

□ File No.: EXP202104006

## 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 August 10, 2022, the Director of the Spanish Agency for  
Data Protection agreed to start a sanctioning procedure against VODAFONE  
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that  
transcribe:

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File No.: EXP202104006

### AGREEMENT TO START THE SANCTION PROCEDURE

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

### FACTS

FIRST: A.A.A. (hereinafter, the claiming party) dated August 21, 2021  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against VODAFONE ESPAÑA, S.A.U. with NIF A80907397 (in  
forward, VODAFONE). The reasons on which the claim is based are the following:  
Indicates that you have requested a copy of your telephone contract from VODAFONE because you are not  
applying the contracted rate. That he has requested it on several occasions without being  
send (infringement of your right of access to your personal data). Finally  
receives an email with the telephone contract of another client, violating the  
secrecy of the personal data of said client.

Along with the notification, an audio file in mp3 format is provided, in which you can listening to a recording in which two people intervene, one on behalf of VODAFONE, and another that identifies itself as B.B.B. with DNI \*\*\*NIF.1, holder of the line phone \*\*\*TELEPHONE.1. The recording is dated 07/28/2020.

There is no record of the date on which the complaining party had access to said recording, since he has not sent the email in which he states that he has

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received. Likewise, the claiming party does not provide a document proving that it has VODAFONE required its own contract.

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

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on 11/08/2021 as recorded in the acknowledgment of receipt in the file.

No response has been received to this letter of transfer.

THIRD: On November 21, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

## FUNDAMENTALS OF LAW

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### Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is the processing of personal data, since VODAFONE performs, among other treatments, the collection, registration, consultation, etc. of the following personal data of natural persons, such as: name, identification number, phone number etc

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VODAFONE carries out this activity in its capacity as data controller, given that it is the one who determines the ends and means of such activity, by virtue of article 4.7 of the GDPR.

Article 4 paragraph 12 of the GDPR defines, in a broad way, "violations of security of personal data" (hereinafter security breach) as "all those security violations that cause the destruction, loss or alteration accidental or unlawful personal data transmitted, stored or otherwise processed form, or unauthorized communication or access to said data."

In the present case, there is a personal data security breach in the circumstances indicated above, categorized as a breach of confidentiality, by a recording containing data has been sent to the complaining party personal data of another person, thus allowing their knowledge by those who are not legitimized for it.

It should be noted that the identification of a security breach does not imply the imposition of a sanction directly by this Agency, since it is necessary analyze the diligence of managers and managers and security measures applied.

Within the principles of treatment provided for in article 5 of the GDPR, the integrity and confidentiality of personal data is guaranteed in section 1.f) of article 5 of the GDPR. For its part, the security of personal data comes regulated in articles 32, 33 and 34 of the GDPR, which regulate the security of the treatment, the notification of a breach of the security of personal data to the control authority, as well as the communication to the interested party, respectively.

## II

Article 5.1.f) of the GDPR

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized processing or illicit and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality»).".

In this case, it is clear that the personal data of a VODAFONE customer, in its database, were improperly exposed to the complaining party that, according to his own statement, he received them by email, having had therefore access to the name, ID and telephone number of an unknown person, without there is, of course, the authorization of said person to expose their data to a

Third, there is no legitimating cause for it.

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In accordance with the evidence available in this agreement of initiation of the disciplinary procedure, and without prejudice to what results from the investigation, it is considered that the known facts could constitute a infringement, attributable to VODAFONE, due to violation of article 5.1.f) of the GDPR.

Classification of the infringement of article 5.1.f) of the GDPR

IV.

If confirmed, the aforementioned violation of article 5.1.f) of the GDPR could lead to the

commission of the offenses typified in article 83.5 of the GDPR that under the

The heading "General conditions for the imposition of administrative fines" provides:

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

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,

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

contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very

serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

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

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

following:

a) The processing of personal data in violation of the principles and guarantees

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

Penalty for violation of article 5.1.f) of the GDPR

V

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of

agreement to start disciplinary proceedings, and without prejudice to what results from the

investigation, it is considered that the offense in question is serious for the purposes of the GDPR and that it is appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR:

As mitigations:

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-The number of interested parties affected and the level of damages that have suffered (part a). This file deals with the data of a single person, and there is no evidence that such action has caused him harm.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in section 2 of article 76 "Sanctions and measures corrective measures" of the LOPDGDD:

As aggravating factors:

-The linking of the offender's activity with the performance of processing of personal data (section b).

The activity of VODAFONE, provider of telephone services and Internet, and the high number of customers it has, entails the handling a large amount of personal data. This implies that they have sufficient experience and should have adequate knowledge to the processing of said data.

The balance of the circumstances contemplated in article 83.2 of the GDPR and the Article 76.2 of the LOPDGDD, with respect to the offense committed by violating the established in article 5.1.f) of the GDPR, allows initially setting a penalty of

€50,000 (fifty thousand euros).

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GDPR Article 32

Article 32 "Security of treatment" of the GDPR establishes:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of processing, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical and appropriate organizational measures to guarantee a level of security appropriate to the risk, which may include, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to guarantee the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore the availability and access to personal data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of effectiveness technical and organizational measures to guarantee the safety of the treatment.

2. When evaluating the adequacy of the security level, particular consideration will be given to take into account the risks presented by data processing, in particular as consequence of the destruction, loss or accidental or illegal alteration of data personal information transmitted, preserved or processed in another way, or the communication or unauthorized access to such data.

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3. Adherence to an approved code of conduct pursuant to article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and have access to personal data can only process such data by following instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

In the present case, at the time of the breach, VODAFONE did not have with the appropriate technical and organizational measures to avoid the incident, since according to the claimant, an email was sent to him by recording that corresponds to another client, where the personal data of said client.

In accordance with the evidence available in this agreement of initiation of the disciplinary procedure, and without prejudice to what results from the investigation, it is considered that the known facts could constitute a infringement, attributable to VODAFONE, for violation of article 32 of the GDPR.

Classification of the infringement of article 32 of the GDPR

## VII

If confirmed, the aforementioned infringement of article 32 of the GDPR could lead to the commission of the offenses typified in article 83.4 of the GDPR that under the The heading "General conditions for the imposition of administrative fines" provides:

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

paragraph 2, with administrative fines of maximum EUR 10,000,000 or,  
in the case of a company, an amount equivalent to a maximum of 2% of the  
total annual global business volume of the previous financial year, opting for  
the highest amount:

a) the obligations of the person in charge and the person in charge according to articles 8,  
11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,  
5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result  
contrary to this organic law".

For the purposes of the limitation period, article 73 "Infractions considered serious"  
of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679,  
are considered serious and will prescribe after two years the infractions that suppose a  
substantial violation of the articles mentioned therein and, in particular, the  
following:

(...)

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f) The lack of adoption of those technical and organizational measures that  
are appropriate to ensure a level of security appropriate to the  
risk of treatment, in the terms required by article 32.1 of the  
Regulation (EU) 2016/679.

Penalty for violation of article 32 of the GDPR

VIII

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of

agreement to start disciplinary proceedings, and without prejudice to what results from the

investigation, it is considered that the offense in question is serious for the purposes of the

GDPR and that it is appropriate to graduate the sanction to be imposed in accordance with the following

criteria established in article 83.2 of the GDPR:

As mitigations:

-The number of interested parties affected and the level of damages that have

suffered (part a). This file deals with the data of a single

person, and there is no evidence that such action has caused him harm.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established in section 2 of article 76 "Sanctions and measures

corrective measures" of the LOPDGDD:

As aggravating factors:

-The linking of the offender's activity with the performance of data processing

personal (section b). The activity of VODAFONE, service provider

telephone and internet, and the high number of clients it has, entails the

handling a large amount of personal data. This implies that they have experience

sufficient and should have adequate knowledge for the treatment of

such data.

The balance of the circumstances contemplated in article 83.2 of the GDPR and the

Article 76.2 of the LOPDGDD, with respect to the offense committed by violating the

established in article 32 of the GDPR, allows the initial setting of a penalty of

€20,000 (twenty thousand euros).

imposition of measures

Among the corrective powers provided by article 58 "Powers" of the GDPR, in the section 2.d) establishes that each supervisory authority may "order the controller or processor that the processing operations are comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period...".

The Spanish Agency for Data Protection in the resolution that puts an end to the this procedure may order the adoption of measures, as established

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in article 58.2.d) of the GDPR and in accordance with what is derived from the instruction of the procedure, if necessary, in addition to sanctioning with a fine.

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against VODAFONE SPAIN,

S.A.U., with NIF A80907397, for the alleged violation of Article 5.1.f) of the GDPR typified in Article 83.5 of the GDPR.

INITIATE SANCTIONING PROCEDURE against VODAFONE ESPAÑA, S.A.U., with NIF A80907397, for the alleged violation of Article 32 of the GDPR, typified in the Article 83.4 of the GDPR.

SECOND: APPOINT as instructor C.C.C. and, as secretary, to D.D.D.,

indicating that any of them may be challenged, if applicable, in accordance with the established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Sub-directorate General of Inspection of Data in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be:

- For the alleged violation of article 5.1.f) of the GDPR, typified in article 83.5 of said regulation, an administrative fine amounting to 50,000.00 euros
- For the alleged infringement of article 32 of the GDPR, typified in article 83.4 of said regulation, an administrative fine of 20,000.00 euros

FIFTH: NOTIFY this agreement to VODAFONE ESPAÑA, S.A.U., with NIF A80907397, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In his writing of allegations must provide your NIF and the procedure number that appears in the heading of this document.

If, within the stipulated period, he 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, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the

sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 56,000.00 euros, resolving the procedure with the imposition of this sanction.

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In the same way, it 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 56,000.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. 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 both reductions were to be applied, the amount of the penalty would remain established at 42,000.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (56,000.00 euros or 42,000.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to

name of the Spanish Data Protection Agency in the bank

CAIXABANK, S.A., indicating in the concept the reference number of the

procedure that appears in the heading of this document and the cause of

reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of

Inspection to continue with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On September 7, 2022, the claimed party has proceeded to the

payment of the penalty in the amount of 56,000 euros using one of the two

reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not

The acknowledgment of responsibility has been accredited.

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THIRD: The payment made entails the waiver of any action or resource in the  
against the sanction, in relation to the facts referred to in the  
Commencement Agreement.

## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679  
(General Data Protection Regulation, hereinafter GDPR), grants each  
control authority and as established in articles 47 and 48.1 of the Law  
Organic 3/2018, of December 5, Protection of Personal Data and guarantee of  
digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve  
this procedure the Director of the Spanish Data Protection Agency.  
Likewise, article 63.2 of the LOPDGDD determines that: "Procedures  
processed by the Spanish Data Protection Agency will be governed by the provisions  
in Regulation (EU) 2016/679, in this organic law, by the provisions  
regulations dictated in its development and, insofar as they do not contradict them, with character  
subsidiary, by the general rules on administrative procedures."

## II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure  
Common for Public Administrations (hereinafter LPACAP), under the heading  
"Termination in disciplinary proceedings" provides the following:  
"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,  
The procedure may be resolved with the imposition of the appropriate sanction.  
2. When the sanction has only a pecuniary 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 presumed perpetrator, in  
any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202104006, 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 the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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