has the obligation to integrate and deploy the protection

of data within everything that makes up your organization, in all its areas. I know

must bear in mind that, ultimately, the determining purpose is to

guarantee the protection of the interested party.

Interpret it in the opposite direction - the obligations that article 28 of the RGPD imposes

to the data controller are limited to verifying the capabilities of the data controller

initio and to sign the treatment manager contract - would not only contravene the

current legislation constituting a clearly fraudulent action, but rather

would violate the spirit and purpose of the GDPR.

In light of the principle of proactive responsibility (art 5.2 RGPD), the person in charge of the

treatment must be able to demonstrate that it has taken into account all the elements

provided for in the GDPR. In the present case, VDF has disregarded the

contracting by the entity in charge of the treatments initially entrusted.

The data controller must take into account whether the data processor

provides adequate documentation that demonstrates said compliance, policies of

privacy protection, file management policies, privacy policies

information security, external audit reports, certifications,

management of the exercises of rights … etc.

The data controller must also take into account the knowledge

specialized technicians of the person in charge of the treatment, the reliability and its resources.

Only if the data controller can demonstrate (principle of liability

proactive of art 5.2 of the RGPD) that the person in charge of the treatment is adequate during

the entire processing phase (at all times) to carry out the order

entrusted may enter into a binding agreement that meets the requirements of the

article 28 of the RGPD, without prejudice to the fact that the data controller must follow

complying with the principle of accountability and periodically check the

compliance of the person in charge and the measures in use. Before outsourcing a treatment

and in order to avoid possible violations of the rights and freedoms of those affected, the

controller must enter into a contract, other legal act or agreement

binding with the other entity that establishes clear and precise obligations in terms of

of data protection (in the present case there is a contract of September 2019

with Vamavi).

The person in charge of the treatment can only carry out treatments on the instructions

documentation of the controller, unless required to do so by law

of the Union or of a Member State, which is not the case. The person in charge of the treatment

It also has the obligation to collaborate with the person in charge in guaranteeing the rights

of the interested parties and comply with the obligations of the data controller.

in accordance with the provisions of the aforementioned article 28 of the RGPD (and related).

Therefore, it is insisted that the data controller must establish

clear modalities for said assistance and give precise instructions to the person in charge of the

treatment on how to comply with them properly and document it prior to

through a contract or in another (binding) agreement and check in all

moment of the development of the contract its fulfillment in the form established in the

same.

However, despite the obligations of the person in charge, article 28 of the RGPD

seems to suggest that the responsibility of the processor remains

limited compared to the responsibility of the data controller. In

other words, although data controllers can, in principle, be

responsible for the damages derived from any infraction related to the

processing of personal data (including those that have been committed by the

data processor) or breach of contract or other (binding) agreement

those in charge may be held liable when they have acted

margin of the mandate granted by the data controller, or have not complied

their own contractual obligations or in accordance with the RGPD. In these cases, the

in charge of the treatment can be considered totally or partially responsible for

the “part” of the processing operation in which you participate. He will only be in charge

fully responsible when it is entirely responsible for the damages

caused in terms of the rights and freedoms of the interested parties affected; all

this, without avoiding the responsibility in which the data controller has

incurred in order to avoid them.

In the present case, and in accordance with the content of the contract signed, the respondent #2

acts as a manager whenever, according to the definition, they act

fully in the name and on behalf of the person in charge (VDF) for all purposes in

matter of data protection. Simply bring up the content of the already

mentioned STS 1562/2020 (for all), which states the following:

<< In this sense, and the Judgment of the Supreme Court of June 5, 2004, which

confirms, in appeal for Doctrine Unification, that of this AN of October 16,

2003, echoing what was argued by this Chamber, refers to the differentiation of two

responsible depending on whether the decision-making power is directed to the file or to the

data treatment. Thus, the person responsible for the file is the one who decides the creation of the file.

file and its application, and also its purpose, content and use, that is, who has

capacity to decide on all the data recorded in said file.

The person responsible for the treatment, however, is the subject to whom the

decisions on the specific activities of a certain data processing,

that is, on a specific application. It would be all those assumptions in

which the power of decision must be differentiated from the material realization of the

activity that integrates the treatment.

With this, as also argued by the STS of April 26, 2005 (appeal for

unification of doctrine 217/2004), the Spanish legislator intends to adapt to the

requirements of Directive 95/46/EC, which aims to provide a legal response to the

phenomenon, which is becoming more and more frequent, of the so-called externalization of

computer services, where multiple operators act, many of them

insolvent, created with the aim of seeking impunity or irresponsibility of the

that follow in the next links of the chain.

Currently, the new Regulation (EU) 2016/679 of the European Parliament and of the

Council of April 27, 2016, regarding the protection of natural persons in relation to

regarding the processing of personal data (repealing the Directive

95/46/EC, and directly applicable as of May 25, 2018) also distinguishes

between the figures of the person in charge and the person in charge of the treatment. The first is defined

in section 7) of article 4 as "individual or legal entity (...) that determines the

purposes and means of treatment". And the person in charge of treatment in section 8) of the

same article 4 as the one that "processes personal data on behalf of the person responsible

of the treatment".

This in relation to Articles 24 and 28 of the same European Regulation of

Data Protection. Responsible and in charge of data processing that, without place

Undoubtedly, they are also responsible for breaches of data protection

of data, in such new regulatory framework, in accordance with the provisions of article

82.2 of the repeated Regulation (EU) 2016/679, in which: «Any person responsible

that participates in the treatment operation will be liable for the damages

caused in the event that said operation does not comply with the provisions of this

Regulation. A manager will only be liable for damages

caused by the treatment when you have not complied with the obligations of the

this Regulation addressed specifically to those in charge or has acted

margin or contrary to the legal instructions of the person in charge ».

It follows from all of the above that the concurrence, in the present case, of a

in charge of the treatment ZZZZ in no way exempts the entity from responsibility

XXXX now recurring, and this despite the forcefulness of the clauses that appear

in the contract and annex to it signed by both companies (proven facts 9 and

10) insofar as the personal data processed were for the purpose of carrying out

an advertising campaign regarding car and motorcycle insurance that was marketed by the

(XXXX), ultimately for the benefit of said XXXX, being such plaintiff entity the one that, in

Ultimately, it determines the purposes and means of repeated data processing, therefore

that it cannot be exonerated from liability.>>

The STS continues, in relation to the possible exoneration of alleged responsibility

As for what is signed in the "processing manager" contract, the following:

<< The sanctioned conduct of obstruction or impediment by XXXX of the exercise

by its client of the right to oppose the processing of their data, is manifested in

that said company did not adopt any kind of measure or precaution to avoid the

sending advertising to your customer's email addresses by

those companies entrusted with carrying out the advertising campaigns.

The adoption of the necessary measures or precautions to ensure the effectiveness of the

right to oppose the processing of your data by XXXX, such as

responsible for the file, subsist even if the advertising campaigns are not carried out

from the data of their own files, but with databases of other

companies contracted by XXXX, and in this case it was proven that the appellant

did not communicate to the companies with which it contracted the performance of services of

advertising the complainant's opposition to receiving publicity from the Mutual, nor in short

took any provision to ensure the exclusion of his client from the shipments

advertisers contracted with third parties>> and as in the present case,

resulting in the line called included in the advertising exclusion lists from the

3/08/2018.

Consequently, it must be concluded that the treatment analyzed in the background

in its various modalities by the person in charge, the controller is

Vodafone Spain, S.A.U. (VDF) and acting as manager that other

entity that acts in the name and on behalf of VDF and for its benefit (Vamavi).

Of the documentation that works in the file to which mention is made in the

this resolution based on the information collected by the Inspection of this

AEPD and VDF's own acts and manifestations, non-compliance by

VDF as responsible for the treatments entrusted to the effective control and

continued in the time of the measures provided in the above transcribed art 28 of the

GDPR.

In this regard, add that the obligation set forth in art 28.3.h) RGPD, using in the

At the beginning, the imperative term “will put” referred to the person in charge of the treatment, generates the

obligation to "demand" from the controller "compliance with the obligations

established in this article, as well as to allow and contribute to the realization

of audits, including inspections, by the controller or another auditor

authorized by said person in charge.

Thus, it is clear that those in charge of the treatment (and, where appropriate, successive

subprocessors) who act in the name and on behalf of VDF do not offer the guarantees

sufficient to apply the technical and organizational measures appropriate to the treatment

commissioned by VDF. And they are not duly documented by VDF either.

entrusted tasks that carry out the treatments in the name and on behalf of the

responsible (VDF).

VDF, as data controller, does not know under what conditions it contracts a

commissioned to act on your behalf and name and under your specific specifications

-which do not exist regarding the crossing and exclusion of lines called included

previously in robinson Adigital- and accepts in these conditions and without hesitation this

conduct even having knowledge of this anomaly.

Nothing appears in the relationship between VDF and those in charge regarding the requirements

listed in art 28.3 above, which, in summary, are specified in defining

previously by the person in charge of the treatment (VDF) the object, duration, nature,

purpose, types of data, categories, obligations and rights of the interested parties, and

mandatory powers of continuous control … etc. Only on specific occasions

cites having informally communicated one or another specific guidelines for action without

that this implies any effective control of VDF with the treatments entrusted

on your behalf and on your behalf.

Therefore, non-compliance with data protection regulations must be

imputed also, and in the first place, to the person in charge of the treatment (VDF) for not acting

clearly, actively and effectively in stipulating and enforcing the specifications

opportune to carry out adequately in time the treatment

commissioned on his behalf.

The foregoing, without prejudice to the responsibilities incurred by the

Entities in charge and sub-in charge of the treatments that must be settled in

other procedures, which to date have already been resolved.

Consequently, there is no evidence that VDF has carried out continuous monitoring during

the entire execution cycle of the commissioned treatments despite numerous

Known claims and ongoing investigations carried out by the AEPD and

which VDF has full knowledge

Art 23 LOPDGDD.

SAW

Article 23. Advertising exclusion systems.

<<1. The processing of personal data that is intended to avoid sending

of commercial communications to those who have expressed their refusal or

opposition to receiving them. To this end, information systems may be created, general

or sectoral, in which only the essential data will be included to identify the

the affected. These systems may also include preference services,

through which those affected limit the reception of commercial communications

those from certain companies.

2. The entities responsible for the advertising exclusion systems will notify

the competent control authority, its creation, its general or sectoral nature, as well

as the way in which those affected can join them and, where appropriate,

assert your preferences. The competent control authority will make public in its

electronic headquarters a list of the systems of this nature that were

communicated, incorporating the information mentioned in the previous paragraph. to such

effect, the competent control authority to which the creation has been communicated

of the system will make it known to the remaining control authorities for their

post for all of them.

3. When an affected person expresses to a person in charge his desire that his data not

are treated for the sending of commercial communications, it must inform you

of the existing advertising exclusion systems, being able to refer to the

information published by the competent control authority.

4. Those who intend to carry out direct marketing communications must

previously consult the advertising exclusion systems that could affect your

action, excluding from the treatment the data of those affected who would have

expressed their opposition or refusal to it. For these purposes, to consider

Once the previous obligation has been fulfilled, it will be enough to consult the exclusion systems

included in the list published by the competent control authority.

It will not be necessary to carry out the query referred to in the previous paragraph when the

affected had provided, in accordance with the provisions of this organic law, his

consent to receive the communication to whoever intends to make it.>>

In the event that there is an infringement of the provisions of the RGPD, between the

corrective powers available to the Spanish Data Protection Agency,

as a control authority, article 58.2 of said Regulation contemplates the

following:

7th

“2 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;"

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

particular case;".

viii

Therefore, VDF, as the controller of the processing carried out on behalf of and

on your behalf and in accordance with the evidence available in the

At this time, it is considered that the facts exposed do not comply with what is established

in article 28, with the scope expressed in the Foundations of Law

above, and involve the commission of an offense classified in article 83.4.a) of the

RGPD, which under the heading “General conditions for the imposition of fines

administrative” provides the following:

Article 83.4.a) of the RGPD establishes the following:

<4. Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a

39, 42 and 43; …>.

Article 71 of the LOPDGDD. Violations.

The acts and behaviors referred to in sections 4, 5 constitute infractions.

and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

Article 73 section p) of the LOPDGDD, establishes the following:

<Infringements considered serious. Based on the provisions of article 83.4 of the

Regulation (EU) 2016/679 are considered serious and will prescribe after two years the

infractions that suppose a substantial violation of the mentioned articles

in that and, in particular, the following:

p) The processing of personal data without carrying out a prior assessment of the

elements mentioned in article 28 of this organic law.>

According to the available evidence, the facts constitute

infringement of art. 28 in relation to art 24 of the RGPD, infringement typified in art.

83.4.a) of said rule and considered serious for the purposes of prescription in art. 73

section p) of the LOPDGDD.

IX

In the present case, the claimed party, as data controller
now imputed, has not proven to carry out with its obligations or the
due diligence to which it is obliged according to article 28 and 24 of the RGPD in the
follow-up and successive and permanent control throughout the entire cycle of the
treatment of the services entrusted with the entity in charge of the treatment
(Vamavi), which has given rise to the violation of rights and freedoms of the
claimant.

In order to determine the administrative fine to be imposed, the
provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

X

"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.

2. 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;

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, in what

measure;

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, through infringement.

For its part, in relation to article 83.2.k) RGPD, article 76 “Sanctions and measures

corrections” of the LOPDGDD provides:

<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.

4. It will be published in the Official State Gazette the information that

identify the offender, the offense committed and the amount of the penalty imposed

when the competent authority is the Spanish Data Protection Agency, the

sanction exceeds one million euros and the offender is a legal person.

When the competent authority to impose the sanction is an authority

regional data protection, it will be in accordance with its applicable regulations>.

In accordance with the transcribed precepts, and derived from the instruction of the

procedure for the purpose of setting the amount of the penalty for infraction of article 28 of the

RGPD to VDF as responsible for the aforementioned infringement typified in article 83.4.a)

of the RGPD, it is appropriate to graduate the fine that must be imposed as follows:

Violation due to non-compliance with the provisions of article 28 in relation to article 24

of the RGPD, typified in article 83.4.a) and classified as serious for the purposes of

prescription in article 73, paragraphs p) of the LOPDGDD:

The following graduation criteria are considered concurrent aggravating circumstances, according to

Article 83.2 of the RGPD and 76 of the LOPDGDD:

Art. 76.1.b) LOPDGDD. The high link between the offender's activity and the processing of personal data. It is known that VDF is a entity with more than fifteen million customers whose personal data is processed systematically in the exercise of its powers as one of the main telecommunications operators.

Art. 83.1 and 83.2.k) and RGPD. The status of a large company of the responsible entity and its turnover (according to the corresponding audited annual accounts report to the period from March 2018 to March 2019, plus 1,600 million euros of business and with more than 4,000 employees).

Art. 83.2.b) RGPD. The respondent entity has not implemented procedures adequate action in contracting and continuous, permanent and effective throughout the term of the contract with those in charge of processing so that the infraction is not the consequence of a punctual anomaly in the operation of said procedures but a persistent and continuing defect of the personal data management system designed by the controller in terms of the treatments delegated to those in charge of them, which denotes a gross negligence.

Art. 83.2.e) Any previous infraction: There are more than fifty in this AEPD sanctioning procedures completed in the last two years.

Considering the exposed factors, and taking into account the range of the sanction possible up to 10 million euros, the assessment of the amount of the fine for the infringement charged is €100,000 (one hundred thousand euros), resulting in the present case adequate to be proportional, effective and dissuasive (art 83.1 RGPD).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE VODAFONE ESPAÑA, S.A.U., with CIF A80907397, for a

violation of Article 28 of the RGPD, typified in Article 83.4 of the RGPD, a fine

of 100,000 euros (one hundred thousand euros).

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

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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 in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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