

Procedure no.: PS/00086/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated November 12, 2018

filed a claim with the Spanish Agency for Data Protection against

VODAFONE ESPAÑA, S.A.U. with NIF A80907397, for the use of your data without your consent.

The events occurred on 08/30/2018, the date on which he received an SMS

demanding an invoice worth €54.94. after which he gets in touch by phone

with customer service, discovering that your contract for the lines \*\*\*TELEFONO.1

and \*\*\*PHONE.2 a third line had been added without their consent.

In addition, the ownership of the three lines, as well as the direct debit

had passed, without his consent, to an unknown third person, called

B.B.B.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirector General for Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

In addition, the following extremes are noted:

This Body has transferred this claim to VODAFONE

SPAIN, S.A.U. and there is an acknowledgment on 12/05/2018 but as of 02/06/2019 there has been no answered the request of the agency.

For this reason, this claim is admitted for processing by fraudulent contracting and amount claim without the entity having given response to the Spanish Data Protection Agency.

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THIRD: On March 21, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 6 of the RGPD, typified in article 83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the claimed entity submitted a written of allegations in which he states that as a consequence of the large number of requirements received since the entry into force of the RGPD, it has not been possible respond to the request for information from the AEPD in relation to E/09384/2018, within of the period given for it.

However, the defendant entity indicates that everything has been the result of an error

punctual, and that has already been corrected, which is accredited by providing a letter of

03/14/2019 sent to the claimant, where she is informed that the facts

reported have occurred due to an error in their computer systems, and that in the

At present, his NIF has been removed from the file of the other client in order to

that this situation be resolved immediately. Also, it is confirmed that

there are neither active services nor debt associated with your person.

FIFTH: On 04/11/2019, the instructor of the procedure agreed to open

a period of evidence practice, taking into account the actions

preliminary investigations, E/09384/2018, as well as the documents provided by the

reclaimed.

Of the actions carried out, the following have been accredited:

#### PROVEN FACTS

FIRST: The claimant has contracted the telephone lines \*\*\*TELEFONO.1 and

\*\*\*PHONE.2.

SECOND: On 08/30/2018, you receive an SMS demanding an invoice for €54.94.

after which he calls customer service, discovering the existence of a third line

added to your contract without your consent.

THIRD: The ownership of said lines has been modified without your consent,

so that the personal data and direct debit that appear in the database

of data of the claimed entity do not correspond to those of the claimant, but to a

unknown third called B.B.B..

FOURTH: As a consequence of said facts, the claimant files a complaint before

the police, on 09/03/2018, and claim before the OMIC of Puerto de la Cruz on

09/04/2018.

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FIFTH: The entity claimed by means of a pleadings letter, provides a letter of 03/14/2019 sent to the claimant, where she is informed that the facts reported have occurred due to an error in their computer systems, and that in the At present, his NIF has been removed from the file of the other client in order to that this situation be resolved immediately. Also, it is confirmed that there are neither active services nor debt associated with your person.

## 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 according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of the Article 6 of the RGPD, which states that:

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 personal data 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;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of

another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

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over said interests do not prevail the interests or the rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with regard to the

treatment in compliance with section 1, letters c) and e), setting more

specifies specific treatment requirements and other measures that guarantee a

lawful and equitable treatment, including other specific situations of

treatment under Chapter IX.”

The infringement is typified in Article 83.5 of the RGPD, which considers that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 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;
- b) the rights of the interested parties according to articles 12 to 22;
- c) transfers of personal data to a recipient in a third country or a international organization under articles 44 to 49;
- d) any obligation under the law of the Member States that is adopted under Chapter IX;
- e) Failure to comply with a resolution or a temporary or definitive limitation of the processing or suspension of data streams by the data protection authority control pursuant to Article 58(2) or failure to provide access in non-compliance with article 58, section 1.”

Therefore, this infraction can be sanctioned with a fine of €20,000,000. maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount, in accordance with article 83.5 a) of the RGPD.

However, the provisions of article 83.5, sections a) and b), of the RGPD, its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

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“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

### III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of powers corrective measures, among which is the power to impose fines, in the event that there is an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period.

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each case particular;

In the present case, the claimant states that VODAFONE ESPAÑA, S.A.U.

has used your data for the fraudulent contracting of a new telephone line added to your contract without your consent.

It has been proven that the claimed entity has corrected the situation object of the present case and the claimant has been informed of this by letter dated 03/14/2019, where he is informed that "the facts denounced have occurred due to an error in their computer systems", and that "currently their NIF has been eliminated of the file of the other client in order for this situation to be resolved immediate". Likewise, it is confirmed that "there are no active services or debt associated with his person.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: WARN VODAFONE ESPAÑA, S.A.U. with NIF A80907397, for a infringement of article 6.1 of the RGPD typified in article 83.5.a) of the RGPD and considered very serious in article 72.1.b) of the LOPDGDD.

SECOND: TO REQUEST VODAFONE ESPAÑA, S.A.U, so that within a period of one month from this act of notification:

2.1.- COMPLY with the provisions of article 6.1 RGPD. In particular, it is urged to adopt



the appropriate technical measures so that errors such as the one in this case do not happen again, thus guaranteeing that the processing of personal data counts always with the consent of their owners, in accordance with the provisions of article 6 of the GDPR

2.2.- REPORT to the Spanish Agency for Data Protection of compliance with the required, providing the documentation or supporting evidence of said circumstance, including the exact date of your withdrawal.

THIRD: NOTIFY this resolution to VODAFONE ESPAÑA, S.A.U. Y, in accordance with article 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.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP, Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm decision may be provisionally suspended in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry  
Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through  
any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1  
october. You must also transfer to the Agency the documentation that accredits the  
effective filing of the contentious-administrative appeal. If the Agency did not have  
knowledge of the filing of the contentious-administrative appeal within two  
months from the day following the notification of this resolution, I would consider  
The precautionary suspension has ended.

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Sea Spain Marti

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