

Procedure No.: PS/00249/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00249/2019, instructed by the Spanish Agency for Data Protection, to the entity VODAFONE ESPAÑA SAU., (VODAFONE), (in hereinafter, "the entity claimed), by virtue of a complaint filed by D. A.A.A. (in hereinafter, "the claimant") and based on the following:

BACKGROUND

FIRST: On 02/12/19 he entered this Agency (through the Institute Gallego de Consumption), brief presented by the claimant, in which he states, among another, the following: "In the months of July and August 2018, the company VODAFONE, It has increased my bills. Put in contact with the company they tell me which is due to the expansion of some services but which I had never contracted. Nope However, the company tells you that the difference in the c/c number will be reimbursed in about 15 days. After a few days they tell me that the money will not be returned, having to make the claim in writing. Requested the sending of the invoices, I They send mine and others from someone else." Present a copy of 6 invoices with the following features:

HEADLINE

B.B.B.. ***NIF.2

A.A.A.. ***NIF.1

No.

INVOICE

RI00129240

RI00160440

79

RI00100108

48

RI00132997

43

RI00320266

00

RI00333269

82

ACCOUNT NUMBER

VODAFONE

***PHONE.2

***PHONE.2

***TELEPHONE 1

***TELEPHONE 1

***TELEPHONE 1

***TELEPHONE 1

DATE

ISSUE

N

01/01/1

8

02/01/1

8

08/12/1

7

08/01/1

8

09/08/1

8

08/10/1

8

ADDRESS

***ADDRESS.2

***ADDRESS 1.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 04/10/19, an information request is addressed to the entity, being notified on 04/15/19, according to a certificate issued by the Service of Electronic Notifications and Electronic Address Enabled. However, the entity claimed DID NOT send this Agency any type of information or documentation regarding the alleged facts.

THIRD: On 07/25/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the powers established in article 58.2 of the RGPD and in articles 47, 64.2 and

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68.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and Guarantee of Digital Rights (LOPDGDD), for the infringement of the article 5.1.f) of the RGPD typified in article 83.5.a) of the RGPD and considered "very serious", for prescription purposes, in article 72.1.a) of the LOPDGDD, argued in which: "it has been verified that, according to the complaint filed, Vodafone has activated some services not requested by the claimant. After contacting the company, a refund of amounts unduly collected is pending.

After requesting the invoices from the company, the company sends you, in addition to those claimed, several invoices from an outside third party".

FOURTH: According to the Electronic Notifications and Electronic Address Service

Authorized by the Ministry of Territorial Policy and Public Function (through the General Secretariat of Digital Administration), it is certified that, through said service the notification was sent, with Reference: ***REFERENCE.1 to the entity VODAFONE ESPAÑA SA - A80907397, the date of availability being the 08/10/2019 at 05:00:16 and the date of automatic rejection by the entity claimed, on 08/18/2019 at 00:00:00.

FIFTH: This Agency has not received, in the period granted for this purpose, allegations by the entity claimed, at the initiation of the file and according to

It was stated in the same, "If within the stipulated period he did not make allegations to this initial agreement, it may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP)".

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

1.- Requested by the claimant for the invoices issued by Vodafone, for discrepancies in the billing due to having registered him for services that he had not contracted, the company sends you, in addition to your invoices, other invoices with personal data of a third party.

FOUNDATIONS OF LAW

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II

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 LOPDGDD, the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the performance of the claimed entity, which has reflected in the facts declared proven.

From the documentation in the file, sent by the claimant, it is offered clear indications that the respondent violated article 5 of the RGPD, principles

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related to treatment, in relation to article 5 of the LOPGDD, duty to confidentiality, when disclosing to a third party the personal data of another person.

The duty of confidentiality, previously the duty of secrecy, must be understood as

Its purpose is to prevent leaks of data not consented to by

their owners.

Therefore, this duty of confidentiality is an obligation that falls not only on the responsible and in charge of the treatment but to anyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

In this sense, the National High Court pronounced itself in a judgment of 01/18/02, in

whose Second Law Foundation, stated: "The duty of professional secrecy

which is incumbent on those responsible for automated files, ..., implies that the

responsible –in this case, the recurring banking entity- of the data stored

-in this case, those associated with the complainant- cannot reveal or make known their

content having the "duty to keep them, obligations that will subsist even after

to end their relations with the owner of the automated file or, where appropriate, with the

responsible for it... This duty of secrecy is essential in societies

increasingly complex, in which advances in technology place the

person in risk areas for the protection of fundamental rights, such as

intimacy or the right to data protection set forth in article 18.4 of the

EC. In effect, this precept contains an "institution to guarantee the rights to

privacy and honor and the full enjoyment of the rights of citizens who,

moreover, it is in itself a fundamental right or freedom, the right to freedom

in the face of potential attacks on the dignity and freedom of the person

from an illegitimate use of mechanized data processing (STC 292/2000)

..."

For all these reasons, the lack of diligence in sending documentation to the

applicant by the entity VODAFONE ESPAÑA SAU, since I provide data

personal data of a third party.

III

Thus, the known facts are constitutive of an infraction, attributable to the

claimed, for violation Article 5.1.f) of the RGPD establishes that: "the data personal data will be treated in such a way as to ensure adequate security, including protection against unauthorized or unlawful processing and against loss, accidental destruction or damage, through the application of technical measures or appropriate organizational

For its part, and after the evidence obtained in the preliminary investigation phase and throughout the instruction of the procedure, it is appropriate in this case to attend to what stipulated in article 83.2 of the RGPD, in order to set the amount of the sanction to impose in the present case:

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

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The intentionality or negligence in the infringement. In the present case we are before unintentional negligent action (paragraph b).

- The data controller has NOT taken, as far as is known, no measure to mitigate the damages suffered by the interested parties (section c).

- The data controller has NOT exercised, up to now, no cooperation with the supervisory authority in order to remedy

infringement and mitigate the possible adverse effects of the infringement (paragraph F).

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The categories of personal data affected by the infringement,

The data processed in this case, are of a markedly personal nature and therefore person identifiers (section g).

The way in which the supervisory authority became aware of the infringement.

In this case, through a complaint filed by the claimant (section h).

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 76.2 of the LOPDGDD:

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The link between the activity of the offender and the performance of treatment of personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 5.1.f) of the RGPD allows setting a penalty of 60,000 euros (sixty thousand euros), considered as "very serious", for purposes of prescription of the same, in 72.1.a of the LOPDGDD.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

:

RESOLVE

FIRST: IMPOSE the entity VODAFONE ESPAÑA SAU a fine of 60,000

euros (sixty thousand euros), for the infringement of article 5.1.f) of the RGPD.

SECOND: NOTIFY this resolution to the entity VODAFONE ESPAÑA

SAU. and, according to art. 77.2 of the RGPD, INFORM the claimant about the result of the claim.

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.

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

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

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

Common to Public Administrations, within the voluntary payment period indicated in the

Article 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 17

December, by depositing it in the restricted account number ES00 0000 0000 0000 0000

0000, opened in the name of the Spanish Agency for Data Protection in the Bank

CAIXABANK, S.A. or otherwise, it will be collected in the period

executive.

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 section 2 of article 37 of the LOPD, in the wording given by article 82 of Law 62/2003, of December 30, on measures fiscal, administrative and social order, this Resolution will be made public, once Once it has been notified to the interested parties. The publication will be made in accordance with provided for in Instruction 1/2004, of December 22, of the Spanish Agency for Data Protection on the publication of its Resolutions and in accordance with the provided in article 116 of the regulations for the development of the LOPD approved by the Royal Decree 1720/2007, of December 21.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations, 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 13/07, 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 legal text.

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 of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>],

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious appeal-

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within a period of two months from the day following the notification of the

This resolution would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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