

□ Procedure No.: PS/00341/2020

RESOLUTION R/00530/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00341/2020, instructed by the Spanish Agency for
Data Protection to VODAFONE ESPAÑA, S.A.U., given the complaint filed
by A.A.A., and based on the following,

BACKGROUND

FIRST: On October 5, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against VODAFONE
SPAIN, S.A.U. (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00341/2020

935-200320

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 May 12, 2019
filed a claim with the Spanish Data Protection Agency. The
claim is directed against Vodafone Spain, S.A.U. with NIF A80907397 (in
later, the claimed one).

The claimant states that the respondent is requesting the payment of a
invoice, for a contracting of services carried out without your consent.
He adds that he became aware of that debt through an SMS and appeared
in a shop of the claimed party to obtain an invoice amounting to €56.88, although the

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address that appears and the bank account in which said payment is domiciled are not his.

And, among other things, it provides the following documentation:

☐ Copy of police report No. 4796/19 dated May 9, 2019 where

The facts denounced are recorded and where the information is also recorded:

o That he went to the Vodafone store on 05/08/2019 when

became aware of said debt through SMS.

o That the invoice pending payment is for €XX.XX, is in your name with

your NIF and address is ***ADDRESS.1 and the termination of the account

where said direct debit payment is located is YYYY, not being

this claimant account.

☐ Copy of claim before the Consumer Service of the Provincial Directorate

of Ciudad Real of the Ministry of Health dated 05/10/2019.

☐ Copy of the Vodafone invoice that is in the name of the claimant at the address

***ADDRESS.1 for an amount of €XX.XX and account number ending in

YYYY. It also appears as Vodafone account number ***ACCOUNT.1 and as ref.

direct debit ***ACCOUNT.1 and issue date 04/22/2019.

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

documents provided by the claimant / of the facts and documents of which he has

had knowledge of this Agency, the Subdirector General for Data Inspection

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).

On November 6, 2019, the respondent stated to this Agency:

1. That he sent a letter to the claimant informing him of the steps taken to resolve your complaint and apologize.

Provides a copy of the letter sent to the claimant on November 5, 2019 in the address *** ADDRESS.2 indicating that the registration of www.aepd.es

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services not recognized as fraudulent excluding the debt that was recorded in his name in any financial solvency file that in his case it would have been registered.

1. That after analyzing the claim presented by the claimant and carrying out the Timely internal investigations have verified that despite the fact that the contracting had the appearance of being correct, it has been known that that it has not been made by the claimant.

2. That the service request appeared to be correct since it was carried out in compliance with the security procedure followed by the claimed party.

3. That the debt has been excluded from any asset solvency file

refusal in which the respondent could have registered said debt.

Screenshots of Experian and Equifax are provided where in the section

of casualties, a search is carried out by the NIF of the complainant without throwing results.

4. That all the service that was recorded in the name of the claimant and that he does not recognize and that the debt was excluded corresponding to the amount of €XX.XX of the asset solvency files refusal in which the respondent had registered the debt.

On January 27, 2020, the respondent sends this Agency the following information:

1. That the fraudulent hiring in question was carried out on January 5 2017 through the Vodafone Online Store.

2. That the management of the registration of the services was carried out in accordance with the policy existing VODAFONE security for the online modality:

a. That in the first place the contracting person was asked for an address of email with which to be able to access by creating a profile to client's private area, as well as a telephone number.

b. Next, you were asked for the details of your personal data: name, surnames, DNI, postal address and bank account. that in everything

At that time, the person who completed the information identified himself as the claimant.

c. That once all the requested information is completed, the corresponding contract that is sent to the email address facilitated.

3. State:

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“It is important to bear in mind that Vodafone in this mode of hiring has no way of knowing if the person completing the data is really the owner of the same or if that person is authorized to use thereof. There is no way of knowing if the third party has had access to the data from D.A.A.A. legally or not.

In relation to the above, through the website, the contracting party was requested, alleged offender, the provision of contact information, such as your name, surnames, ID and postal address, who in this case provided the data of Mr.

A.A.A.. The address indicated, in turn, is ***ADDRESS.1, which is object of claim by D. A.A.A.. In this sense, in no way way could my client know or question once the

Recruitment Security Policy, that said address provided directly by the client, in reality the infringer, was the correct one.”

1. That the respondent only knew that said hiring did not have appearance of correct from the notification of the complaint filed by the complainant on May 9, 2019 at the General Police Directorate.

2. Provide monthly invoices with issue dates from 02/01/2017 to 08/01/2018. All invoices include:

- a. As Owner, the complainant
- b. Mailing address ***ADDRESS.1
- c.

Last four digits of the bank account: YYYY

d. Vodafone account number ***ACCOUNT.2

and. Direct debit ***ACCOUNT.2

3. Provide a copy of the "Vodafone Online Store" contract dated 01/05/2017 to

name of the complainant and where it states:

a. In the customer data section, the address states "****ADDRESS.2"

b. In the billing section there is an account number whose last 4

digits are RRRR.

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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 RGPD deals in its article 5 with the principles that must govern the

treatment of personal data and mentions among them that of "lawfulness, loyalty and

transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner with the interested party;"

Article 6 of the RGPD, "Legality of the treatment", details 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 it meets at least one of the following

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 infraction for which the claimed entity is held responsible is

typified in article 83 of the RGPD that, under the heading "General conditions for

the imposition of administrative fines", states:

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"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) 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."

On the one hand, it is proven that the respondent processed the personal data

of the claimant (name, surnames and NIF). Thus, the defendant, when contracting, did not have

the precautions necessary to prove the legitimacy of the contracting party.

On the other hand, the respondent lacked legitimacy to process the data

claimant's personal

They also confirm the absence of legitimacy for the treatment, since

show that there was no contract between the two.

It must be taken into account that the documentation in the file

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offers evidence that the claimed party violated article 6.1 of the RGD, since

processed the claimant's personal data without legitimacy.

The lack of diligence displayed by the entity in complying with the

obligations imposed by the personal data protection regulations

it is therefore evident. Diligent compliance with the principle of legality in the treatment

of third-party data requires that the data controller be in a position

to prove it (principle of proactive responsibility).

According to the evidence currently available

procedural, and without prejudice to what results from the investigation of the procedure, it is estimated

that the conduct of the respondent could violate article 6.1 of the RGPD and may be

constituting the infringement typified in article 83.5.a) of the aforementioned Regulation

2016/679.

In this sense, Recital 40 of the GDPR states:

“(40) For the processing to be lawful, the personal data must be processed with the consent of the interested party or on some other legitimate basis established in accordance with Law, either in these Regulations or by virtue of another Law of the Union or of the Member States referred to in this Regulation, including the need to comply with the legal obligation applicable to the person responsible for the treatment or the need to execute a contract in which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract.”

III

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

visions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“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

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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;

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 treatments

of personal data.

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

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

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) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those 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 fine to

impose on the claimed entity as responsible for an infraction typified in

article 83.5.a) of the RGPD, in an initial assessment, they are considered concurrent in

the present case the following factors:

As aggravating factors:

- That the facts object of the claim are attributable to a lack of

diligence of the claimed (article 83.2.b, RGPD).

- Basic personal identifiers are affected (personal data

(art.83.2. g) of the RGPD).

- The obvious 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)

As mitigating factors:

- The measures that the defendant adopted to alleviate the damages suffered

by the claimant (article 83.2.c).

- The degree of cooperation with the supervisory authority in order to remedy

to the infraction and mitigate its possible adverse effects (article 83.2.f). The

claimed provided information to this Agency about the events that occurred, sent

to the claimant an explanatory letter in which he apologizes and that he proceeded

to exclude the corresponding debt.

Therefore, based on the foregoing,

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By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against VODAFONE SPAIN,

S.A.U. with NIF A80907397, for the alleged violation of article 6.1. GDPR

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

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

indicating that any of them may be challenged, as the case may be, in accordance with

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 to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and his documentation, the documents

obtained and generated by the General Subdirectorate for Data Inspection during the

investigation phase, as well as the report of previous Inspection actions.

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

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

sanction that could correspond would be 50,000 euros (fifty thousand euros), without

prejudice to what results from the instruction.

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

A80907397, granting him a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header 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).

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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 40,000 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 40,000 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 30,000 euros.

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, 40,000 euros or 30,000 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

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On October 27, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 30,000 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the 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

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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

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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. 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.

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/00341/2020, 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

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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

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