

936-031219

Procedure No.: PS/00307/2019

RESOLUTION R/00658/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00307/2019, instructed by the Agency

Spanish Data Protection Officer to VODAFONE ESPAÑA, S.A.U., given the complaint

presented by A.A.A., and based on the following,

BACKGROUND

FIRST: On November 14, 2019, 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 transcribed:

<<

Procedure No.: PS/00307/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following:

FACTS

FIRST: D.A.A.A. (hereinafter, the claimant) dated March 29, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in

later, the claimed one).

The claimant states that the operator claims a debt on a

service that was discharged and without outstanding balances.

He adds that he filed a claim with the Secretary of State for the

Information Society and the Digital Agenda on December 4, 2017, which states that the matter raised has been resolved and sends you a copy of the www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

2/10

report issued by the operator, dated January 16, 2018, in which manifests the deactivation of the service and the fiber associated with the number ***TELEFONO.1 and the issuance of two corrective invoices.

Along with your letter, the following documentation has been provided: letter from the claimed where it recognizes the definitive withdrawal, invoices subsequent to the aforementioned withdrawal, letter from a third company claiming the debt and resolution of the Ministry of State for the Information Society and the Digital Agenda.

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).

On May 29, 2019, the claim and request for information to the claimed party, giving it a period of one month to reply.

It is recorded that said notification was received on June 5 of this year, and dated June 9, August 2019, since the respondent did not respond to the information request of this Agency, by the Director of the AEPD, it is agreed to admit for processing the claim filed by the claimant.

Thus, on October 11, 2019, the respondent answers the aforementioned

request stating that they attach the letter sent to the claimant where he was reports on the steps taken. Specifically, that they have proceeded to cancel the debt that was operating in their systems linked to their name.

They add that in their systems there was an acceptance of an offer by the claimant who is the one that has generated the debt. Fruit of the acceptance of said offer they began to invoice the services that left the debt that they now claim, and that has requested the annulment of the debt and so they have communicated it to the claimant.

THIRD: In view of the reported facts, in accordance with the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

available evidence, it has become known that:

1.- The claimed party has requested a non-existent debt from the claimant, stating the resolution of the Secretary of State for the Society of the Information and the Digital Agenda, which considers that the complaint by the operator, when issuing a report where the operator attends to the claimant's request, dated January 16, 2018, it states the deactivation of the service and the fiber associated with the number ***TELEFONO.1 and the issuance of two invoices rectifications.

Subsequently, it has followed the claim by invoicing, and has assigned its data to a collection company.

2.- The respondent has stated on October 11, 2019 to this Agency, which have proceeded to cancel the debt that was associated with the claimant.

FOUNDATIONS OF LAW

Yo

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.

The RGPD deals in its article 5 with the principles that must govern the treatment of personal data and mentions among them that of "Accuracy". The provision provides:

II

"1. The personal data will be:

(...)

d) "accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed (<<accuracy>>)"

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/10

Article 83 of the RGPD, under the heading "General conditions for the imposition of administrative fines" establishes:

"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)

Basic principles for treatment, including

conditions for consent under articles 5,6,7 and 9.”

The LOPGDD in its article 72.1a) indicates: "Infringements considered very serious":

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679”.

III

In order to determine the administrative fine to be imposed, the

observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that

point out:

“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

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

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

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 data processing personal.

c) The profits obtained as a result of committing the offence.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

d) The possibility that the conduct of the affected party could have led to the commission of the infringement.

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 controversies between them 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 a fine to be imposed in the

this case for the infringement typified in article 83.5.a) of the RGPD of which

holds the claimed party responsible, in an initial assessment, it is estimated that the

following factors:

-

-

The merely local scope of the treatment carried out by the claimed entity.

Only one person has been affected by the offending conduct.

There is no evidence that the defendant had acted maliciously, although the

-

performance reveals lack of diligence.

There is an obvious link between the processing of personal data and

-

the activity carried out by the claimant.

-

The entity claimed is considered a large company.

At the same time, it is valued as mitigating factors that he canceled the debt that was in his

systems and replied to the claimant.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.

START SANCTION PROCEDURE against VODAFONE ESPAÑA, S.A.U.

with NIF A80907397, for the alleged infringement of article 5.1.d) of the RGPD

typified in article 83.5.a) of the aforementioned RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/10

1. 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

what is established in articles 23 and 24 of Law 40/2015, of October 1, of

Legal Regime of the Public Sector (LRJSP).

two.

INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its attached documentation, the

information requirement that the General Subdirectorate of Data Inspection

referred to the entity claimed in the preliminary investigation phase and its

respective acknowledgment of receipt.

3. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Administrations

Public, the sanction that could correspond would be 30,000 euros (thirty

thousand euros), without prejudice to what results from the instruction.

4. NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U. with NIF

A80907397, granting a hearing period of ten business days for

formulate the allegations and present the evidence that it deems appropriate.

In your brief of allegations you must provide your NIF and the number of

procedure at the top 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).

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 24,000 euros, resolving the procedure with the imposition of this sanction.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

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 24,000 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 18,000 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, 24,000 euros or 18,000 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

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

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 Data Protection Agency

>>

: On December 5, 2019, the respondent has proceeded to pay the

SECOND

the sanction in the amount of 18,000 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in 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 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. A sanctioning procedure has been initiated, if the offender acknowledges his

responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

10/10

any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

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

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00307/2019, 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

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

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es