

□ File No.: PS/00501/2021

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 November 15, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against VODAFONE
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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File No.: PS/00501/2021

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following:

FACTS

FIRST: D.A.A.A. (hereinafter, the complaining party) dated January 15,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Vodafone Spain, S.A.U. with NIF A80907397 (in
hereinafter, the claimed party or Vodafone). The grounds on which the claim is based
are the following.

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The complaining party states that a third party has contracted with the entity Vodafone two prepaid telephone numbers in your name, through a distributor of the claimed party.

And, attach the following documentation:

1. Complaint before the National Police Force of Fuengirola (Málaga) with number report XXXXX/YY, of September 9, 2020, for alleged usurpation civil identity.

2. Complaint to Vodafone in the consumer office of Mijas, from XX of September 2020.

3. Response received by the Mijas consumer office, in which They state that the lines have been activated since February 17, 2020.

4. Burofax to Disashop, of October 16, 2020, in the request as distribution company of both Vodafone prepaid telephones, which give you the right to access your data.

5. Response from Diasashop, informing that the responsibility for the situation It's from Vodafone.

6. Burofax to DPO of Vodafone, of October 28, 2020, in which it requests Vodafone the right to access the data referring to the contracting of both prepaid numbers.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

THIRD: On May 19, 2021, the application was admitted for processing.

claim filed by the claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

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Vodafone representatives state on June 2, 2021 that they attach as document number 1 copy of the letter sent to the complaining party, giving compliance with your exercised right of access, for which you are given the all personal documents found in Vodafone systems.

Subsequently, on July 4, 2021, the respondent states that after carry out the appropriate investigations, have been able to verify that the complete list of the prepaid lines that the claimant has had with Vodafone would be the following:

(i) ***PHONE.1

(ii) ***PHONE.2

Regarding the line ***TELEPHONE.1, they have been able to verify that it was given high on December 16, 2019 and low on July 22, 2020. The

disconnection was made by the distributor Disashop Consulting, S.L.

According to the entity's representatives, the line ***TELÉFONO.1, as of the date of June 22, 2021, is in another operator, specifically, in Movistar.

On the other hand, the line ***TELÉFONO.2 has registered its registration on the 17th of February 2020 and his discharge on September 23, 2020. The disconnection was carried out by part of the distributor Disashop Consulting, S.L.

In the Vodafone systems there is no documentation that currently allows prove the contracting of the lines in prepaid mode, however, they provide a copy of an "information document for natural and legal persons who acquire a prepaid card" relative to the line ***TELÉFONO.2 in which the details of the claimant, DNI and postal address, but does not contain any signature.

Vodafone does not have documentation proving the contracting of the lines prepaid ***TELEPHONE.1 and ***TELEPHONE.2 in the name of the claimant.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

II

The General Data Protection Regulation deals in article 5 with the principles that must govern the processing of personal data and mentions among them that of "legality, loyalty and transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

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 violation of article 6.1 of the RGPD is typified in article 83 of the RGPD that, under the heading "General conditions for the imposition of fines administrative", says:

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"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 72.1.b) qualifies this infraction, for the purposes

of prescription, as a very serious infraction.

The documentation in the file offers evidence that the party

claimed violated article 6.1 of the RGPD, since it processed the personal data

of the claimant (name, surnames and D.N.I.), without having legitimacy for the treatment

of the claimant's data.

It should be remembered that article 5 of the RGPD, after alluding in its section

1 to the principles relating to the processing of personal data -among them, as

has pointed out in the preceding Basis, that of "legality"-, it says in its section 2:

“The person responsible for the treatment will be responsible for compliance with the

provided in section 1 and able to demonstrate it (<<proactive responsibility>>)”

Well, with respect to the facts that are the subject of this claim,

We must point out that Vodafone does not have documentation proving the

contracting the prepaid lines ***TELEPHONE.1 and ***TELEPHONE.2 in the name of the

claimant.

The lack of diligence displayed by the entity in complying with the

obligations imposed by the personal data protection regulations

it is therefore evident. Diligent compliance with the principle of legality in the treatment

of third-party data requires that the data controller be in a position

to prove it (principle of proactive responsibility).

In short, there is evidence in the file that the respondent tried

the personal data of the claimant without legitimacy to do so. The behavior described violates article 6.1. of the RGPD and is subsumable in the sanctioning type of the article 83.5.a, of the RGPD.

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III

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

“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.”

“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 as the number of stakeholders affected and the level of damage and
damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have applied under articles 25 and 32;
- e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;
- 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 if the person in charge or the person in charge notified the infringement and, in such case, to what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered 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 mechanisms certificates 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 realized or losses avoided, direct

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or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. 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 treatments of personal data.
- 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 after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested party."

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, in an initial assessment, they are estimated to be concurrent in the present case the following factors:

As aggravating factors:

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name of

claimant.

The intentionality or negligence of the infringement (article 83.2.b, RGPD). Given

that the respondent party does not have documentation proving the
contracting the prepaid lines ***TELEPHONE.1 and ***TELEPHONE.2 to

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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 sanctions to be imposed on the claimed party and set them in the amount
of €70,000 for the infringement of article 83.5 a) RGPD and 72.1b) of the LOPDGDD.

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Therefore, in accordance with the foregoing, by the Director of the
Spanish Data Protection Agency.

HE REMEMBERS:

FIRST: Start sanctioning procedure against Vodafone España, S.A.U. with NIF
A80907397, for the alleged infringement of article 6.1. of the RGPD 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 during the

investigations phase.

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 70,000 euros (seventy thousand euros), without

prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to Vodafone España, S.A.U. with NIF

A80907397 granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

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In accordance with the provisions of article 85 of the LPACAP, in the event that

the sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

the present procedure. With the application of this reduction, the sanction would be

established at 56,000 euros, resolving the procedure with the imposition of this

sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 56,000 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the sanction is cumulative to the one It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The pay volunteer of the amount referred to in the preceding paragraph may be made at any time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be established at 42,000 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, 56,000 euros or 42,000 euros, you must do so cash by depositing it in account number ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for Data Protection 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 welcomes

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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.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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SECOND: On December 23, 2021, the claimed party has proceeded to payment of the sanction in the amount of 56,000 euros using one of the two reductions provided for in the Start Agreement transcribed above. Therefore, it has not acknowledgment of responsibility has been confirmed.

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

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

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information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but 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 with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00501/2021, of in accordance with the provisions of article 85 of the LPACAP.

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

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the

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day following the notification of this act, as provided in article 46.1 of the
aforementioned Law.

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