

□ File No.: PS/00180/2021

## 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 June 7, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against TELEFÓNICA  
MOBILE SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement  
which is transcribed:

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Procedure No.: PS/00180/2021

### 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 claimant) dated December 11, 2020  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against TELEFÓNICA MÓVILES ESPAÑA, S.A.U. with NIF  
A78923125 (hereinafter, the claimed one).

The claimant states that the respondent continues to use his number  
phone \*\*\*PHONE.1, accessing your employees to your customer profile, without your

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consent, to carry out tests in its Call Centers and stores. In fact, states that, in two days, he has received a total of 247 calls from number 1004, despite the fact that in previous claims the respondent claimed to have implemented new security measures so that it does not happen again.

On April 10, 2021, the claimant expands his claim stating that he continues to receive calls from the claimed party, but in this case from the number 1002 (to move)

Provides as proof of your claim, the SMS received and the calls from the 1002 and 1004.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes foreseen in article 37 of the aforementioned rule, or to these when they were not designated, it was given transfer of the claim to the claimed entity so that it proceeded to its analysis and respond to the complaining party and to this Agency within a month.

As a result of this procedure, on March 30, 2021, the claimed has stated that a written response has been sent to the claimant, in which shows that "new control measures have been implemented, maintaining in force and reinforcing the measures that had already been adopted above regarding the use of \*\*\*PHONE.1" numbering.

A copy of the letter sent to the claimant is attached.

On the other hand, it indicates that the claimant exercised his right of access, which was answered by letter on April 10, 2017.

Next, they state: "that he has analyzed the record of the calls provided by the claimant in this file, and notes that, after confirming receipt of these, it has been detected that by mistake the claimant and his

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numbering in a campaign organized by our company in order to verify the existence of technical breakdowns that customers may suffer.

Although security and control measures have been taken on the use of this numbering since 2014, they have been strengthened and implemented two new measures:

On the one hand, and by verifying that these calls were made by a campaign resolution of technical incidents, our team has proceeded to exclude the numbering of the mentioned campaigns.

Additionally, a direct blocking measure has been taken in the the aforementioned numbering so that, at the time a new campaign with similar characteristics, the numbering is identified and automatically excluded.

On the other hand, a fortnightly check will be carried out on all our customer databases to confirm that all measures applied since the year 2014, are applied correctly.

Lastly, despite the fact that the claimant in his brief when referring to "the black list" in which you have entered the Telefónica numbers, in the moment when one of our agents tries to contact the

numbering \*\*\*PHONE.1, and even though it is blocked by the client, our agent does not appear any warning, alarm or similar that indicates this situation, therefore, the calls continue to be issued.

After receiving the last claim from the client, the operation has been strengthened to the when establishing and preparing communication campaigns for clients, inhibiting this number automatically so that it cannot be included as a recipient in no case in those communications; and checks will be carried out on a regular basis. in order to check that our agents comply with all the measures established by the company".

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THIRD: The result of the transfer process initiated in the previous event does not made it possible to understand the claims of the claimant satisfied. Consequently, with dated April 21, 2021, for the purposes provided in article 64.2 of the LOPDGDD, The Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed.

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 defendant is accused of committing an infraction for violation of the Article 6 of the RGPD, "Legality of the treatment", which indicates 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 at least one of the following is met 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 infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance

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with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9."

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements

considered very serious” provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in it and, in

particularly the following:

(...)

a) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.”

III

The documentation in the file offers evidence that the

claimed, violated article 6.1 of the RGPD, since it carried out the treatment of the

personal data of the claimant without having any legitimacy to do so.

The respondent has acknowledged said error and has indicated that it has analyzed the

record of the calls provided by the claimant in this file, and

notes that, after confirming receipt of these, it has been detected that by mistake

included the claimant and his number in a campaign organized by the claimed

in order to verify the existence of technical breakdowns that could be suffered by the

customers.

Likewise, it states that after receiving the last claim from the client, it has

strengthened the operation at the time of establishing and preparing the campaigns of

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communications to clients, inhibiting this number automatically so that they do not may be included as a recipient in any case in those communications; and that will carry out controls periodically in order to check that their agents

They comply with all the measures established by the company.

However, despite stating the claimed in previous claims

have implemented new security measures so that it does not happen again. This

Of course, the 1002 and 1004 calls continue to occur. Therefore, it

is producing the treatment of the personal data of the claimant without basis legitimizing.

#### IV

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 83.2 of the RGPD, precepts that, respectively, provide the following:

“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;

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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.” (The underlining is from the AEPD)



In order to specify the amount of the sanction to be imposed on the one claimed by violation of article 83.5.a) of the RGPD, it is essential to examine and assess whether the circumstances described in article 83.2 of the RGPD concur and if they intervene mitigating or aggravating the responsibility of the responsible entity.

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 be imposed in the present case, the party claimed is considered responsible for an infringement typified in article 83.5.a) of the RGPD, in an initial assessment, concurrent the following factors.

As aggravating the following:

- In the present case we are facing a negligent action on significant data that allow the identification of a person (article 83.2 b).
- Basic personal identifiers are affected (name, a number of identification, the line identifier) (article 83.2 g).

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- Section k), in relation to article 76.2 of Organic Law 3/2018, in which frames as an aggravating circumstance the continuous nature of the infraction attributed to the claimed.
- The evident link between the business activity of the defendant 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).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and

set it at the amount of €75,000 for the infringement of article 6 of the RGD.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.

START SANCTION PROCEDURE against TELEFÓNICA MÓVILES

ESPAÑA, S.A.U., with NIF A78923125, for the alleged infringement of article 6

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

2. 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).

3.

INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its attached documentation, the

information requirements that the General Subdirectorate of Inspection of

Data sent to the entity claimed in the preliminary investigation phase and its

respective acknowledgments of receipt.

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

bre, of the Common Administrative Procedure of the Public Administrations,

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the corresponding sanction would be 75,000 euros (seventy-five thousand

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

5. NOTIFY this agreement to TELEFÓNICA MÓVILES ESPAÑA, S.A.U.,

with NIF A78923125, granting a hearing period of ten business days

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

nients. 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 same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

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

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

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 60,000 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 60,000 euros and its payment will imply the termination of the

process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

apply for the acknowledgment of responsibility, provided that this acknowledgment

of the responsibility is revealed within the period granted to formulate

arguments at the opening of the procedure. The voluntary payment of the referred amount

in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 45,000 euros.

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

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 60,000 euros or 45,000 euros, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which 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.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On July 7, 2021, the claimed party has proceeded to pay

the sanction in the amount of 45,000 euros making use of the two reductions

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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

FIRST: By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to sanction the infractions that are committed

against said Regulation; violations of article 48 of Law 9/2014, of 9

May, General de Telecomunicaciones (hereinafter LGT), in accordance with the

provided in 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 information society and electronic commerce (hereinafter LSSI), according to Article 43.1 of said Law provides.

SECOND: Article 85 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), under the heading "Termination in sanctioning procedures" provides the

Next:

"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."

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

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00180/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to TELEFÓNICA MÓVILES 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.

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